

**JEFFERSON HENRIETTA ASSOCIATES
415 PARK AVENUE
ROCHESTER, NEW YORK
(585) 244-3575
(585) 473-3555 Fax**

March 1, 2002

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

Re: Storage Space Rochester New York

Dear Richard,

As per our conversation the following shall serve as formal written notification that Premier North American Van Lines is no longer receiving payments for your belongings. All payments are to be forwarded to Jefferson Henrietta Associates at the above referenced address.

A statement will be forthcoming which will outline your past due balances and I will follow up with you as soon as I have an answer to the insurance question.

Very truly yours,
Jefferson Henrietta Associates

A handwritten signature in black ink, appearing to read 'David M. Dworkin', with a large, sweeping flourish at the end.

David M. Dworkin

DMD/lg

JEFFERSON HENRIETTA ASSOCIATES

415 Park Avenue

Rochester, New York 14607

585-244-3575

Date: March 7, 2002

Dr. Richard Cordero

59 Crescent Street

Brooklyn, NY 11208-1515

Re: Storage Rochester, N.Y.

CODE	EXPLANATION	AMOUNT
1	Storage 11-1-01 to 12-1-01	\$ 57.60
1	Storage 12-1-01 to 1-01-02	\$ 57.60
1	Storage 1-1-02 to 2-01-02	\$ 57.60
1	Storage 2-1-02 to 3-01-02	\$ 57.60
1	Storage 3-1-02 to 4-1-02	\$ 57.60
3	Insurance from 11-01-01 to 4-1-02 @ \$2.72 per month	\$ 13.60
	Please make check payable to: Jefferson Henrietta Associates	
	AFTER 30 DAYS A 2% LATE FEE WILL BE APPLIED TO ALL OUTSTANDING INVOICES	
	TOTAL	\$ 301.60

CODE

1.Storage Rent

2.Late Fee

3.Insurance

C

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

April 16, 2002

David Dworkin
415 Park Avenue
Rochester, New York 14607

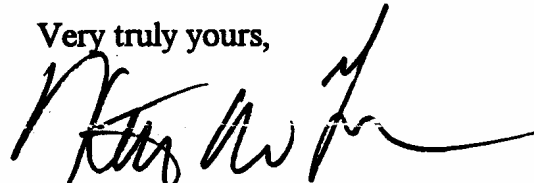
RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Mr. Dworkin:

Please be advised that M&T Bank has a blanket lien against the assets of Premier Van Lines. As the Chapter 7 Trustee, I will not be renting or controlling the storage units or any of the assets at the Jefferson Road location. Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank. M&T Bank is represented by Mike Beyma and Tim Johnson of Underberg & Kessler, LLP.

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,



Kenneth W. Gordon

KWG/sem

**JEFFERSON HENRIETTA ASSOCIATES
415 PARK AVENUE
ROCHESTER, NEW YORK
(585) 244-3575
(585) 473-3555 Fax**

April 25, 2002

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

Re: Storage Space Rochester New York

Dear Richard,

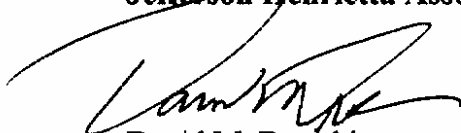
As per our conversation the following shall serve as a recap of our April 22, 2002 telephone conversation. While you indicated to me that you were paying monthly insurance to Premier North American Van Lines our current insurance policy does not provide for such insurance. Accordingly, the following shall serve as formal written notification that Jefferson Henrietta Associates is not carrying any insurance on your personal belongings. Should you wish to insure your belongings I suggest you do at your own expense.

Additionally, while we cannot make any representations as to the status or condition of your belongings prior to the date possession of the premises were given to us, we are able to inform you that no belongings have been removed since that date without being witnessed by me.

M & T Bank located at 255 East Avenue; Rochester New York is the lien holder of all of Premier Van Line's assets. I suggest you contact them with respect to the status of your belongings.

As I indicated to you I will attempt to find the name of the insurance carrier who handled the Premier account. Should I be successful in my search I will follow up with you.

Very truly yours,
Jefferson Henrietta Associates



David M. Dworkin

DMD/pb

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****May 30, 2002****Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208****VIA FACSIMILE 718/827-9521****Re: Premier Van Lines, Inc.****Dear Dr. Cordero:**

I am in receipt of your May 21 letter and am aware of additional attempts by you to contact this office. While I appreciate your frustration with the way the "system" has failed you in this case, I regret that I am unable to be of either legal or practical assistance to you in trying to solve your problem.

Premier ceased operations at the end of 2001. Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about.

I must suggest- in fact insist- that you direct your inquiries to the landlord as the party in a position to be of assistance to you. The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company (at least to the extent I would be entitled to be compensated for such efforts), and it is not my place to question his judgment on such matters.

You have asked me to attend to your inquiries with a sense of professional responsibility. That is exactly what I am doing. I have an obligation to avoid conflicts of interest, which prevent me from offering you any form of legal advice other than to advise you to seek your own independent counsel. 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. Within these bounds, I have provided you with every permissible courtesy, but I cannot permit continued repeated contacts- particularly to our office staff- which are directed at obtaining things from us which we cannot give you.

Very truly yours,
Raymond C. Stilwell**RCS****Buffalo Office: The Law Center, 17 Beresford Court, Williamsville, NY 14221 • Phone (716)634-8307 • Fax (716)634-8716**

Blank

Dr. Richard Cordero, Esq.

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

May 30, 2002

Kenneth Gordon, Esq.
Gordon & Schall
100 Meridian Center Blvd., Suite 120
New York, NY 14618

Bankruptcy case number 01-206-92

Dear Mr. Gordon,

You may remember that two weeks ago we finally spoke on the phone concerning Premier Van Lines, the now bankrupt moving and storage company of which you are the trustee. I let you know that I had stored my belongings with Premier and was trying to find out their whereabouts and condition. Neither Mr. David Palmer, the owner of Premier, nor his associate Mr. David Dworkin, the owner of the Jefferson Henrietta warehouse used by Premier, have acted on their assurances that they would confirm in writing their initial oral statements that my belongings are safe. On the contrary, Mr. Dworkin has now admitted that he does not even know for sure that my belongings are in his warehouse, yet, he even billed me for storing them. Mr. Palmer has had his phone disconnected and he will not even contact me at the urging of his attorney upon my request.

Indeed, by a most circuitous way I found out who his lawyer is, namely, Raymond Stilwell, and after a lot of effort have managed to obtain a letter from him. I am sending you a copy of it because in it Mr. Stilwell makes assertions that involve you. Thus, I would appreciate it if you would confirm that what he asserts is correct and supplement it with pertinent information. Among other things, I would like to know the following:

1. whether Mr. Dworkin assumed responsibility for the stored belongings with your knowledge and, if so, under what circumstances and when; if there is a document to that effect, kindly send me a copy or, if you cannot do so, at least quote it;
2. on what date he first knew that you were Premier's bankruptcy trustee. Mr. Dworkin told me that the trustee was Manufacturers and Traders Bank, M&T Bank, but did not give me either a full address or a phone number. That sent me on a wild chase that consumed a lot of my time and effort. It turned out that M&T only holds a lien on the warehouse where assets stored with Premier are located;
3. the address and a phone number that does work -585-292-9530 was