

Dr. Richard Cordero

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COPY

January 23, 2003

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445

[tel. (585) 586-6392]

Dear Ms. Dianetti,

As discussed earlier over the phone, I am interested in obtaining from you for the purpose of gathering the record on appeal, a transcript of the hearing held by the Hon. Judge John C. Ninfo, II, on December 18, 2002, of the motion brought by Kenneth Gordon, Esq., Chapter 7 Trustee, in Adversary Proceeding no. 02-2230, to dismiss my cross-claims.

After having checked your notes, you indicated that the transcript would run to some 25 pages, that each page costs \$3, and that the total cost would be between \$75 and \$80. I accept that estimate and would pay that amount upon your transferring the transcript to the clerk of court and your sending me a copy of it.

I thank you in advance for your efforts on my behalf and remain,

yours sincerely,

Dr. Richard Cordero

cc: Clerk of Court

NOTE: I received this transcript on Friday, March 28, 2003.

Page 19 was folded top over bottom and stuck in the left edge between the transparent plastic front cover and page 1. Page 19 is not dated. It is titled "Statement;" on its back and showing through the transparent plastic, the word "Statement" had been handwritten.

At the back of the transcript is page 18, which is titled "Reporter Certificate." It is dated March 12, 2003.

Both pages are signed Mary Dianetti.

Dated: March 30, 2003

Dr. Richard Cordero

Dr. Richard Cordero

S T A T E M E N T


TO: Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

FROM: Mary Dianetti
Bankruptcy Court Reporter
612 South Lincoln Road
East Rochester, New York 14445

Amount: \$51.00

For transcript of proceedings held on the 18th day
of December before The Honorable John C. Ninfo, II,
Bankruptcy Court Judge of the Western District of
New York, in the matter of PREMIER VAN LINES,
Debtor, BK. No. 02-2230.

Thank you.


Mary Dianetti
Bankruptcy Reporter

Statement

1 UNITED STATES BANKRUPTCY COURT
2 WESTERN DISTRICT OF NEW YORK

3 -----X

4 In Re:

5 Premier Van Lines

6 Debtor.

7 -----X

8
9 A.P. No. 02-2230

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

14
15 Wednesday
16 December 18, 2002
17 Rochester, New York

18
19
20
21 Reported by:

22 Mary Dianetti

23 Bankruptcy Court Reporter

24 612 South Lincoln Road

25 East Rochester, New York 14445

(585) 586-6392

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APPEARANCES:

GORDON & SCHAAL

By: Kenneth W. Gordon, Esq.

100 Meridan Centre Boulevard

Rochester, New York 14618

MR. RICHARD CORDERO

59 Crescent Street

Brooklyn, New York 11208-1515

(Appearing telephonically)

KARIN TACY, CLERK

Bankruptcy Court Clerk's Office

Rochester, New York

1 THE CLERK: This is the matter of Premier Van
2 Lines and Dr. Cordero is on the phone.

3 THE COURT: Dr. Cordero --

4 MR. CORDERO: Hello, your Honor.

5 THE COURT: -- can you hear me?

6 MR. CORDERO: I can.

7 THE COURT: Okay. Good. Mr. Gordon just
8 walked in the courtroom.

9 Do you know anything about the whole status
10 of this adversary proceeding, Mr. Gordon, aside from
11 the fact that you're not necessarily involved in all
12 of it?

13 MR. GORDON: Well, your Honor --

14 THE COURT: What happened here? It was filed
15 in September, but it's never gotten to me for some
16 reason in terms of a pretrial.

17 MR. GORDON: Here's what I know Judge --

18 THE COURT: Why wasn't this pretried?

19 MS. TACY: Your Honor, for two reasons.

20 One, there is a third party complaint that was filed.

21 The answer has been submitted in that, but
22 Ms. Schmitt the Trustee would like to have a pretrial
23 before all the answers come in, so we're scheduled on
24 January 10th, but not with all the parties though.

25 THE COURT: I understand.

1 Today this is just the Trustee's motion,
2 Dr. Cordero, to dismiss your cross claim.

3 MR. CORDERO: Yes.

4 THE COURT: And your claim appears to be
5 two alleged causes of action; one for defamation and
6 one because you're alleging that the Trustee really
7 didn't do his job properly with respect to the stuff
8 that you have in storage formerly with Premier Van
9 Lines.

10 I guess your stuff now we know is in Avon;
11 Is that correct?

12 Or we don't know where it is?

13 MR. CORDERO: Where my -- it all was --
14 initially they were at the Jefferson warehouse in
15 Henrietta. They were in there.

16 The lawyer said that they were there, but
17 the Trustee Gordon abandoned them and the bank,
18 Manufacturer bank bought them from the Trustee and
19 he auctioned the containers and all the equipment to
20 a third party that - Champion Moving, any of those
21 product - containers eventually with my name.

22 So I asked them -- the owner of Champion
23 Moving, Christopher Carter, to look for them.

24 He went into the business files that were
25 among those assets in the different warehouse that

1 he found that the debtor also have all those assets
2 in another warehouse, and they -- now they say they
3 have at least one storage container, but hopefully two
4 storage containers with my name.

5 And the owner of that warehouse has filed
6 an adversary proceeding and said that he cannot release
7 the goods because the Trustee could sue him.

8 So right now all my goods are at the Avon
9 warehouse and where -- and at a different type
10 warehouse.

11 (Unintelligible) the Trustee Gordon had
12 performed his duty there would be -- at least the
13 warehouse in the Jefferson warehouse, there would be --
14 that were abandoned to the owner of the Jefferson
15 warehouse, there would be what goods were given to
16 the bank and were given to the warehouse, but
17 nothing of that was done.

18 And before it was (unintelligible) interest
19 and neglect of negating it and debtor cannot possibly
20 liquidate without talking -- the warehouse and they --
21 that while entrusted to the debtor and to give, against
22 the debtor or debtor --

23 MR. GORDON: Your Honor, if I may? This
24 was originally filed as a Chapter 11 and was
25 converted to Chapter 7.

1 THE COURT: Look --

2 MR. GORDON: Let me, if I could just address
3 what is before the Court, though, which is my motion
4 to dismiss two cross claims, your Honor.

5 The first of those cross claims is a claim
6 for defamation based upon two letters that I wrote, one
7 to the Court and one to Mr. Cordero.

8 In those letters I was addressing issues
9 raised by Mr. Cordero in the context of the bankruptcy
10 proceeding. I addressed those issues.

11 I had tried throughout this proceeding to
12 direct Mr. Cordero to the parties who I believe could
13 help him, those who are actually in possession of
14 what he says are his assets.

15 He has taken offense at some of the things
16 I have said in my letter.

17 I believe that the case law I cited to the
18 Court is very clear, that those letters, given that
19 they were in the context of the bankruptcy proceeding,
20 responding to Mr. Cordero's request for information,
21 are absolutely privileged and cannot legally in this
22 state form the basis of a defamation claim.

23 And so I believe that that particular claim,
24 the defamation claim, even if you take everything in
25 Mr. Cordero's complaint as true would not sustain a

1 cause of action and should be dismissed.

2 And secondly is the claim that there has
3 been negligence in the performance of the Trustee's
4 duties and that Mr. Cordero has suffered as a result of
5 it.

6 I understand Mr. Cordero's frustration that
7 he has not been able to recover his property, but his
8 property is not property of the estate.

9 At no time was his property either
10 administered by me or abandoned by me. It never
11 became property of the estate.

12 I think I cited case law to the Court
13 indicating that property stored and held as property
14 is not, in fact, property of the Debtor.

15 It would certainly have been inappropriate
16 of me to have sold Mr. Cordero's property or
17 administered it in any way.

18 So that his complaint which is essentially
19 that I have not diligently found his assets and
20 directed him to find his assets, even if you take those
21 allegations as true, they do not form the basis for
22 a cause of action for negligent performance of the
23 Trustee's duties since they're outside the scope of
24 the Trustee's duties.

25 It is not the duty of the Chapter 7 Trustee

1 to administer property of a third party. That is
2 essentially the issue before the Court today.

3 I think I could help shed some light on the
4 other issues, finding Mr. Cordero's property and what
5 we can do to get either Mr. Pfunter or Mr. Dworkin,
6 who are the two landlords involved here, to search
7 their warehouses and find everything that might be
8 Mr. Cordero's, and I also believe it would be
9 beneficial to Mr. Cordero to present to the Court
10 and the parties a list of his assets which he believes
11 were in storage so that those parties can actually look
12 for those assets.

13 That is the practical answer, Judge, and if
14 you will, my legal position on the motion to dismiss.

15 MR. CORDERO: I would like to respond.

16 THE COURT: Fine. Go ahead.

17 MR. CORDERO: On defamation and the
18 negligence case, first of all, I made a recent --
19 Trustee Gordon -- it may not be applicable at all for
20 the reason that currently - here are further -
21 Gordon is a appointed scheduled appointee.

22 He later goes to court, a Federal judge and
23 U.S. Trustee so that it may be that Federal law and
24 particularly, the interpretation of defamation of the
25 person in the case is the controlling thing in this

1 case.

2 Rather than New York law, the Federal
3 constitution has been interpreted to provide --

4 THE COURT: Dr. Cordero, before we even
5 get there, would you tell me what you think was
6 defamatory in these two letters?

7 Quite frankly, I don't find anything about
8 the letters defamatory at all.

9 MR. CORDERO: Your Honor, in here is that --
10 first of all I have asked them, but remains to
11 (unintelligible) but I -- while demands remains that I
12 made more than twenty phone calls to -- just to dispose
13 of the same thing, that you've taken the property of
14 the customers, and that I either -- or that application
15 or that I'm unable to receive that and all that is
16 (unintelligible) taken -- taken as a whole is in
17 danger by -- at my personal and professional competence
18 as to -- explain to you and prove from taking into
19 account of my application for a review of the
20 performance and for his removal as Trustee in this

21 Those were allegations. There's no way that
22 even if it were applicable the first allegation would
23 privileged.

24 Trustee Gordon is an officer of the Court
25 who is to make a truthful statement to the Court at all

1 times, and me.

2 The Court will -- who will -- nothing to
3 application that I made.

4 In fact, at this - in the last paragraph
5 of his letter not to take any action on my application,
6 Trustee Gordon, they do to use the Court to my
7 application.

8 Same thing. Same letter is the letter of
9 December 23rd and the letter of October 1st to other
10 parties, even parties who have nothing to do in either
11 of the cases now in existence. Somebody who at the
12 time wasn't even a party to anything.

13
14 THE COURT: Okay. Dr. Cordero, I'm going to
15 cut you off now because you explained all of this
16 stuff in your papers so it's already part of the
17 record.

18 You're just repeating what basically you have
19 in your papers which is fine.

20 I'm going to rule on the motion and then I'm
21 going to explain my ruling to you.

22 First of all, I'm going to grant the
23 Trustee's motion and I'm going to dismiss your cross
24 claims.

25 First of all, with respect to the defamation,

1 quite frankly, these are the kind of things that happen
2 all the time, Dr. Cordero, in Bankruptcy court.

3 They may not happen in your world, but they
4 do happen in Bankruptcy court and no one in the
5 bankruptcy system who would read those two letters -
6 either myself, my clerk, any lawyer in the bankruptcy
7 bankruptcy system - and for one second look at those
8 and say there is anything defamatory about them.
9 defamatory about them.

10 I mean, it's just not the case, and it's all
11 part really of the Trustee just trying to resolve these
12 issues.

13 With regard to the negligence issue, let me
14 really try to refocus and reframe you as to what the
15 problem is.

16 We in the system really do the best job
17 that we can, whether they be clerks in the bankruptcy
18 system, whether they be Judges, whether they be people
19 from the chamber's staff, Trustee, U.S. Trustee and
20 everybody, but we just deal with what we're given.

21 The real problem here isn't Mr. Gordon. The
22 real problem is the people who ran Premier Van Lines
23 who couldn't run it properly and ended up going
24 bankrupt and who don't have the best records in the
25 world and didn't prepare for their business demise the

1 way you would have liked them to, and who didn't think
2 as much of their customers as perhaps some others
3 would.

4 Over the thirty years, Doctor, that I have
5 been doing this I've seen all kinds of business
6 failures and I've seen all kinds of principals in
7 business who performed various services for their
8 demised businesses, depending on what kind of people
9 they are.

10 I have seen people who have worked for three
11 years after their company went bankrupt to try to sort
12 out records, and these people like yourself, not
13 necessarily in this business, at their own time and
14 expense, working a regular job and doing this at night
15 for three or four nights every month.

16 Those are the kind of people you run into
17 sometime and other people just walk away from these
18 businesses and just don't care, and there is a third
19 group that walk away because they're just so distraught
20 over it all and they have some emotional problems and
21 they're upset of the loss of their business and failure
22 of their family and that they can't just bring them-
23 selves to do anything.

24 There are all kinds of people in business
25 that go bankrupt and the trustees try to do the best

1 that they can, given what are horrible records
2 and people that are walking away and don't care
3 anymore, for one reason or another, and the trustees do
4 try to help people like yourself in these kind of
5 situations, but that really is not necessarily their
6 jobs.

7 Mr. Gordon is right. They have limited
8 duties to try to protect the creditors, to some extent
9 to try to get this resolved, but when there are other
10 parties - parties like secured creditors involved and
11 landlords and Debtors, they really defer to those
12 people also in the hopes that people like you will be
13 taken care of.

14 It doesn't always happen this way. That
15 appears to be a little bit of a mess, but it does
16 appear that everybody now is focused on it. They
17 brought it to my attention.

18 This motion for the first time has really
19 brought this meaningfully to my attention. We are
20 going to try to resolve some of these things for
21 people like yourself on January 10th when this
22 pretrial -- we'll try to get the landlords in to do
23 these kind of things. Maybe it should have been done
24 before, but it doesn't always happen that way.

25 But Mr. Gordon really did from the

1 correspondence that I read try to tell you early on
2 that your property was not property that he had to
3 administer and that you really need to get yourself
4 an attorney and get somebody involved in Rochester in
5 a proactive way to try to resolve those issues on your
6 behalf.

7 And the paper work that I read indicated to
8 me he gave you a heads up on that very early on. You
9 may not like that. It may be difficult for you.

10 It's a little bit like the medical profession
11 today in the medical world. If you go into the
12 hospital, you better have someone proactive on your
13 side to work yourself through the hospital and medical
14 staff and so forth.

15 If you're going to go and put yourself in
16 the hands of the medical staff, you're going to come
17 up short every time.

18 Here I think you had warning that you need
19 to get real proactive about this, but not necessarily
20 from a distance.

21 It would have been nice if you had someone
22 on board here in Rochester for a couple of days really
23 kind of seeing this thing through, but the point I'm
24 making to you is that I don't see anything in the paper
25 work that indicates to me that Mr. Gordon has done

1 done anything wrong given his duties a a Chapter 7
2 Trustee.

3 You may not like it. You may have preferred
4 that something different was done.

5 It would have been nice if everything just
6 just fell into place with the landlord and M&T Bank
7 and maybe if the Debtor had hung in a little bit
8 longer to try to help out, but it didn't happen,
9 Doctor.

10 But as I look at those two things, I don't
11 don't see defamation and I don't see the Trustee being
12 negligent so I'm going to dismiss.

13 MR. CORDERO: Your Honor, may I say
14 something?

15 THE COURT: Sure.

16 MR. CORDERO: Your Honor, it seems to me that
17 the Creditors -- this case before -- even they,
18 (unintelligible) the case indicates they have money
19 and the calculation there is no -- that would cover his
20 statement and any - there is no way possible that
21 they -- it -- I cannot understand how the Court would
22 accept that Mr. Gordon refuse in that the state action
23 because -- (unintelligible) therefore, it is premature.

24 Let discovery find out was -- on part of the
25 Trustee was trying to prevent instead of conveying an

1 an investigation as Trustee and from being removed as
2 Trustee.

3 As to the issue of the negligence and we are
4 conducting, nobody said -- I haven't even stated that
5 my belongings were part of the estate of the Debtor.
6 That is not the issue.

7 The issue is that Trustee Gordon is not
8 performing his duties under the Code and I --
9 collaboration for where he stated that the Trustee
10 has to be - investigate the financial affairs of the
11 Debtor, he has to take a proactive act, and if he had
12 done that he would he have found that somebody had
13 acted --

14 THE COURT: Doctor, if the Debtor had done
15 its job and looked out for his customers as it went to
16 demise, you would have had all of that information.

17 The real problem I'm trying to tell you is
18 not with Mr. Gordon. It's with these companies that
19 fail and don't do everything that they could for their
20 customers and their creditors.

21 At any rate, I've heard your arguments.
22 Your arguments are fine. They're in your papers. You
23 made your record.

24 If you wish to appeal this, you're more
25 than welcome to do that, but I made my ruling. I'm

1 sticking to it.

2 I'm going to grant the Trustee's motion.

3 So good luck to you, Doctor.

4 MR. GORDON: Judge, would you like me to
5 submit an order or will you be preparing --

6 THE COURT: You can submit an order.

7 Thank you, Doctor.

8 MR. CORDERO: Judge, may I ask you a
9 question?

10 THE COURT: Real quick because I have other
11 people -- this is not the only matter we have today.
12 We have four calendars today.

13 MR. CORDERO: Where do I get the information
14 for the appeal?

15 THE COURT: You can contact the Clerk's
16 office, the Bankruptcy Clerk's Office.

17 DR. CORDERO: That's fine. Thank you very
18 much.

19 THE COURT: Okay. Thank you, Doctor.

20 MR. CORDERO: Bye now.

21 MR. GORDON: Thank you Judge.

22

23

24

25

* * *

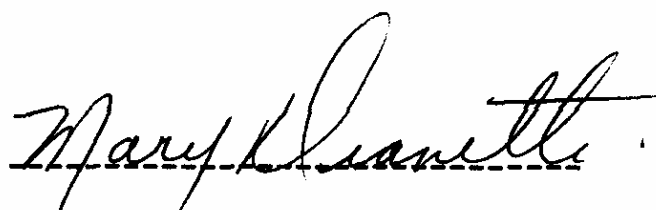
REPORTER CERTIFICATE

I, Mary Dianetti, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated: March 12, 2002

At Rochester, New York


Mary Dianetti

Dr. Richard Cordero

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

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

March 30, 2003

Ms. Mary Dianetti
Court Reporter
612 South Lincoln Road
East Rochester, NY 14445

[tel. (585)586-6392]

CONFIDENTIAL

Dear Ms. Dianetti,

Last January 8 we first talked about the terms for making a transcript for appeal purposes of the hearing last December 18, before the Hon. John C. Ninfo, II, in which I was the respondent and Kenneth Gordon, Trustee, the movant. You stated that the transcript would run to some 25 pages, that each page costs \$3, and that the total cost would be between \$75 and \$80. You also stated that you could have it ready in about ten days or less, and that you could even prepare it on an expedited basis if I needed it sooner. I accepted the cost and normal delivery terms and confirmed my acceptance by letter to you of January 23.

However, weeks went by without your sending me a copy of the transcript or letting me know what was going on, or rather, what was not going according to our agreement. I called you and even recorded a message on your answering machine, but you did not return my call. Then on March 10, I called you again. Since I did not find you there, I began to record another message. As I was finishing by saying that I found the situation of your not sending me the transcript or returning my call very strange, you picked up the phone.

You assured me that I would receive the transcript by the end of the week, and made that most extraordinary comment that 'you want the transcript from the moment you came in on the phone.' I told you that I wanted everything and that I got the impression that other exchanges had taken place between the Judge and other parties before and after I was on the phone. You said that was not the case. However, when I asked you how long the transcript would run, you said that it would be only 17 pages. I brought to your attention what you had stated before.

Despite your assurance that I would receive the transcript by the end of that week, you failed to perform accordingly: I just received the transcript on Friday, March 28. It is very strange that your Reporter Certificate is dated March 12. Why did you not mail it on that day so that I could have it by the end of the week as you had assured me I would? Where did it linger so that I was deprived of it for more than two additional weeks? Also strange is the fact that there was another paper signed with your name but not dated.

I trust you are aware of the importance of a transcript for an appellant and that the circumstances under which this transcript has finally arrived are quite strange, to put it mildly.

Therefore, I request that you provide me, and copy the Court, with a dated and signed statement containing assurances and explanations concerning the following specific points:

1. a) that you submitted a transcript to the Bankruptcy Court, of which the one you sent me is an identical copy, and
b) that such transcript contains a complete and accurate written statement of all the statements made in court on December 18, 2002, at the hearing In re Premier Van Lines, case no. 02-2230, including those that were made while I was on the phone as well as those made before or after I was on the phone;
2. why, in spite of your experience, you estimated the length of the transcript to be between 25 and 27 pages but it actually came out at only 17 pages, which represents a mistake of almost 60%;
3. a) why although in the phone conversation that we held on March 10 you assured me that I would have the transcript by the end of that week, and your signed Reporter Certificate is dated March 12, the transcript was only mailed on March 26;
b) who had access to it in the meantime or thereafter; and
c) for what purpose.

Kindly add any other statement reasonably intended or necessary to provide full disclosure about, and to put to rest, the concerns that I have expressed about the untimeliness, content, and addressees of the transcript to which I am entitled under the Rules of Procedure and under our agreement.

So that this request may not be left without any action just as that for the transcript was for over two and half months, I ask that you reply within 10 days. That is a period of time that the Rules of Procedure applicable to you too consider reasonable for action to be taken timely in the context of court business. Consistent with the position that I have taken before, I consider that FRBkrP Rules 9006(e) and (f) are applicable to this request.

If I do not receive a timely answer, I will take it to mean that you acknowledge that you did not abide by our agreement and are giving up your claim to compensation.

Sincerely,

Dr. Richard Cordero

Certificate of Service

I, Dr. Richard Cordero, certify that on March 31, 2003, I sent the original of the accompanying letter to:

Ms. Mary Dianetti
Court Reporter
612 South Lincoln Road
East Rochester, NY 14445

Dated: March 31, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

April 11, 2003
612 South Lincoln Road
East Rochester, NY 14445

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11206-1515

Dear Mr. Cordero:

In reply to your letter dated March 30, 2003, the answers to your questions are as follows:

- 1.a) The transcript filed with the Bankruptcy Court is identical to yours and I am enclosing a copy that I had Ms. Tacy copy of said transcript.
- b) The transcript contains a complete and accurate written statement of all statements made in court on December 18, 2002, at the hearing In Re: Premier Van Lines, Case No. 02-2230, including those that were made while you were on the phone.
I should note here that in one of our conversations where you inquired if anything said before your matter began and after your matter ended that I got my notes and read to you the beginning and the end of the proceeding, and I assured you nothing was said before or after your proceeding regarding your matter.
- 2.a) In answer to your questions regarding my estimate of 25 pages, I informed you on the telephone that I always estimate high and that the attorneys when receiving their transcripts are happy about that. I previously made that remark to you. However, what I base my estimate on is the number of folds of the paper that I write on. I had 53 folds and I divided by 3, which means one page for three folds, and then I allow for the title page and appearance and certification pages, and I allow a little more for colloquy versus the question and answer format.
In my estimate it should have been four folds for one page because I had my spacing set a little farther apart than I realized.
- 3.a) In our phone conversation of March 10th I informed you the transcript was being typed and you would have it probably the end of that week. The certificate was dated the 12th and that is when I signed it and that is when I should have mailed it to you and filed it with the Bankruptcy Court. The other paper that was attached to your copy of the transcript which

was not signed was a certificate that I must have picked up inadvertently when I put the transcript in a folder.

The certificates on my transcripts all read the same, and I do have other transcripts that I produce, and I must have picked that up inadvertently, and obviously, didn't check your copy before I mailed it to you. The two copies filed with the Bankruptcy Court are dated March 12th.

- b) The answer to your question as to who had access to the transcript in the meantime or thereafter is as follows:

After proofreading the transcript I was concerned about the record that you made as not being complete as it was obvious that I had not picked up everything that you might have said. I went to the file in the Bankruptcy Court Clerk's Office and read some papers in the file to try and discern whether what you said would be understandable to anyone who read the transcript. I could not fix the record that I took because I can only transcribe the words that I have and not put in other words that I do not have in my notes.

I honestly do not know if it was the reception or your accent or if you were reading from a paper and not speaking right into the phone, but I was trying very hard to get down everything that you said.

You can see from the transcript that I put in the word unintelligible. I was concerned about doing that as the only time I ever do that is while transcribing tapes.

So in that time period from the 12th to when you received the transcript and the filing of them with the Bankruptcy Court Clerk's Office, I consulted with another reporter who had extensive experience. I was concerned about putting the word unintelligible in the transcript because I had never done that before. However, in other courts that I have worked there were never any telephonic proceedings.

Unfortunately, the reporter was on vacation and didn't get back to me for some time. The transcript was in my possession and I was inquiring about the telephonic proceeding and inability to hear every word and the correct procedure.

That is the explanation for the time lapse of the date on the certification and when you received it. And also the explanation of not reading it again and catching the unsigned certificate as I was trying to get it to you as fast as I could.

I would just add that I did not provide this transcript as timely as I could have as the circumstances were such - due to the telephonic appearance - that I really

was trying to resolve the problem of not being able to catch every word you said and inserting the word unintelligible.

When you asked me on the phone whether there was a problem, I should have said I had difficulty understanding you, but I waited to proofread the transcript and then went from there.

I apologize for any inconvenience this has caused you and I trust I have answered all of your questions to your satisfaction.

Very truly yours,

A handwritten signature in black ink that reads "Mary Dianetti". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mary Dianetti
Bankruptcy Court Reporter

cc: Judge John C. Ninfo, II

Dr. Cordero,

Just a note
to tell you that
we were out of
power for 8 days
and therefore this
letter may be a
little late.

Mary Dianetti.

UNITED STATES BANKRUPTCY COURT

Western District of New York

In Re:

APPLICATION FOR ENTRY
OF DEFAULTPREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543

Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

1. On November 22, 2002, a copy of the summons and complaint was served on David Palmer, the above named Defendant, and the certificate of service of process was filed in this Court on the same date.
2. Defendant, David Palmer, has failed to plead or otherwise defend in this action, and the time to plead or otherwise defend expired on December 16, 2002.

☐ Defendant has appeared in this action.
☒ Defendant has not appeared in the Adversary proceeding No. 02-2230, and the time to appear has expired.
3. The Defendant is not an infant or incompetent person.
4. Debtor ☐ is ☒ is NOT the Defendant. If debtor is Defendant, a default judgment motion was properly brought and served in accordance with Rule 55 and Fed.R.Bankr.P. Rule 7055.
5. It is requested that the Clerk enter default of the Defendant pursuant to Bankruptcy Rule 7055 and Rule 55(a) of the F.R.C.P.
6. I, Dr. Richard Cordero, third-party plaintiff appearing pro se, declare under penalty of perjury that the foregoing is true and correct.

Executed: December 26, 2002Dr. Richard Cordero**CLERK'S CERTIFICATE OF DEFAULT**

The default of the Defendant, David Palmer, is hereby entered according to law.

Dated: _____

PAUL R. WARREN, Clerk of Court

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

AFFIDAVIT OF
NON-MILITARY SERVICE

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543
Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

I, Dr. Richard Cordero, am Plaintiff pro se in the above action. When I spoke with Defendant Palmer early this year, he presented himself to me as a businessman and never mentioned that he was or intended to be in the military. After Mr. Palmer would not take or return any of my phone calls, I communicated with his attorney, Raymond Stilwell, Esq., in an effort to get Mr. Palmer to honor his word concerning the retrievability of my property, which his company, Premier Van Lines, Inc., the Debtor, held in storage for me. Mr. Stilwell invoked a confidentiality privilege and refused to provide any information concerning Mr. Palmer's whereabouts. Mr. Stilwell never alleged that Mr. Palmer's unavailability was due to his being in military service. The above stated address of Mr. Palmer appeared in the certificate of service that the attorneys at Underberg & Kessler for M&T Bank, the lienholder of Premier's assets, attached to a paper that they have just served in this action, in which M&T Bank is a defendant.

I learned from M&T Bank and its attorneys that M&T Bank obtained a judgment against Mr. Palmer that at the time it could not enforce because it had not been able to find Mr. Palmer.

Thus, I affirm that to the best of my knowledge it is my good faith belief that Defendant Palmer is not in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940.

Dated: December 26, 2002

Dr. Richard Cordero

(Affirmed under penalty of perjury)

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

ORDER TO TRANSMIT RECORD
TO DISTRICT COURT

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543

Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

ORDER TO TRANSMIT RECORD IN NON-CORE PROCEEDING TO DISTRICT
COURT, COMBINED WITH FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION REGARDING PLAINTIFF'S REQUEST FOR ENTRY
OF DEFAULT JUDGMENT

The Clerk of Bankruptcy Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984)

TO THE DISTRICT COURT:

Having examined the record in this Adversary Proceeding and having found it to be a non-core proceeding, the Bankruptcy Court is without authority to enter a final or dispositive order or judgment. (See, §157(c), Title 28 United States Code). Plaintiff has requested entry of default judgment against David Palmer, the above named Defendant.

☒ No hearing was necessary.

☐ A hearing was necessary, which hearing was held on _____

at _____, on notice to _____

at which hearing there appeared _____

_____, who was heard.

FINDINGS

This Court now finds that the Third-party Complaint was filed by the Plaintiff on November 22, 2002, that an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of judgment by default, by application or affidavit filed in this Court on December 26, 2002, and that the Clerk certified and entered the Fact of Default on _____.

CONCLUSIONS

The Plaintiff is entitled under applicable law to entry of judgment by default.

RECOMMENDATION

Wherefore, it is recommended that the District Court award default judgment to the Plaintiff in the amount of \$24,032.08 (plus the allowed per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Amount Due.

Date: _____

John C. Ninio, II, U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

Western District of New York

In Re:

AFFIDAVIT OF AMOUNT DUE

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543
Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

In support of the Plaintiff's request that the Bankruptcy Court recommend and the District Court enter default judgment against David Palmer, the above named Defendant, the Plaintiff submits the following itemization of damages sought:

Principal amount prayed for:

1) property in storage	14,000.00
2) capitalized moving, storage, insurance and related fees and taxes that Plaintiff has paid since his property went into storage in August 1993.....	9,887.15
Pre-judgment interest at the rate of 5% from November 22 through December 26, 2002	44.93
Costs (for copying, phone, and postage).....	100.00
Attorney's fees (See § 1923, Title 28 United States Code).....	+0.00
TOTAL DAMAGES	\$24,032.08

Plus per diem of \$3.40 since the date of
the filing plaintiff's request for default

Date: December 26, 2002

Dr. Richard Cordero

Plaintiff pro se

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

ORDER

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543
Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

Based on the annexed Recommendation and Certification, it is

ORDERED, ADJUDGED AND DECREED that a default judgment be entered against David Palmer, the above named Defendant, in the amount of \$24,032.08.

Date: _____

U.S. D. J.

Certificate of Service

I, Dr. Richard Cordero, served a copy of my letter to Judge Ninfo, a Pre-trial Option Form, and my application to enter a default judgment against Mr. David Palmer, all dated December 26, 2002, on the parties listed below.

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1400 United States Courthouse
100 State Street
Rochester, NY 14614

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883

Mr. David Dworkin
415 Park Avenue
Rochester, New York 14607

Jefferson Henrietta Associates
415 Park Avenue
Rochester, New York 14607

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

The President
Rochester Americans Hockey Club
Office of the President
100 Exchange Blvd.
Rochester, New York 14614

Dated: December 26, 2002
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

ADAIR, KAUL, MURPHY, AXELROD & SANTORO, LLP

ATTORNEYS AND COUNSELORS AT LAW

Raymond C. Stilwell 300 Linden Oaks • Suite 220 • Rochester, New York 14625-2883
Telephone: 585/248-3800 • Fax: 585/248-4961
E-mail: rcstilwell@adairlaw.com

Please reply to:
Rochester

December 20, 2002

Clerk, US Bankruptcy Court
1220 US Courthouse
100 State Street
Rochester, NY 14614

Re: Pfutner v. Gordon et al
Case No.00-1-20692 (Chapter 7); AP 02-2230

I have received a notice of pretrial relative to the above, which is scheduled for the 10th of January, 2003 calendar. I already have an existing commitment at that hour in Erie County Supreme Court. However, I am not sure if my appearance is required so as to also require an adjournment of the matter.

Premier is not a party to the lawsuit. Mr. Palmer, who apparently is, has not retained me relative to the suit, or even contacted me in over six months about anything. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them. I therefore am unsure what the purpose is of including us in this noticing (or, for that matter, on any of the service lists which have developed over the past several months). We have no records other than those already turned over to the trustee, and no special ability to resolve the underlying issues.

I await the Court's advisement as to whether another date and time will be required, but it cannot happen at the time specified in the notice.

Very truly yours,

Raymond C. Stilwell

RCS\
XCs: [per attached]

Buffalo Office: The Law Center, 17 Beresford Court, Williamsville, NY 14221 • Phone (716)634-8307 • Fax (716)839-0714

David D. MacKnight
Lacy, Katzen etal
130 East Main St.
Rochester, NY 14604

KENNETH W. GORDON, As Trustee
100 Meridian Centre Blvd.
Suite 120
Rochester, NY 14618

Michael J. Beyma
Underberg & Kessler
1800 Lincoln First Tower
Rochester, NY 14604

RICHARD CORDERO
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

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

December 26, 2002

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1400 United States Courthouse
100 State Street
Rochester, NY 14614

[tel. 585-263-3148]

Re: Premier Van Lines, bankruptcy case no. 01-20692; Adversary proceedings no. 02-2230

Dear Judge Ninfo,

I was informed by Case Administrator Karen S. Tacy that I should disregard the Request of the United States Trustee for Status Conference, which sets down such conference for January 8, and concern myself only with the Pre-trial conference scheduled for January 10. Since I must inform the Court of my choice by December 27, I am sending herewith a Pre-Trial Option Form where I have stated, among other things, my preference for a telephone conference.

I would like to note that it is not the case as yet that "all parties to the action agree that a conference by telephone will serve to expedite a final settlement of this matter." That could hardly be the case because two parties, namely, Mr. David Dworkin and Jefferson-Henrietta Associates have not even answered my third party complaints. Their attorneys at Underberg & Kessler, who represent co-defendant M&T Bank and third-party defendant David Delano, have conflicted themselves out and requested on their behalf that the deadline to file an answer be extended from December 19 to December 31. This means that I do not even know their names and, consequently, cannot undertake with them any negotiation that may lead to their agreement to hold a phone pre-trial conference. Moreover, once their answers are mailed from Rochester, they might not reach me in Brooklyn until January 6. That will give very little time to engage in negotiations before the Pre-trial Conference scheduled for the 10th. Therefore, I believe that it would be more appropriate to adjourn that Conference.

This goes along the line of the request for adjournment made by Raymond C. Stilwell, Esq., the attorney who represented David Palmer, who is now a third-party defendant. In his letter to the Clerk of Court of December 20, he stated a previous judicial commitment in support of his request.

Mr. Stilwell has therein also questioned the need for him to appear at that Conference given that 'Mr. Palmer has not retained him relative to this suit.' In this vein, I note that early in January 2002, I spoke with Mr. Palmer in an effort to find out the condition of my property in storage with his company, Premier Van Lines, Inc., which he never told me was a bankrupt Debtor or in liquidation. Nevertheless, Mr. Palmer assured me that my property was safe and available. When that began to appear not to be the case, Mr. Palmer would neither take nor return my calls. I appealed to Mr. Stilwell as his lawyer. In his letter to me of May 30, 2002, Mr. Stilwell wrote that, "I also have an obligation to maintain the confidences of our own client, which precludes me from putting you in direct contact with Mr. Palmer or assisting in your efforts to do so without his consent."

I respectfully submit to the Court that Mr. Stilwell should be required to attend the conference and provide all the information in his possession and state his good faith belief about where Mr. Palmer is or may be and how to get him to appear in Court. Indeed, through Mr. Stilwell, as officer of the court, Mr. Palmer invoked, and benefited from, the provisions of the bankruptcy law. Thereby Mr. Palmer submitted himself to the jurisdiction of the Court and Mr. Stilwell assisted him in securing the most advantageous application of the law. Both should be deemed to remain under the jurisdiction of the Court until at least the liquidation of the company for the protection of whose rights they first came to Court, whereby they also agreed to assume the concomitant of rights, namely, obligations.

Mr. Palmer must not be allowed to secure a discharge in bankruptcy of his company's debts and then to evade the obligations imposed upon him by the judicial system whose benefit he sought. To let him cut and run when the time comes for him to deal with his obligations would make a mockery of the Court and the judicial system that it helps to administer. The Court can only be respected when it respects itself by making sure that he who asks its intervention to solve his problems does not exploit it for its benefits but dumps it to escape his obligations. Only thus can its system dispense justice, for imposing obligations upon one party also means protecting the rights of one or even many other parties who are the intended beneficiaries of those obligations.

Yet, Mr. Palmer has already failed to bear his obligation to answer my complaint in the adversary proceeding. That is why I have applied for default judgment against him. However, by entering default judgment according to law the Court would not ensure respect for the judicial system if it did not also take steps to ensure that Mr. Palmer complies with it. In this regard, the evidence is not encouraging. I was told by M&T Bank and its attorneys at Underberg & Kessler, that M&T Bank -a co-defendant in this adversarial proceeding and lienholder of Mr. Palmer's company, the Debtor in the bankruptcy case- had obtained a judgment against Mr. Palmer that they could not enforce because unable to find him. This tallies with Mr. Stilwell's refusal to put me in direct contact with Mr. Palmer.

Thus, as the very first step in insuring that Mr. Palmer does comply with the default judgment, the Court should require that Mr. Stilwell, who in his dealings with me held himself out as Mr. Palmer's attorney, attend the pre-trial conference. Mr. Stilwell is first and foremost an officer of the Court; only because of that status is he allowed to represent clients in court. As such, he has the obligation to uphold the proper functioning of the court by ensuring that his clients appear before it for both the rights and the obligations phases of court proceedings, particularly those proceedings that they have set in motion or participated in. He must not be allowed to invoke any client-attorney privilege to shield Mr. Palmer from the reach of the Court under whose jurisdiction both Mr. Palmer and Mr. Stilwell placed themselves. Far from it, Mr. Stilwell must be required not only to state upon information and belief Mr. Palmer's whereabouts, but also accompany his statements with his best efforts to make Mr. Palmer appear in Court. That is part of his responsibilities as an officer of the court.

The address that I have indicated for Mr. Palmer in my application for default judgment appeared in the certificate of service that M&T Bank's attorneys attached to a paper that they have just served in this action. Mr. Palmer's disregard of my complaint gives rise to the concern that he will also disregard the copy of my application for default judgment that I am mailing him to that address. It is for the Court to ensure that its handling of this application is not contemptuously turned into an exercise in futility.

Therefore, I respectfully request that the Court:

1. take notice that I have opted to conduct a telephone conference as soon as that is possible;
2. consequently adjourn the conference;
3. require Mr. Stilwell to attend and participate in that conference; and
4. order Mr. Stilwell to provide all information useful to establish Mr. Palmer's whereabouts and fully assist the Court in bringing Mr. Palmer before it.

Yours sincerely,

Dr. Richard Cordero

Certificate of Service

I, Dr. Richard Cordero, served a copy of my letter to Judge Ninfo, a Pre-trial Option Form, and my application to enter a default judgment against Mr. David Palmer, all dated December 26, 2002, on the parties listed below.

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1400 United States Courthouse
100 State Street
Rochester, NY 14614

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883

Mr. David Dworkin
415 Park Avenue
Rochester, New York 14607

Jefferson Henrietta Associates
415 Park Avenue
Rochester, New York 14607

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

The President
Rochester Americans Hockey Club
Office of the President
100 Exchange Blvd.
Rochester, New York 14614

Dated: December 26, 2002
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

Dr. Richard Cordero

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

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

January 30, 2003

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1400 U.S. Courthouse, 100 State Street
Rochester, NY 14614

[tel. (585)-263-3148]

Re: Premier Van Lines, bankruptcy case no. 01-20692; Adversary proceedings no. 02-2230

Dear Judge Ninfo,

Over a month ago, on December 26, I filed all the forms necessary to take a default judgment against Mr. David Palmer. Upon finding out that no recommendation for the entry of such judgment has been forwarded to the District Court, I called the Bankruptcy Court. There I was informed that you consider the issue of damages premature until I go to Rochester to inspect my property.

I fail to see the connection between the default judgment and such visit. I filed for default judgment because Mr. Palmer did not care to respond to my complaint. Thus, his failure to comply with the legal requirement, stated in the summons, of answering the complaint under pain of being subjected to default judgment for the amount sued for gives rise to my right to such judgment. Why should the court protect the interest of a party such as Mr. Palmer who has shown so much contempt for the court and for legal requirements?

This is not even the first time that Mr. Palmer shows contempt. To begin with, he showed contempt for his clients, such as me, to whom he gave no notice that his company, Premier Van Lines, was in bankruptcy. He even concealed from me, during our telephone conversations, that his company was in liquidation. What is more, he affirmed that my property was safely in storage at the Jefferson Henrietta warehouse, just as he affirmed so to his own lawyer, who wrote that to me. But, as you know, my property was not even there. Yet, he had been billing me for its storage as well as for its insurance; I paid those bills from him; and he took the money. For a person that has shown no consideration for others or for the court for that matter, why should the court be concerned about sparing him the payment of default judgment? It is Mr. Palmer's turn to pay.

Indeed, there is evidence that Mr. Palmer would not even care to see default judgment entered against him. As I indicated in my December 26 letter to you: "I was told by M&T Bank and its attorneys at Underberg & Kessler, that M&T Bank -a co-defendant in this adversarial proceeding and lienholder of Mr. Palmer's company, the Debtor in the bankruptcy case- had obtained a judgment against Mr. Palmer that they could not enforce because unable to find him. This tallies with Mr. Stilwell's refusal to put me in direct contact with Mr. Palmer."

If Mr. Palmer can come up with a reason why default judgment should not be entered against him, he should take the trouble to go to District Court and argue his case himself. By contrast, I have made a lot of sacrifice to comply with all legal requirements, spending an enormous amount of time writing the pleadings and finding and completing all the default judgment forms. Of the two of us, I should be the beneficiary of the court's consideration. Therefore, I respectfully request that the court forward my application to the District Court; otherwise, that it state in writing why it rules against doing so.

Yours sincerely,

Dr. Richard Cordero

Certificate of Service

I, Dr. Richard Cordero, hereby certify that I have served a copy of my letter to the Hon. Judge John C. Ninfo, II, dated January 30, 2003, and concerning Adversary Proceeding no. 02-2230, on the following parties:

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070
fax. (585) 244-1085

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800
fax (585) 248-4961

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650
fax (585) 454-6525

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706
fax. (585) 263-5862

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

Dated: February 5, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

Blank

DOCKETED

UNITED STATES BANKRUPTCY COURT

Western District of New York

In Re:

APPLICATION FOR ENTRY
OF DEFAULT

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543

Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800

Third-party Defendant

1. On November 22, 2002, a copy of the summons and complaint was served on David Palmer, the above named Defendant, and the certificate of service of process was filed in this Court on the same date.
2. Defendant, David Palmer, has failed to plead or otherwise defend in this action, and the time to plead or otherwise defend expired on December 16, 2002.
☐ Defendant has appeared in this action.
☒ Defendant has not appeared in the Adversary proceeding No. 02-2230, and the time to appear has expired.
3. The Defendant is not an infant or incompetent person.
4. Debtor ☐ is ☒ is NOT the Defendant. If debtor is Defendant, a default judgment motion was properly brought and served in accordance with Rule 55 and Fed.R.Bankr.P. Rule 7055.
5. It is requested that the Clerk enter default of the Defendant pursuant to Bankruptcy Rule 7055 and Rule 55(a) of the F.R.C.P.
6. I, Dr. Richard Cordero, third-party plaintiff appearing pro se, declare under penalty of perjury that the foregoing is true and correct.

Executed: December 26, 2002Dr. Richard Cordero

SUGGESTED FORM D-2

CLERK'S CERTIFICATE OF DEFAULT

The default of the Defendant, David Palmer, is hereby entered according to law.

Dated: February 4, 2003

Paul R. Warren
PAUL R. WARREN, Clerk of Court

Page 1 of 6

49

UNITED STATES BANKRUPTCY COURT

Western District of New York

In Re:

ORDER TO TRANSMIT RECORD
TO DISTRICT COURTPREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

DebtorRichard Cordero
59 Crescent Street
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer
1829 Middle Road
Rush, New York 14543Raymond Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883,
tel. (585) 248-3800Third-party Defendant

ORDER TO TRANSMIT RECORD IN NON-CORE PROCEEDING TO DISTRICT COURT, COMBINED WITH FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION REGARDING PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT JUDGMENT

The Clerk of Bankruptcy Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984)

TO THE DISTRICT COURT:

Having examined the record in this Adversary Proceeding and having found it to be a non-core proceeding, the Bankruptcy Court is without authority to enter a final or dispositive order or judgment. (See, §157(c), Title 28 United States Code). Plaintiff has requested entry of default judgment against David Palmer, the above named Defendant.

☒ No hearing was necessary.

☐ A hearing was necessary, which hearing was held on _____

at _____, on notice to _____

at which hearing there appeared _____

_____, who was heard.

FINDINGS

This Court now finds that the Third-party Complaint was filed by the Plaintiff on November 22, 2002, that an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of judgment by default, by application or affidavit filed in this Court on December 26, 2002, and that the Clerk certified and entered the Fact of Default on

2/4/2003.

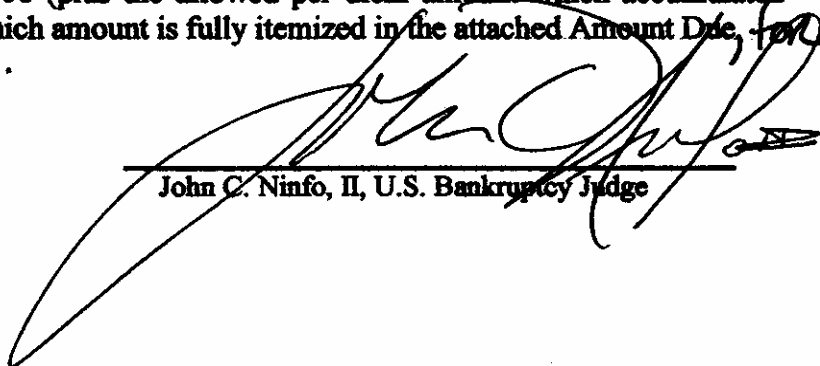
CONCLUSIONS

The Plaintiff is ^{NOT} entitled under applicable law to entry of judgment by default.

RECOMMENDATION

Wherefore, it is ^{NOT} recommended that the District Court award default judgment to the Plaintiff in the amount of \$24,032.08 (plus the allowed per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Amount Due, ~~for~~ The Attached Reasons.

Date: 2/4/03



John C. Ninfo, II, U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
IN RE:**

PREMIER VAN LINES, INC.,

CASE NO. 01-20692

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

A.P. NO. 02-2230

DAVID PALMER,

Third-party Defendant.

**ATTACHMENT TO RECOMMENDATION OF THE
BANKRUPTCY COURT THE DEFAULT JUDGMENT
NOT BE ENTERED BY THE DISTRICT COURT**

1. In 1993 the Third-party Plaintiff, Richard Cordero ("Cordero"), stored various items of personal property with a storage company (the "Cordero Property");
2. Premier Van Lines, Inc. ("Premier"), of which David Palmer was a principal, was a successor storage company of the Cordero Property;
3. In 2001, Premier filed a Chapter 11 case, which was subsequently converted to a Chapter 7 case;
4. On September 27, 2002, an Adversary Proceeding was commenced by James Pfuntner to have the Court determine proper ownership and responsibilities for various storage containers previously stored by Premier, of which James Pfuntner was the successor storage entity;
5. At least one of the storage containers now under the control of James Pfuntner and located at the Sackett Road warehouse in Avon, New York, bears Cordero's name, and there is at least one other container that is not labeled (the "Avon Containers");
6. As part of the Adversary Proceeding, within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993;

ATTACHMENT TO RECOMMENDATION (con't)

7. Cordero has not yet demonstrated that he has incurred the \$14,000.00 in damages requested in the Default Judgment;
8. In addition, Cordero has not yet demonstrated that moving, storage and insurance fees previously paid, are recoverable, especially since a portion of the moving, storage and insurance fees were paid prior to when Premier became responsible for the storage of the Cordero Property;
9. Therefore, since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Court's opinion, the entry of the Default Judgment would be premature;
10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers, but Cordero, pursuant to his attached January 30, 2003 letter, as a pro se litigant, has respectfully requested that the Court forward his Default Judgment Application to the District Court.

DATED: February 4, 2003



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

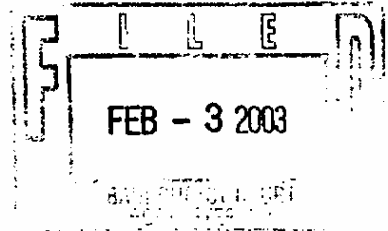
Dr. Richard Cordero

Ph.D., University of Cambridge, Eng 1
M.B.A., University of Michigan Business School
D.E.A., La Sorbonne, Paris

DOCKETED
59 Crescent Street
Brooklyn, NY 11208-1615
tel. (718) 827-8521; CorderoRic@yahoo.com

January 30, 2003

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1400 United States Courthouse
100 State Street
Rochester, NY 14614



Re: Premier Van Lines, bankruptcy case no. 01-20692; Adversary proceedings case no. 02-2230

Dear Judge Ninfo,

Over a month ago, on December 26, I filed all the forms necessary to take a default judgment against Mr. David Palmer. Upon finding out that no recommendation for the entry of such judgment has been forwarded to the District Court, I called the Bankruptcy Court. There I was informed that you consider the issue of damages premature until I go to Rochester to inspect my property.

I fail to see the connection between the default judgment and such visit. I filed for default judgment because Mr. Palmer did not care to respond to my complaint. Thus, his failure to comply with the legal requirement, stated in the summons, of answering the complaint under pain of being subjected to default judgment for the amount sued for gives rise to my right to such judgment. Why should the court protect the interest of a party such as Mr. Palmer who has shown so much contempt for the court and for legal requirements?

This is not even the first time that Mr. Palmer shows contempt. To begin with, he showed contempt for his clients, such as me, to whom he gave no notice that his company, Premier Van Lines, was in bankruptcy. He even concealed from me, during our telephone conversations, that his company was in liquidation. What is more, he affirmed that my property was safely in storage at the Jefferson Henrietta warehouse, just as he affirmed so to his own lawyer, who wrote that to me. But, as you know, my property was not even there. Yet, he had been billing me for its storage as well as for its insurance; I paid those bills from him; and he took the money. For a person that has shown no consideration for others or for the court for that matter, why should the court be concerned about sparing him the payment of default judgment? It is Mr. Palmer's turn to pay.

Indeed, there is evidence that Mr. Palmer would not even care to see default judgment entered against him. As I indicated in my December 26 letter to you: "I was told by M&T Bank and its attorneys at Underberg & Kessler, that M&T Bank -a co-defendant in this adversarial proceeding and lienholder of Mr. Palmer's company, the Debtor in the bankruptcy case- had obtained a judgment against Mr. Palmer that they could not enforce because unable to find him. This tallies with Mr. Stilwell's refusal to put me in direct contact with Mr. Palmer."

If Mr. Palmer can come up with a reason why default judgment should not be entered against him, he should take the trouble to go to District Court and argue his case himself. By contrast, I have made a lot of sacrifice to comply with all legal requirements, spending an enormous amount of time writing the pleadings and finding and completing all the default judgment forms. Of the two of us, I should be the beneficiary of the court's consideration. Therefore, I respectfully request that the court forward my application to the District Court; otherwise, that it state in writing why it rules against doing so.

Yours sincerely,

Dr. Richard Cordero

46

ADAIR, KAUL, MURPHY, AXELROD & SANTORO, LLP

ATTORNEYS AND COUNSELORS AT LAW

Raymond C. Stilwell 300 Linden Oaks • Suite 220 • Rochester, New York 14625-2883
Telephone: 585/248-3800 • Fax: 585/248-4961
E-mail: rcstilwell@adairlaw.com

Please reply to:
Rochester

February 11, 2003

Hon. John C. Ninfo II
United States Bankruptcy Judge
1400 US Courthouse
100 State Street
Rochester, NY 14614

Re: Pfutner v. Gordon et al
Case No. 00-1-20692 (Chapter 7); AP 02-2230

Dear Judge Ninfo:

I wrote to the Court and all parties in December concerning the ongoing proceedings in this case. While the Court did not require my appearance at the January pre-trial conference, I continue to receive almost daily mailings from parties to these adversaries, for which I have no client or ability to respond to.

To reiterate what I informed the parties of in December: Premier, our client in the still-pending Chapter 7, is not a party to the lawsuit. Mr. Palmer, who apparently is, has not retained me relative to the suit, or even contacted me in (now) over eight months about anything, including about putting in any opposition to the intended default against him personally. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them. I have also made every reasonable effort to put Dr. Cordero in touch with the appropriate people to assist him.

Now, in addition to the mail, I am receiving calls attempting to confirm my availability to accompany Dr. Cordero to the Avon warehouse. I have never been to this location, have no idea what he is looking for and can see no purpose being served by such an effort. If I receive direction to the contrary, I will accommodate it, but as of this writing my conflict dates for the rest of this month and next are as follows:

February 18, 19 and 24
March 4, 10, 14, 18, 24 and 26

In addition, I have matters pending in the Commercial Division of State Supreme Court which are typically heard on Friday mornings and at least one of which is awaiting assignment of a return date.

Please advise if the Court requires participation under these circumstances.

Very truly yours,

Raymond C. Stilwell

RCS\
XCs: [per attached]

Buffalo Office: The Law Center, 17 Beresford Court, Williamsville, NY 14221 • Phone (716)634-8307 • Fax (716)839-0714

David D. MacKnight

Lacy, Katzen etal

130 East Main St.

Rochester, NY 14604

KENNETH W. GORDON, As Trustee

100 Meridian Centre Blvd.

Suite 120

Rochester, NY 14618

Michael J. Beyma

Underberg & Kessler

1800 Lincoln First Tower

Rochester, NY 14604

~~RICHARD CORDERO~~

59 Crescent Street

Brooklyn, NY 11208

Dr. Richard Cordero

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

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

March 2, 2003

Hon. David G. Larimer
United States District Judge
United States District Court
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387

Dear Judge Larimer,

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT

I trust this warning grabbed your attention. So it was written in the summons, in bold capital letters from one margin to the other, that I, a defendant appearing pro se, served together with the complaint on Mr. David Palmer to bring him as third party defendant into Adversary Proceeding no. 02-2230 in the bankruptcy court for the Western District. That warning must also have grabbed his attention. This is particularly likely since the summons was properly served on his lawyer, Raymond Stilwell, Esq., given that Mr. Palmer is the owner of the debtor company in the bankruptcy case in chief no. 01-20692. However, Mr. Palmer failed to appear, whether personally or through his lawyer, let alone file any answer. So I timely applied for entry of default judgment in December.

For reasons and under circumstances that I cannot explain under any provisions of law that I have so far researched, the Honorable Judge John C. Ninio, II, has recommended to your court that the application be denied. That is so even though there is no doubt whatsoever that Defendant Palmer received that stark warning and chose to ignore it, thereby consenting to the entry of default judgment. Hence, the clerk of the bankruptcy court already entered his default, though belatedly.

The negative recommendation is predicated on the contention that I, the plaintiff, failed to demonstrate what I was never required to demonstrate either by law or by Judge Ninio, namely, a loss of property and the amount of damages. Nor was I given notice of such recommendation. Yet, I have managed to secure a copy of it. I respectfully object thereto.

Consequently, on the grounds stated in my motion, I respectfully request that you enter and carry into effect judgment by default against Mr. Palmer, ascertain the circumstances of the recommendation, and withdraw the Adversary Proceeding to the district court.

Yours sincerely,

Dr. Richard Cordero

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

In re PREMIER VAN LINES, INC.,
Debtor

Chapter 7 bankruptcy
case no. 01-20692

JAMES PFUNTNER,
Plaintiff

Adversary proceeding
no. 02-2230

-VS-

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

Defendants

RICHARD CORDERO,
Third party plaintiff

-VS-

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

Third party defendants

RICHARD CORDERO,
Applicant

03mbk6001

-VS-

DAVID PALMER,
Respondent

NOTICE OF MOTION
TO ENTER DEFAULT JUDGMENT
AGAINST DAVID PALMER
AND WITHDRAW PROCEEDING

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at 1550 United States Courthouse on 100 State Street, Rochester, New York, 14614, at _____ on _____, 2003, pursuant to Rule 8011(a) of the Federal Rules of Bankruptcy Procedure and 28 U.S.C. §157(d) for an order to enter and carry into effect default judgment against Mr. David Palmer, third party defendant in Adversary Proceeding no. 02-2230, and withdraw the proceeding.

Dated: March 2, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

Certificate of Service

I, Dr. Richard Cordero, hereby affirm under penalty of perjury that I have mailed to the following parties a copy of the notice of my motion for the district court to enter and carry into effect default judgment against Mr. David Palmer in Adversary Proceeding 02-2230 and withdraw the proceeding:

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800
fax (585) 248-4961

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
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Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
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Rochester, NY 14614
tel. (585) 232-1660
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706
fax (585) 263-5862

Dated: March 2, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

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

In re PREMIER VAN LINES, INC.,
Debtor

Chapter 7 bankruptcy
case no: 01-20692

JAMES PFUNTNER,
Plaintiff

Adversary proceeding
no. 02-2230

-VS-

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

Defendants

RICHARD CORDERO,
Third party plaintiff

-VS-

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

Third party defendants

RICHARD CORDERO,
Applicant

-VS-

DAVID PALMER,
Respondent

03mbk6001L
CORDERO'S MOTION
TO ENTER DEFAULT JUDGMENT
AGAINST DAVID PALMER
AND WITHDRAW PROCEEDING

I, Dr. Richard Cordero, affirm under penalty of perjury the following:

1. I appeared as a pro se defendant in the above-captioned Adversary Proceeding filed in the bankruptcy court for the Western District of New York. Subsequently I served Mr. David Palmer, the owner of the Debtor, with a third party complaint, which he failed to answer. I timely applied for default judgment on December 26, 2002.
2. Not until February did the Hon. John C. Ninfo, II, Bankruptcy Judge, make to the district court a negative recommendation on my application for default judgment, of which I was not given notice. Only through my own initiative did I learn about it. I requested a copy of it from the clerks of both the district and the bankruptcy court. No copy was sent. I had to contact again

Deputy Clerk Karen Tacy at the bankruptcy court, who then sent it to me.

3. Hence, as timely as possible, I am moving the district court pursuant to Rule 8011(a) of the Federal Rules of Bankruptcy Procedure (hereinafter FRBkrP) and 28 U.S.C. §157(d) to enter and carry into force default judgment against Mr. David Palmer and withdraw the Adversary Proceeding.

TABLE OF CONTENTS

I. Statement of facts.....	315
II. Conditions for entry of default judgment.....	317
III. Lack of basis in fact for the recommendation	318
A. The facts point to the loss of my property	318
B. Recommendation reveals unwarranted dismissal of my claims	320
C. Default judgment application is not premature since failure to appear is complete.....	322
IV. No grounds in law for requiring applicant to demonstrate anything	325
A. Pleadings only require to state a claim and demand judgment	326
B. Rule 55 only requires showing Defendant's failure to plead	326
1) The clerk's legal obligation to enter default and judgment	326
2) The court's legal obligation "in all other cases"	328
C. No notice and opportunity to object afforded under 28 U.S.C. §157	329
1) Unequal application of the notion of timeliness	330
V. Implications that the recommendation has for the parties	331
VI. Order sought	331
VII. Table of exhibits.....	332

I. Statement of Facts

4. Beginning in January 2002, I spoke on the phone with Mr. David Palmer, the owner of Premier Van Lines, the moving and storage company that was storing my property. While concealing

from me that he had filed for bankruptcy and that Premier was already in liquidation, he told me that my property was safe in the Jefferson Henrietta warehouse.¹

5. I also had occasion to communicate about this with his lawyer, Raymond Stilwell, Esq.².
6. Subsequently, it became obvious that Mr. Palmer had intentionally mislead me and that even the whereabouts of my property, let alone its condition, was unknown, which is the case even today.
7. Through my efforts in searching my property it turned out that Mr. Palmer had abandoned it together with property of other parties at a warehouse in Avon,³ owned by Mr. James Pfuntner. The latter instituted an adversary proceeding and sued me, among others, for storage fees.
8. Thereupon, I served a third-party complaint on his lawyer, Mr. Stilwell, to bring in Mr. Palmer into that proceeding. I claimed that:

“fraudulently, recklessly, or negligently, Mr. Palmer has caused the loss of some or all of Dr. Cordero’s property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.”

9. The summons accompanying the complaint carried this warning in large capital bold letters from one margin to the other of page:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT

10. Although by filing for bankruptcy Mr. Palmer had benefited from the debt discharging provisions of the Bankruptcy Code and was aware of being subject to the jurisdiction of the court, he ignored that warning completely and never cared to appear in court, let alone answer

¹ Premier Van Lines operated out of the warehouse located at 900 Jefferson Road, Rochester, NY 14623, known as the Jefferson-Henrietta warehouse.

² Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, tel. (585) 248-3800; fax (585) 248-4961; attorney for Mr. David Palmer.

³ This warehouse is located at 2140 Sackett Road, Avon, NY 14414; it is referred to as the Avon warehouse.

the complaint.

11. Consequently, last December 26 I timely applied for default judgment against him. Yet, nothing happened, that is, I received no communication whatsoever as to what course my application was taking. I called the district court and was told that it had received nothing in that matter from the bankruptcy court. So I called that court. There a deputy clerk, Ms. Karen Tacy, Case Administrator, told me that my application was just in the chambers of the Hon. John C. Ninfo, II, who had not taken action on it because he considered the issue of damages premature.
12. I then wrote to Judge Ninfo stating the grounds why the application should be granted and requesting that to that end he transmit it to the district court. Till this day I have not received any reply from Judge Ninfo to that letter. What is more, I was not notified of any course of action taken in the matter.
13. So I had to call again and was told that my application had been transmitted, but nobody would tell me whether the recommendation was positive or negative. I requested that a copy be sent to me. Ms. Tacy said that she would send it, but it never arrived. So I had to call again and ask for it once more. Only then did I get it.
14. To my surprise, I learned from it that even the clerk of court, Mr. Paul R. Warren, did not enter the default for more than a month after I mailed the application and only did so after I wrote to Judge Ninfo. I must confess that, for the reasons discussed below, I found his failure to fulfill a legal obligation strange, to put it mildly.
15. The tenor of the recommendation is that no default should be entered because I have not demonstrated that I have suffered any damages or, if I have, that they are recoverable. Now I am baffled! Who ever required me to demonstrate anything in order to be entitled to default judgment?!

II. Conditions for entry of default judgment

16. Default judgment is predicated on the defendant not having appeared and participated in the proceedings. The summons clearly state that the condition precedent for entry of default judgment is the defendant's failure to respond to the summons. That condition was fulfilled because Mr. Palmer did fail to answer. There is no other condition anywhere in the official forms, or in the FRBkrP, for that matter, for the defendant to render himself liable to default judgment.

17. As to the plaintiff, the only condition for him to become entitled to default judgment is that he apply timely for it. That I did.
18. Consequently, I am now entitled to have the default judgment entered. It is not now that a condition subsequent can be imposed for me to receive the benefit which I am reasonably entitled to receive. To do so amount to changing the rules in the middle of the game. That is unfair surprise and inequitable.
19. But why would the bankruptcy court on its own initiative impose conditions subsequent on me to protect the interests of Mr. Palmer, the party that has only shown contempt for the court by ignoring the summons as well as my application for default judgment, which I served on him, not to mention all the contempt that Mr. Palmer has shown to me?

III. Lack of basis in fact for the recommendation

20. In his recommendation, Judge Ninfo contends the following:

9. Therefore, since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Courts' opinion, the entry of the Default Judgment would be premature;"

A. The facts point to the loss of my property

21. Last January 10, the first and only pre-trial conference in the Adversary Proceeding was held. In preparation for it, I requested by letter of December 26 to Judge Ninfo that he require Mr. Palmer's lawyer, Mr. Stilwell, to attend or postpone the conference until he could. I grounded the request in the need to demand of Mr. Stilwell to help the court locate where Mr. Palmer was and to bring him to court, whose protection he had requested for his bankrupt company and where he should now answer my claims. In this vein, I stated the following:

"Thus, as the very first step in insuring that Mr. Palmer does comply with the default judgment, the Court should require that Mr. Stilwell, who in his dealings with me held himself out as Mr. Palmer's attorney, attend the pre-trial conference."

22. I never received any answer to that letter. Mr. Stilwell did not attend the conference, not to mention Mr. Palmer. As a result, the subject of my application for default judgment against Mr. Palmer, which by all accounts is of no interest to anybody else, was not discussed.

23. I attended that conference telephonically and during the time between when I was brought in and was abruptly cut off, the discussion centered on my property at Plaintiff Pfuntner's Avon warehouse. Judge Ninfo ordered that the parties inspect it there. Mr. Pfuntner's lawyer, David MacKnight, Esq.,⁴ agreed to the inspection. I agreed to go to Rochester from New York City, where I live, for that purpose, and was asked to provide three dates when I could do so. Judge Ninfo indicated that within two days of the receipt of those dates, the court would inform me of the date chosen.
24. On January 29, I provided not three, but rather six dates when I could travel to Rochester, and communicated them not only to Judge Ninfo, but also to each of the parties. However, not two days, but rather over a month has gone by and I am still waiting to hear from the Judge about this date, and that despite my bringing it to his attention at a hearing on February 12.
25. Here it should be pointed out that since Judge Ninfo did not respond to my December 26 letter accompanying the application, did not give me any feedback on the application, did not discuss either with me, whether at the pre-trial conference or at any time in January, it is factually inaccurate to state in paragraph 10 of his recommendation that, "The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers, but Cordero, pursuant to his attached January 30, 2003 letter, as pro se litigant, has respectfully requested that the Court forward his Default Judgment Application to the District Court."
26. On February 11, I called Mr. MacKnight to ask him about the date for the inspection. His secretary Cindy said that he might be "on the other line" and was unavailable. I left a message with her for him to call me about this matter. He never returned my call. This shows that Mr. Pfuntner is unwilling or unable to allow my property to be inspected, even though he sued me for storage fees for storing my property and would reasonably be expected to be eager to show the court and me my property in order to establish his claim.
27. Hence, there is no basis in fact for Judge Ninfo to state that it is I who "has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment." What has been demonstrated to date is that my property is nowhere to be seen. The only thing known is that at the Avon warehouse where Mr. Palmer abandoned my property there is a storage container with a label bearing my name. That is all that has been identified of my property: a

⁴ David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604, tel. (585) 454-5650, fax 585-454-6525.

label named Cordero!

B. Recommendation reveals unwarranted dismissal of my claims

28. At the pre-trial conference on January 10, I raised the objection and expressly saved it as such that my participation in the court-ordered inspection of my property and my finding it would not put and end to my claims. Weeks later I still maintained that position and restated it in my letter of January 29 to Judge Ninfo with copies to the other parties:

“Thus, it should be understandable why, as I stated at the pre-trial conference, I will participate in this court-organized inspection without prejudice to any of my rights or claims to compensation asserted in my pleadings. Indeed, the negligence, recklessness, or fraudulent acts of the opposing parties have for more than a year now caused me an enormous waste of time, effort, and money as well as tremendous aggravation while searching for my property. I have appealed for justice to redress these wrongs. I remain committed to obtaining such justice together with the compensation through which it finds practical expression.”

29. Why then, in spite of this unambiguous restatement of what I had already stated at the conference, does Judge Ninfo consider that I am entitled only to compensation for the damage to the property rather than to what I claimed in my pleadings? His position amounts to already having on his own motion ruled on the claims in my pleadings and dismissed all save one. Indeed, he states in paragraph 8 that:

“In addition, Cordero has not yet demonstrated that moving, storage and insurance fees previously paid, are recoverable, especially since a portion of the moving, storage and insurance fees were paid prior to when Premier became responsible for the storage of the Cordero Property.”

30. How can Judge Ninfo know when Premier became responsible for the storage of my property and under what circumstances it assumed liability given that discovery in this case has not even begun at all and Mr. Palmer failed to appear, let alone file an answer?!

31. Unfortunately, there is objective evidence to support the inference from that paragraph that in his mind Judge Ninfo has already dismissed those claims of mine: Last December 18, he held a

hearing of Trustee Gordon's motion to dismiss my cross-claims of defamation and of reckless and negligent performance of his duties as trustee of Premier...and the Judge dismissed them!

- 1) even though no discovery or disclosure had even begun;
- 2) even though the other parties would assert the same or similar claims and defenses;
- 3) even though there were genuine questions of material fact involving the Trustee's defamatory motivation when he made false written statements to both Judge Ninfo and Trustee Gordon's supervisor at the United States Trustee in an effort to dissuade them from taking any action on my initial application of September 27, 2002, for a review of his performance and fitness to serve as trustee and thereby secure the personal benefit of remaining as trustee;
- 4) even though the Trustee had abandoned income-generating assets of Premier at the Jefferson-Henrietta warehouse, failed in his duty to examine Premier's "records and books"⁵ in that warehouse, which would have enabled him to find other Premier assets located elsewhere,⁶ and when others were actually found by third parties and me at the Avon warehouse, and the Trustee abandoned them too! No wonder the Trustee ended up with nothing but a No Distribution Report.

32. How could these facts, which went undisputed by Trustee Gordon, not elicit Judge Ninfo's curiosity to the point of causing him to want to know more through at least discovery, if not trial itself? For whatever reason these disturbing facts failed to do so and Judge Ninfo ordered, without findings of fact or discussion of applicable law, my cross-claims against Trustee

⁵ See §2-2.2.1 of the Trustee Manual, Chapter 7 Case Administration.

⁶ This is precisely what did Mr. Christopher Carter, cellphone (585) 820-4645, owner of Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624; tel. (585) 235-3500; fax (585) 235-2105. At an auction held by M&T Bank, Premier's blanket lien holder, Mr. Carter bought Premier's income-generating assets in the form of storage contracts. Thereby he obtained the right to remove to his storage facility Premier's physical assets at the Jefferson-Henrietta warehouse consisting of storage containers, each of which was packed with the property belonging presumably to a single Premier customer, and office equipment, including Premier's business files, to which the Trustee had had access all along. I requested Mr. Carter to let me know the condition of my property. However, Mr. Carter informed me that no storage container bore my name. Then Mr. Carter looked in Premier's business files and found that Premier had assets, including storage containers, in the Avon warehouse. At my instigation, Mr. Carter informed M&T Bank thereof. In turn, the attorney for M&T Bank, Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604, tel. (585) 258-2800, fax (585) 258-282, informed me of this by letter with copy to Trustee Gordon.

Gordon dismissed. His order was filed on December 30, 2002. It is now pending on appeal in district court; see case no: 03cv6021L.

33. If Judge Ninfo can dismiss before discovery claims arising out of such egregious conduct on the part of an officer of the court and federal appointee, such as Trustee Gordon, can one reasonably expect that he will not dismiss claims that he has already so pre-judged as to dismiss through his negative recommendation my application for default judgment against a defendant who contemptuously ignored the warning in the summons by not appearing in his court or answering my complaint?
34. Whether there is the will or the method for examining rather than dismissing my claims, and even any others, for that matter, in this Adversary Proceeding, is a pertinent question in light of these facts: Although the Proceeding was filed last October 3,⁷ and the pre-trial conference was held on January 10, there has been no scheduling or planning of any disclosure or any discovery except the so far unenforced requirement to inspect my property. None of the objectives of a Rule 16 pre-trial conference was attained. Was any really sought? Nobody could be seriously expecting that with the sole inspection of my property all the claims, counterclaims, cross-claims, and third-party claims among nine parties would disappear by art of magic. What reason could possibly explain such counter-intuitive expectation?

**C. Default judgment application is not premature
since failure to appear is complete**

35. Judge Ninfo writes in paragraph 9 that “the entry of the Default Judgment would be premature.” Is that what is really premature here?
36. In paragraph 6 of his recommendation, Judge Ninfo writes as follows”

⁷ Paragraph 4 of Judge Ninfo’s recommendation states that “On September 27, 2002, an Adversary Proceeding was commenced by James Pfuntner....” Only the Adversary Proceeding Cover Sheet and the complaint bear that date. The summons bears the date of October 3, 2002, written by Deputy Clerk Karen Tacy as well as the rubber stamp mark “RECEIVED OCT 04 2002,” presumably placed there when the summons was received at the office of Mr. MacKnight.

It should also be noted that the same paragraph mentions the following: “4....various storage containers previously stored by Premier, of which James Pfuntner was the successor storage entity.” However, Mr. Pfuntner identifies himself in his complaint as just the lessor. In paragraph 12 he writes as follows: “Before the filing of the Debtor’s Petition in reorganization, Plaintiff and Debtor [Mr. Palmer] entered into a lease providing for monthly rent of \$2,170 in respect to the Property [the warehouse at Avon]...14. Debtor defaulted in making monthly payments before the filing of its Petition.”

“6. As part of the Adversary Proceeding, within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damage, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993;”

37. Now compare that formulation with the following:

‘...it may be determined whether Cordero has incurred any loss or damage based on whether all the property is accounted for and, if so, whether it is in the same condition as when delivered in 1993’

38. Which of the two formulations would convey to a reasonable person the impression that the court has not already reached a “premature” finding as to the extent to which and the condition in which the property will be found and the element of liability?

39. Given that Mr. Palmer led his company into bankruptcy and liquidation, did not provide for insurance that he nevertheless charged me for –thus providing the basis for the claim of insurance fraud–, abandoned my property in a warehouse, did not dare list in the bankruptcy or the liquidation forms either my property or even assets of his company in that warehouse, and given that this warehouse had been closed down and that it was not in active use, what would a person who had reached no “premature” decision think more likely to be the case: that the property in question was in the same condition as it was in 1993 or in a worse condition?

40. Now add to that what I brought to the attention of Judge Ninfo and the parties at the pre-trial conference and in my January 29 letter:

“if the warehouse has been closed for a long time and nobody fumigated against vermin or repaired a leaky roof or kept the temperature at an adequate level, my property may be worm-eaten, rat-gnawed, and moldy.”

41. Would it not be “premature” to dismiss out of hand, before discovery or disclosure had even begun, that the property abandoned under such circumstances in a closed-down warehouse might likely have sustained some damage?

42. And how probable is it that “all of the Cordero Property is accounted for?” I sent to Judge Ninfo and all the parties the list of items of showing that my property includes the following items, inter alia:

1) Queen bed mattress and box spring	11) wall-to-wall pieces of carpet
2) a leather recliner	12) bed and personal clothing
3) a pull-out-bed sofa	13) more than 30 cardboard boxes, some described as “large” and containing, among other things
4) a mahogany dresser and its large mirror	14) lots of professional books
5) a center table with chiseled glass top	15) Tiffany lamps
6) a corner table	16) a large microwave oven
7) a TV cabinet with rotating top	17) lamp shades
8) metal lamp stands	18) cooking utensils
9) two large metal trunks	19) serving tableware, etc.
10) a framed picture	

43. There are so many items in that property because I left all my household belongings in storage when I went to live in a student residence at the University of Michigan Business School.
44. It is quite unlikely that all of it would fit in the single storage container that is said to be labeled with my name and found in the Avon warehouse. This is so because for storage, as opposed to transportation, objects cannot be placed on the furniture lest they warp it or cause a discoloration mark. Hence, is it not “premature” for Judge Ninfo, against the weight of the evidence available and in the absence of the unenforced required inspection, to raise the expectation that “all of the Cordero Property is accounted for”?
45. In the same vein, this is the expensive and practically new property bought in Rochester within a period of 21 months by a professional without children and living alone who spent most of his time away at the office. Mr. Palmer, the irresponsible owner of the storage company that went bankrupt, abandoned it only to be found in the closed down warehouse of Lessor Pfuntner, who although not getting paid rent for over a year did not sue for fees from the defendants, including me, until through my search he became aware of the property there or of the possibility of sticking the unpaid bills on those whom he never cared to inform that their property had been left there. How likely is it that the lessor spent his own money to keep the warehouse at warehouse standards? Therefore, would it be “premature” and imprudent to fear that the property, in the hands of those people, could have been damaged?
46. Judge Ninfo also had reason to consider the possibility that my property had been stolen, for Mr. Pfuntner himself wrote in his complaint as follows:

“17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002.”

47. Although Trustee Gordon⁸ denies this allegation in paragraph 1 of his answer, the fact remains that until discovery –which has not even begun- has taken place, the trial is conducted, and findings are made, that allegation remains in dispute and thus, as a possible fact in the open mind of a cautious person.
48. Hence, would it have been well-founded or rather “premature” as a pre-conceived idea to consider and even express the possibility that thieves might have walked in and out of that warehouse with some of that property so that upon inspection not “all of the Cordero Property is accounted for”?
49. Under these circumstances, it is beyond comprehension why Judge Ninfo has volunteered to oppose my application for default judgment...and to do so when Mr. Palmer, the party directly affected by it, failed to oppose himself or through his lawyer, Mr. Stilwell, both my claims in the pleadings and my application for default! *MIND-BOGGLING!*
50. Whether my application is “premature” is an argument that Mr. Palmer should be making, not Judge Ninfo. How can I reasonably expect him to examine my application impartially when he has already decided on his own initiative what I am not entitled to and since when Mr. Palmer is liable to me, if he is?

IV. No grounds in law for requiring applicant to demonstrate anything

51. Indeed, how open-minded does Judge Ninfo sound when he writes thus:

“9. Therefore, since **Cordero has failed to demonstrate** that he has incurred the loss for which he requests a Default Judgment, in this Court’s opinion, the entry of the Default Judgment would be premature.” (emphasis added)

⁸ Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618, tel. (585) 244-1070, fax (585) 244-1085.

A. Pleadings only require to state a claim and demand judgment

52. How could I possibly have “failed to demonstrate” anything when Judge Ninfo has not even scheduled any discovery or disclosure, the trial has not taken place, and I am not required by law to demonstrate anything? All the law requires me to do in order to apply for default judgment is this:

FRCivP “Rule 8. [made applicable by F.R.Bankr.P. Rule 7008(a)] General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain...(2) **a short and plain statement of the claim** showing that the pleader is entitled to relief, and (3) **a demand for judgment for the relief** the pleader seeks. Relief in the alternative or of several different types may be demanded.

(e) Pleadings to be Concise and Direct; Consistency

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense **alternatively** or **hypothetically...regardless of consistency** and whether based on legal, equitable, or maritime grounds...” (emphasis added)

53. If I, as a pleader, could under the law make ‘alternative, hypothetical, and even inconsistent claims’ and still be entitled to default judgment if the defendant failed to appear and defend – see Rule 7003 and Rule 3- how can Judge Ninfo require that I “demonstrate,” not to mention affirm that I have “failed to demonstrate,” what I am entitled to?

B. Rule 55 only requires showing Defendant’s failure to plead

1) The clerk’s legal obligation to enter default and judgment

54. The only failure that I had to make “appear by affidavit or otherwise” in order to be entitled to default judgment was Mr. Palmer’s. This follows from FRBkrP Rule 7055, which makes

applicable Rule 55 of the FRCivP. The latter provides that:

“Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend** as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party’s default.” (emphasis added)

55. This provision applies squarely to the instant situation. Thus, in my December 26 Application for Entry of Default, I made the necessary request and averment:

“5. It is requested that the Clerk enter default of the Defendant pursuant to Bankruptcy Rule 7055 and Rule 55(a) of the F.R.C.P.

“6. I, Dr. Richard Cordero, third-party plaintiff appearing pro se, declare under penalty of perjury that the foregoing is true and correct.”

56. Yet, the clerk failed to fulfill his obligation to enter –“shall enter”- the default. Why did he not do so until February -although he timely received my application in December- and only after I had to make all those phone calls and even wrote to Judge Ninfo in this matter? On “Page 4 of 6” of the recommendation Judge Ninfo writes “that the Clerk certified and entered the Fact of Default on 2/4/2003.” That fact was such back on the day when the Clerk received the application. He did not have to wait for any recommendation or any further action on my part to enter the fact of Mr. Palmer’s default.

57. Likewise, as to the default judgment and even if under 28 U.S.C. §157(c)(1) it is for the district, not the bankruptcy, court to enter it, the provisions of Rule 55 are clear as to the requirements for it:

“(b) Judgment. Judgment by default may be entered as follows:

(1) When the plaintiff’s claim against a defendant is for a sum certain or for a **sum which can by computation be made certain**, the clerk upon request of the plaintiff and upon affidavit of the amount due **shall** enter judgment for that amount and costs against the defendant, if the defendant has been **defaulted for failure to appear** and is not an infant or incompetent person.” (emphasis added)

58. There is no requirement that the plaintiff “demonstrate” the extent of his loss or what fees he is

entitled to recover. Once the defendant has been “defaulted for failure to appear,” the plaintiff only has to request a sum certain, which here is \$24,032.08, and the clerk has the legal obligation “to enter judgment for that amount.”

2) The court’s legal obligation “in all other cases”

59. Rule 55(b)(2) applies only “In all other cases,” that means, when the defendant has appeared, but has failed to defend. That is not the instant case given that (b)(1) applies squarely. Likewise, if the amount of plaintiff’s claim is for a sum certain, as is here, \$24,032.08, then “it is [not] necessary to take an account or to determine the amount of damages.”
60. Indeed, if even when the plaintiff’s claim is for a sum certain and the defendant has been defaulted for failure to appear the court could still decide on its own initiative that it nevertheless wants to take an account or determine the amount of damages, then there would be no case where (b)(1) would find application. Under such construction, “the claim for a sum certain or for a sum which can by computation be made certain” (emphasis added) would never give rise to the legal obligation that “the clerk upon request of the plaintiff...shall enter the judgment for that amount.” Such a construction of (b)(2) would render (b)(1) inoperative by making the clerk enter judgment only at the will of the court.
61. But in the instant case Judge Ninfo has not even invoked the provisions of (b)(2). He simply has created an obligation, nowhere to be found in Rule 55 or elsewhere, for the plaintiff to “demonstrate” that he is entitled to damages, to what type of them, and in what amount.
62. If the clerk and the court failed to fulfill their legal obligations under Rule 55, that can have serious implications. During the time that the entry of default and judgment have been delayed, I have been prevented from taking whatever action I could to enforce the judgment. That is additional time during which Mr. Palmer could spend, disperse, or otherwise dispose of assets with which to satisfy the judgment. He could also have used them to pay the judgment obtained by M&T Bank,⁹ the holder of a blanket lien against Premier, thereby reducing the pool of funds from which to satisfy my judgment. Likewise, I have also been forced to further litigate this matter, which costs me an enormous amount of time, effort, and aggravation.

⁹ M&T Bank, Manufacturers & Traders Trust Bank, 255 East Avenue, Rochester, NY 14604.

C. No notice and opportunity to object afforded under 28 U.S.C. §157

63. Judge Ninfo not only imposed this obligation before discovery, let alone the trial, has even begun, but he has also done so without affording me a fundamental constitutional due process right, namely, that of notice and opportunity to be heard before his recommendation, a judicial act aimed at depriving me of a right, is acted upon by the district court. That he had an obligation to do so flows from 28 U.S.C. §157(c)(1):

“28 U.S.C. §157(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing de novo those matters to which **any party has timely and specifically objected.**” (emphasis added)

64. How could any party ‘specifically object’ to a recommendation if the bankruptcy judge does not give the party at least notice that he is making any recommendation at all?
65. This is all the more obvious because neither the law nor the rules of procedure impose upon the district court the obligation to serve a copy of the recommendation on all the parties and ask them “Do you want to object to anything here?” Far from it, the district court would understand the non-receipt of any objection as the decision of each of the parties to accept the recommendation, even though the only reason why they did not object was the bankruptcy court’s failure to give them notice thereof.
66. In the instant case, even though I sent my application for default in December, Judge Ninfo did not inform me that he was taking no action on it, and even when I had to phone both the district and the bankruptcy courts to inquire about the matter and finally had to write to him, the Judge neither answered the letter nor sent me a copy of his recommendation...and even when I found out on my own initiative that he had made a recommendation and asked the clerk of the bankruptcy court to send me a copy, it was not sent, so I had to ask for it again!
67. The due process concept of notice and opportunity to be heard can also be found in Rule 55(b)(2) itself:

“Rule 55(b)

(2) By the court

In all other cases the party entitled to a judgment by default shall apply to the court therefor...If, in order **to enable the court to enter judgment** or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, **the court may conduct such hearings** or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.”
(emphasis added)

68. If the court does not give notice that it will do nothing about an application for default, and does not give notice of the requirement to “demonstrate” that it has come up with, and does not give notice that the plaintiff has “failed to demonstrate” what he did not know he had to, and does not give notice of its recommendation not to enter default judgment, and does not give notice of the plaintiff’s right to object to its recommendations, under what circumstances would the court deem “necessary and proper” to conduct such hearings?

1) Unequal application of the notion of timeliness

69. In this context, note that §157(c)(1) requires the objection to be made timely. Now, how can a party not only object, but also do so timely when he does not even know that a recommendation was made, let alone when it was made? Had I not insisted on obtaining a copy of the recommendation, the district court could make or could already have made a decision along the lines of Judge Ninfo’s recommendation and then, if anybody notified me of it, post-mortem as it were, could I object timely?
70. This issue of timeliness acquires special significance in the instant case. Although I timely mailed last January 27 a motion under Rule 8002(c)(2) to extend time to file a notice of appeal, and the opposing party, Trustee Kenneth Gordon, Esq., acknowledged on page 2 of his Memorandum of Opposition that it had been timely filed on January 29, Judge Ninfo found that it had been untimely filed on January 30, and without discussing at the hearing my objection to this discrepancy, or making any findings thereon in the order, denied the motion...because of its disputed untimeliness of one day! Similarly, my arguments that the complete-on-mailing and the three additional days rules of FRBkrP Rule9006(e) and (f), respectively, were

applicable to Rule 8002 were summarily denied.

71. Given the paramount importance that Judge Ninfo attaches to timeliness, which in his view trumps the right of appeal even in the case of a pro se litigant such as I am, one would reasonably expect him to give notice of his recommendations -when he finally decided to make them- on the application to enter default judgment to the parties, and particularly to the applicant, so that they could timely object to them if they deemed it warranted.

V. Implications that the recommendation has for the parties

72. What Rule 55 in conjunction with Rule 60 provides is for default judgment to be entered and then for the defendant to take the trouble to come to court to show cause why the judgment should be vacated.
73. Judge Ninfo's recommendation immunizes the defendant against any adverse consequences of failing to appear and defend, thereby rendering the concept of judgment by default meaningless in theory and ineffective in practice. It amounts to advocating that the district court vacate the judgment before it was ever entered. What is so disconcerting, in addition to sweeping aside the applicable provisions of law, he volunteers his advocacy on behalf of a defendant that never showed respect for the court and its rules and never even cared whether default and judgment were entered against him. We should all be so lucky if we ever showed contempt for the court!
74. If his recommendation were followed and no default were entered, the most ironic and unjustifiable situation would arise where the defaulting party would be held harmless from the consequences of his contemptuous non-appearance in the court whose protection he had initially applied for and he would have time to spend, disperse, or otherwise make his assets unreachable, while I, who complied with all the requirements of answering to the Plaintiff as well as claiming against Mr. Palmer and applying for default against him, through the pre-trial imposition of a non-statutory burden to "demonstrate," would be deprived of my right to obtain judgment against a defaulted defendant

VI. Order sought

75. On the strength of the foregoing, I respectfully request that the District Court:

- 1) find Judge Ninfo's recommendation lacking foundation in fact and in law, reject it, and

enter default judgment against Mr. David Palmer as I applied for it;

- 2) vacate any order or decision that it may have already taken that denies or limits my application for default judgment, and grant the request in 1) above;
- 3) investigate and determine the circumstances under which the clerk of the bankruptcy court failed to enter default upon the application therefor that I timely mailed to him on December 26, 2002, and which he only entered on February 4, 2003;
- 4) as provided under 28 U.S.C. §157(d) and for cause shown, including the disregard of the facts, the imposition of obligations with no foundation in law, the questions about impartiality, the pre-judgment and apparent dismissal of issues, the lack of any progress in this case, the dismissal of my claims against Trustee Gordon even before any discovery was had although other parties will assert the same or similar claims and defenses, etc., withdraw the entry and the carrying into effect of said default judgment and of the rest of the Adversary Proceeding from the bankruptcy court and bring it to itself.

VII. Table of Exhibits

- 1) Letter of R. Stilwell, Esq., of May 30, 2002, to Dr. R. Cordero[A:18]
- 2) Dr. R. Cordero's application for entry of default judgment
against D. Palmer[A:290]
- 3) Dr. Cordero's letter to Judge Ninfo with Application for
Default Judgment of December 26, 2002, against D. Palmer[A:299]
- 4) Letter of Dr. R. Cordero of January 29, 2003, to Judge Ninfo[A:365]
- 5) Letter Dr. R. Cordero of January 30, 2003, to Judge Ninfo[A:302]
- 6) Recommendation of the Hon. John C. Ninfo. II of February 4,
2003.....[A:304]
- 7) Judge Ninfo's Attachment to Recommendation of February 4,
2003, to the District Court for the Western District of NY not
to enter default judgment[A:306]

Dated: March 2, 2003

59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

Certificate of Service

I, Dr. Richard Cordero, hereby affirm under penalty of perjury that I have mailed to the following parties a copy of my motion for the district court to enter and carry into effect default judgment against Mr. David Palmer in Adversary Proceeding 02-2230:

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800
fax (585) 248-4961

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070
fax (585) 244-1085

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686
tel. (585) 454-5650
fax (585) 454-6525

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706
fax (585) 263-5862

Dated: March 2, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

Dr. Richard Cordero

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

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

March 5, 2003

Mr. Paul R. Warren
Clerk of the Bankruptcy Court
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

[tel. 585-263-3148]

Re: Premier Van Lines, bankruptcy case number 01-20692, Chapter 7
Adversary proceedings case no. 02-2230

Dear Mr. Warren,

Last December 26, I completed and sent you all the suggested official forms to apply for default judgment of Mr. David Palmer in the above-captioned Adversary Proceeding.

Suggested form D-2 provides as follows:

SUGGESTED FORM D-2

CLERK'S CERTIFICATE OF DEFAULT

The default of the Defendant, David Palmer, is hereby entered according to law.

Dated: _____

PAUL R. WARREN, Clerk of Court

The phrase "according to law" refers to Rule 55 of the FRCivP –made applicable by FRBkrP Rule 7055-, which provides that:

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend** as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

The condition for entry of default was met since, as per the official form, it was made to appear that Mr. Palmer had failed to plead or otherwise defend. That triggered your legal

obligation, -"shall"- to enter the default. However, you did not do that, nor did you notify me of whatever you did do instead.

Weeks went by without my receiving any feedback. So I called the district court and was told that concerning my default application it had received nothing from the bankruptcy court. So I called your office. There your deputy, Ms. Karen Tacy, Case Administrator, told me that my application was just in the chambers of the Hon. John C. Ninfo, II, -although I had addressed it to you- and that he had not taken action on it because he considered the issue of damages premature.

I had to write to Judge Ninfo to request that the application be transmitted to the district court. It was transmitted, but once more I was not notified thereof. I had again to inquire about it and was bandied between the district and the bankruptcy court. Finally, I found out from Ms. Tacy that a recommendation had been transmitted, but not its tenor. Twice I had to request a copy of it. Eventually I received one of it.

Judge Ninfo states in his recommendation to the district court that, "the Clerk certified and entered the Fact of Default on 2/4/2003," a date after my letter to the Judge. However, the fact of Mr. Palmer's default was already such a fact at the time of your receipt of my application. At that time you had an unconditioned legal obligation, "according to law" and stated in clear language, to certify and enter the default. You did not do so.

Therefore, I respectfully request that you state the reasons for your failure. So that this request may not be left without any action just as my December 26 application was, I also ask that you reply within 10 days. That is a period of time that the Rules of Procedure that you too are responsible for enforcing consider reasonable for action to be taken timely in the context of litigation. Consistent with the position that I have taken before, I consider that FRBkrP Rules 9006(e) and (f) are applicable to this request.

If I do not receive a timely answer, I will take it to mean that you acknowledge your failure and I will proceed accordingly.

Yours sincerely,

Dr. Richard Cordero

Certificate of Service

I certify that on 6 instant, I sent the accompanying letter addressed to Mr. Paul R. Warren, Clerk of the Bankruptcy Court, as well as copies to the following parties:

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
tel. (585) 244-1070
fax (585) 244-1085

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
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tel. (585) 232-1660
fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706
fax (585) 263-5862

Dated: March 6, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

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

**OFFICE OF THE CLERK
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

*1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614 (585) 263-3148
www.nywb.uscourts.gov*

Paul R. Warren
Clerk of Court

Michelle A. Pierce
Chief Deputy

Todd M. Stickle
Deputy Clerk in Charge

March 12, 2003

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

**Re: Premier Van Lines, Inc./BK No 01-20692
Richard Cordero v. David Palmer/ AP No 02-2230**

Dear Dr. Cordero:


I am in receipt of your letter of March 5, 2003, which was received by the Clerk's Office on March 10, 2003. Contrary to the statements made in your letter claiming that the Clerk's Office did not certify and enter a default in the above-referenced Adversary Proceeding, the "fact of default" was certified and entered by the Clerk of Court on February 4, 2003, after the Application was processed in the normal course of business. Your letter seems to suggest that the Clerk was required to certify and enter the fact of default immediately upon receipt of such an Application or within a defined period of time. There is no such requirement in Bankruptcy Rule 7055(a) or elsewhere in the Bankruptcy Rules. Your Application for entry of a default, together with all such applications, was processed as expeditiously as possible and in the normal course of the Court's business. The time for the defendant to answer or otherwise appear is governed by the Bankruptcy Rules, and the date of execution of the "Clerk's Certificate of Default" does not alter, extend or modify the defendant's time to answer or appear in any respect. It must be noted that the Clerk's certification and entry of the fact of default merely confirms the absence of an answer or appearance by a defendant. The certification by the Clerk of Court is not a determination with respect to the adequacy of service of process, however.

Given the fact that your Cross-Claim against David Palmer requested (1) forms of declaratory relief and (2) money damages that were not for a sum certain or a sum able to be made certain by computation, only the Court has the authority to grant a "default judgment" pursuant to Bankruptcy Rule 7055(b)(1) and (b)(2). In keeping with the mandate of Rule 7055(b)(1) and (b)(2), your application was immediately transmitted to Judge Ninfo for consideration and determination. Despite your suggestion that "[w]eeks went by without my receiving any feedback," the Docket shows that the issues related to your request for a default judgment were actively and extensively considered by the Court during the

month of January. (A copy of the Order and Findings of the Court together with the Docket is enclosed to demonstrate the many activities taken in this matter following receipt of your application for a default judgment). The "Clerk's Certification of Default" would appear to be superfluous in cases where the Court has exclusive jurisdiction over a default application under Rule 7055(b)(2).

The Clerk's Office timely, correctly and dutifully processed your application for a default pursuant to the Bankruptcy Rules. I am providing a copy of this letter, together with a copy of your letter of March 5, 2003, to all parties in interest and to the United States District Court so that their files are complete.

Very truly yours,



Paul R. Warren
Clerk of Court

Enclosures

cc: Clerk of Court, US District Court WDNY
Kathleen D. Schmitt, Esq., Assistant US Trustee
Kenneth W. Gordon, Esq.
David D. MacKnight, Esq.
Michael J. Beyma, Esq.
Karl S. Essler, Esq.
David Palmer
Raymond C. Stilwell, Esq. (Courtesy Copy)

01-20690

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TEST: A TRUE
U.S. DISTRICT COURT
RODNEY C. EARLY, CL

By Mica C. Gray
Deputy Clerk

(Original Filed) 3/11/03

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

v.

DAVID PALMER,

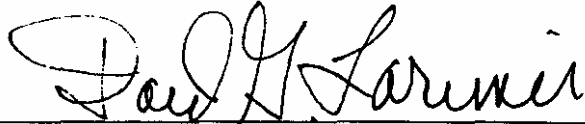
Third-Party Defendant.

Judge John C. Ninfo, II, Chief United States Bankruptcy Judge, has transmitted the Bankruptcy Court record to the District Court for a determination in a non-core proceeding. The transfer relates to Cordero's request to enter default judgment. In the transmittal, Bankruptcy Judge Ninfo recommended that the District Court deny entry of default judgment.

I concur in the Bankruptcy Judge's determination that judgment is not appropriate in this case. Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain. In other words, it may be necessary for an inquest concerning damages before judgment is appropriate. Furthermore, it

would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose.

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
March 11, 2003.

UNITED STATES DISTRICT court
WESTERN DISTRICT OF NEW YORK

IN RE: PREMIER VAN LLINES, INC.

RICHARD CORDERO,

Plaintiff(s),

- vs -

DAVID PALMER,

6:03-MBK-6001L

Defendant(s),

Take notice of an Order filed on 3/11/03, of which is a copy, and entered in the office of the Clerk of the United States District Court, Western District of New York, on 3/12/03 upon the official docket in this case.

Dated: Rochester, New York
3/12/03

RODNEY C. EARLY, Clerk
U. S. District Court
Western District of New York
282 U. S. Courthouse
Rochester, New York 14614

TO:
Richard Cordero
David Palmer
Raymond Stilwell, Esq.

David Palmer
1829 Middle Rd.
Rush, NY 14543

Raymond Stilwell, Esq.
Adair, Kaul Murphy...
300 Linden Oaks Ste. 220
Rochester, NY 14625

Richard Cordero
59 Cresent St.
Brooklyn, NY 11208

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

In re PREMIER VAN LINES, INC.,
Debtor

Chapter 7 bankruptcy
case no. 01-20692

JAMES PFUNTNER,
Plaintiff

Adversary proceeding
no. 02-2230

-vs-

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

Defendants

RICHARD CORDERO,
Third party plaintiff

-vs-

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

Third party defendants

RICHARD CORDERO,
Petitioner

case no: 03mbk6001L

-vs-

DAVID PALMER,
Respondent

CORDERO'S BRIEF
IN SUPPORT OF
MOTION FOR REHEARING
RE IMPLIED DENIAL OF MOTION
TO ENTER DEFAULT JUDGMENT
AND WITHDRAW PROCEEDING

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

1. Dr. Cordero received from the District Court a copy of the Decision and Order –the order- entered on March 12, 2003, in *Richard Cordero v. David Palmer*, case 03-MBK-6001L. It affirms the recom-mendation of the Hon. John C. Ninfo, II, Bankruptcy Judge, to the District Court, that Dr. Cordero's application, dated December 26, 2002, to enter default judgment against David Palmer not be granted.

2. That order does not mention or make any reference whatsoever to Dr. Cordero's motion, dated March 2, 2003, to enter default judgment against Mr. Palmer and withdraw the proceedings from the bankruptcy court to the district court. Therefore, it appears that the motion was either ignored or denied by implication.
3. Dr. Cordero draws the Court's attention to that motion -which is hereby made an integral part of this one and is found on page 16 et seq., infra- and respectfully requests under Rule 8015 of the Federal Rules of Bankruptcy Procedure –FRBkrP- a rehearing of his arguments why it should be granted.
4. Given the time constraints to take action after the entry of an order, Dr. Cordero, a pro se litigant, assumes that his March 2 motion was denied by implication and invokes FRBkrP Rule 9026 Objections Unnecessary, which makes applicable Rule 46 of the Federal Rules of Civil Procedure –FRCivP- so as to "make[] known to the court the action which [Dr. Cordero] desires the court to take or [his] objection to the action of the court and the grounds therefor."

TABLE OF CONTENTS

I. There Is No Need To Conduct An Inquest Into Damages	344
II. Bankruptcy Court Is Not Proper Forum To Conduct Damages Inquest	346
III. Relief Sought	347
IV. Exhibits	
1. Decision and Order of the Hon. David G. Larimer of March 11, 2003.....	339
2. Letter of Dr. Richard Cordero of March 2, 2003, to Judge Larimer	311
3. Motion of March 2, 2003, to Enter Default Judgment & Withdraw Proceedings.....	314
I. Statement of Facts.....	315
II. Conditions for entry of default judgment	317
III. Lack of basis in fact for the recommendation	318
A. The facts point to the loss of my property	318
B. Recommendation reveals unwarranted dismissal of my claim	320
C. Default judgment application is not premature since failure to appear is complete	322
IV. No grounds in law for requiring applicant	

to demonstrate anything	325
A. Pleadings only require to state a claim and demand judgment	325
B. Rule 55 only requires showing Defendant's failure to plead	326
1) The clerk's legal obligation to enter default and judgment.....	326
2) The court's legal obligation "in all other cases"	327
C. No notice and opportunity to object afforded under 28 U.S.C. §157.....	328
1) Unequal application of the notion of timeliness	330
V. Implications that the recommendation has for the parties	330
VI. Order sought	331
4. Letter of Raymond Stilwell, Esq., of May 30, 2003, to Dr. Richard Cordero.....	18
5. Dr. Cordero's Application for Entry of Default of December 26, 2003.....	290
6. Dr. Cordero's Affidavit of Non-military Service	291
7. Dr. Cordero's Affidavit of Amount Due	294
8. Letter of Dr. Cordero of December 26, 2002, to the Hon. John C. Ninfo, II.....	299
9. Letter of Dr. Cordero of January 29, 2003, to Judge Ninfo.....	365
10. Letter of Dr. Cordero of January 30, 2003, to Judge Ninfo.....	302
11. Order of February 4, 2003, to Transmit Record to District Court.....	304
12. Recommendation the Default Judgment Not Be Entered by District Court	306

I. There is no need to conduct an inquest into damages

5. In the second paragraph of its order (see page 9, *infra*), the District Court states that:
"Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain."
6. Dr. Cordero respectfully points out that the matter **does** involve a sum certain, namely, \$24,032.08, which he set out in his affidavit on page 5 of his application to enter a default

judgment, dated December 26, 2002 (see page 41, *infra*). If that is not a sum certain, what is?

7. In this context, it should be noted, as Dr. Cordero did in paragraph 57 et seq. of his March 2 motion, that the Rules even allow a computation to arrive at a sum certain:

“FRCivP Rule 55 [made applicable by Rule 7055 FRBkrP]

(b) Judgment. Judgment by default may be entered as follows:

(1) When the plaintiff’s claim against a defendant is for **a sum certain** or for **a sum which can by computation be made certain**, the clerk upon request of the plaintiff and upon affidavit of the amount due **shall** enter judgment for that amount and costs against the defendant, if the defendant has been **defaulted for failure to appear** and is not an infant or incompetent person.” (emphasis added)

8. Consequently and contrary to what the District Court stated in the third sentence of the second paragraph of its order, an inquest concerning damages before entering default judgment **is not** necessary because there is no legal provision requiring or authorizing the determination of damages before such entry when the sum is certain, as it is in the instant case.
9. What is more, such an inquest would be inappropriate because all the other legal requirements for entering default judgment were met, namely:
- a) the defendant, Mr. David Palmer, failed to appear or otherwise defend as provided by the rules of procedure, even though his lawyer, Raymond Stilwell, Esq.,¹ was served with process, and for good measure, Dr. Cordero served a copy of his application to enter default judgment on not only Mr. Stilwell, but also Mr. Palmer at his current address, despite the fact that under Rule 5(a) FRCivP, made applicable by Rule 7005 F.R.Bkr.P, there was no need to do so;
 - b) the clerk of the bankruptcy court, Mr. Paul Warren, entered, although belatedly, Mr. Palmer’s default on February 4, 2003 (see bottom of page 36, *infra*); and
 - c) Mr. Palmer is neither an infant or incompetent person.

¹ Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, tel. (585) 248-3800; fax (585) 248-4961. Mr. Stilwell represented Mr. Palmer’s company, Premier Van Lines, Inc., the Debtor in bankruptcy case no. 01-20692, from which this Adversary Proceeding arose. After Dr. Cordero spoke with Mr. Palmer several times in the first half of 2002 concerning Dr. Cordero’s property in storage with Mr. Palmer’s company, Mr. Stilwell sent Dr. Cordero a letter, dated May 30, 2002, (see page 33, *infra*) in which he purported to speak as Mr. Palmer’s attorney when giving assurances that the property was at Premier’s warehouse in Jefferson-Henrietta and safe. When that turned out not to be true, Dr. Cordero filed a third-party claim against Mr. Palmer.

II. Bankruptcy Court is not proper forum to conduct damages inquest

10. Contrary to what it appears to the District Court, according to the last sentence of its order's second paragraph, the Bankruptcy Court is not the proper forum to conduct an inquest into damages. Far from it and as Dr. Cordero pointed out in paragraphs 22 et seq. of his March 2 motion, the Bankruptcy Court has failed not only to conduct the inspection but also to secure as little as the date for inspecting Dr. Cordero's property (for its relevance, see Statement of Facts, page 16, *infra*) from the party presumably holding it now, Mr. James Pfuntner, the plaintiff in the Adversary Proceeding, even though:
 - a) at the pre-trial conference held last January 10, the Bankruptcy Court required Dr. Cordero to provide three dates when he could travel from New York City to Rochester to participate in the inspection;
 - b) on that occasion, the Bankruptcy Court stated that within two days of the receipt of such dates it would communicate with the other parties to establish and let Dr. Cordero know the date when all parties could participate in the inspection;
 - c) Dr. Cordero provided not three, but rather six dates on January 29 (see page 43, *infra*) not only to the court, but also to the other parties; and
 - d) the six dates, between February 19 and March 6, have already gone by without the court establishing any of the dates or taking any other measure to carry out the inspection that it had ordered.
11. It should be noted, as Dr. Cordero did on paragraph 26 of his March 2 motion, that Plaintiff Pfuntner brought the Adversary Proceeding, *inter alia*, to claim from Dr. Cordero storage fees for allegedly storing in his warehouse² Dr. Cordero's property. He would reasonably be expected to be eager to show the court that the property is in fact there in order to establish his claim.
12. If Mr. Pfuntner did not communicate his preferred date to the Bankruptcy Court, why did the court allow him to ignore its instruction?; if he did, why did the court not communicate it to Dr. Cordero and schedule the inspection?...particularly since Mr. Pfuntner's lawyer, David MacKnight, Esq.,³ stated at the January 10 pre-trial conference that his client was amenable to the inspection and the other parties stated at that time or since then that they would not participate in it!

² This warehouse is located at 2140 Sackett Road, Avon, NY 14414. It is referred to as the Avon warehouse and is said to be within half an hour by car from Rochester.

³ The lawyer of Mr. Pfuntner is David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604, tel. (585) 454-5650, fax 585-454-6525.

13. Nor has the Bankruptcy Court even begun to conduct any other aspect of discovery whatsoever, even though:
- a) the summons bears the date of October 3, 2002, written by Bankruptcy Court Deputy Clerk Karen Tacy as well as the rubber stamp mark "RECEIVED OCT 04 2002," presumably placed there when the summons was received at the office of the Plaintiff's lawyer;
 - b) this Adversary Proceeding well exceeds the mere inspection of Dr. Cordero's property since Plaintiff Pfuntner sued four parties and Dr. Cordero counterclaimed the Plaintiff, cross-claimed two co-defendants, and brought in four third-parties;
 - c) since the January 10 pre-trial conference, the Bankruptcy Court has taken no action even to require disclosure, not to mention schedule discovery, thereby failing to attain, or perhaps even pursue, any of the conference objectives set out by Rule 16(a) FRCivP, made applicable by Rule 7016 FRBkrP such as "(1) expediting the disposition of the case" and "(2) establishing early and continuing control so that the case will not be protracted because of lack of management"; and
 - d) the bankruptcy court has provided evidence, as Dr. Cordero pointed out in paragraphs 35 et seq. of his March 2 motion, that it has pre-judged the outcome of both the inspection and the inquest into damages even before establishing the date of inspection.
14. Consequently, all the evidence available to the District Court is that the Bankruptcy Court is an improper forum to conduct an inquest into damages and, for that matter, anything else in this case. That is the reason why Dr. Cordero requested in section VI. Order Sought of his March 2 motion that the District Court withdraw to itself this case. On what legal or factual grounds does it appear otherwise to the District Court? Did it even read that March 2 motion before entering its order on March 12?!

III. Relief sought

15. On the strength of the foregoing, Dr. Cordero respectfully requests that the District Court:
- a) note Dr. Cordero's objections to its order entered on March 12;
 - b) grant the relief sought in his March 2 motion, to wit:
 - 1) find Judge Ninfo's recommendation lacking foundation in fact and in law, reject it, and enter default judgment against Mr. David Palmer as Dr. Cordero applied for it;
 - 2) vacate any order or decision that it may have already taken that denies or limits Dr. Cordero's application for default judgment, and grant the request in 1) above;

- 3) investigate and determine the circumstances under which Clerk Warren of the bankruptcy court failed to enter default upon the application therefor that Dr. Cordero timely mailed to him on December 26, 2002, and which Mr. Warren entered only on February 4, 2003;
 - 4) as provided under 28 U.S.C. §157(d) and for cause shown, including the disregard of the facts, the imposition of obligations with no foundation in law, the questions about impartiality, the pre-judgment and apparent dismissal of issues, the lack of any progress in this case, the dismissal of Dr. Cordero's claims against Trustee Gordon even before any discovery was had although other parties will assert the same or similar claims and defenses, etc., withdraw the entry and the carrying into effect of said default judgment and of the rest of the Adversary Proceeding from the bankruptcy court and bring it to itself.
- c) if it implicitly denied Dr. Cordero's March 2 motion, vacate such denial or otherwise, explicitly state its denial and set forth its reasoning and legal basis therefor; and
 - d) in the event of denying this motion, certify for appeal to the Court of Appeals for the Second Circuit the questions whether:
 - 1) where plaintiff by affidavit both applied for default judgment on grounds of defendant's undisputed failure to appear and set out a sum certain to be entered against the defendant, the court erred when it, without providing any legal basis therefor, suspended the application of Rule 55 FRCP so as to deny entry of default judgment and required the conduct of an inquest to establish damages rather than enter such judgment and let the defendant come to court, if he dared or cared about it, to show cause why the default judgment should be set aside, as provided under Rule 60(b); and
 - 2) the court erred in not withdrawing a case from a bankruptcy court to itself although plaintiff applied under 28 U.S.C. §157(d) and showed cause therefor by discussing how the bankruptcy court, inter alia:
 - (a) disregarded the facts and the only evidence available when making a recommendation not to enter default judgment,
 - (b) disregarded the law when instead of entering default judgment for the sum certain that plaintiff had set out, it imposed on him the obligation to demonstrate damages despite its lack of any legal basis therefor,

- (c) gave evidence of lacking impartiality and pre-judging and apparently dismissing issues even before any disclosure or discovery whatsoever has taken place;
- (d) failed to manage the case and move it forward despite having conducted a pre-trial conference, so that the case is drawing to the close of its 6th month after it was brought, but no disclosure or discovery has taken place;
- (e) dismissed the plaintiff's cross-claims against a trustee even before any disclosure or discovery had taken place, although other parties would be free to assert the same or similar claims and defenses,
- (f) did not care even to review the evidence that the trustee had submitted false statements to it in an effort to avoid a review of his performance and fitness to serve as trustee; etc.

Certificate of Service

I, Dr. Richard Cordero, hereby affirm under penalty of perjury that I have mailed to the following parties a copy of my brief in support of my motion for a rehearing by the District Court concerning its implied denial of my motion to enter default judgment against Mr. David Palmer in Adversary Proceeding no. 02-2230 and withdraw said Proceeding:

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800; fax (585) 248-4961

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
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Rochester, New York 14618
tel. (585) 244-1070; fax (585) 244-1085

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street

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Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq.
Fix Spindelman Brovitz & Goldman, P.C.
2 State Street, Suite 1400
Rochester, NY 14614
tel. (585) 232-1660 fax (585) 232-4791

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706; fax (585) 263-5862

Dated: March 19, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

Dr. Richard Cordero

Dr. Richard Cordero, pro se
tel. (718) 827-9521

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
W.D.N.Y. ROCHESTER

2003 MAR 27 PM 4:36

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

v.

DAVID PALMER,

Third-Party Defendant.

Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order entered March 11, 2003 (Dkt. #56). The motion is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
March 27, 2003.

#58

UNITED STATES DISTRICT court
WESTERN DISTRICT OF NEW YORK

CORDERO,

Plaintiff(s),

- vs -

PALMER,

Defendant(s),

6:03-MBK-6001L

Take notice of an order filed on 3/27/03, of which is a copy, and entered in the office of the Clerk of the United States District Court, Western District of New York, on 3/27/03 upon the official docket in this case.

Dated: Rochester, New York
3/27/03

RODNEY C. EARLY, Clerk
U. S. District Court
Western District of New York
282 U. S. Courthouse
Rochester, New York 14614

TO:
Cordero
Palmer
Bankruptcy Court

UNDERBERG & KESSLER LLP

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Telephone: (585) 258-2800
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Facsimile: (716) 847-6004

Writer's Direct Number:

August 1, 2002

Reply to
Rochester Office

(585) 258-2890
mbeyma@underberg-kessler.com

Dr. Richard Cordero, Esq.
59 Crescent
Brooklyn, New York 11208-1515

**VIA FEDERAL EXPRESS AND
VIA FACSIMILE**

Re: Premier Van Lines (Corrected)

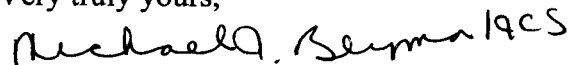
Dear Dr. Cordero:

We have received your various messages regarding the storage of your property with Premier Van Lines. Please be advised that:

1. M&T Bank has not sold the storage cabinets in which your property is apparently located. M&T Bank sold the storage cabinets (but not the contents) of storage units owned by Premier located in Rochester. Your property was not located in Rochester, and Champion has not received title or possession of the same. We believe your property was stored by Premier at its former location in Avon, New York. The Avon landlord is represented by David McKnight of Lacy, Katzen at (585) 454-5650. David has indicated that you may contact the Landlord directly. His name is James Futner and he may be reached at (585) 538-2200.
2. M&T Bank may sell additional storage cabinets including those located in Avon to Champion. Please let us know as to whether you would like yours sold to Champion and for Champion to take over the storage or whether you would rather retrieve your property yourself.

We look forward to your written reply.

Very truly yours,



Michael J. Beyma

MJB:jmm

cc: Vincent Pusateri, Vice President
David DeLano, Assistant Vice President
David MacKnight, Esq.

G:\ATTORNEY\MJB\2002 Letters\Dr.Richard Cordero\tr.wpd

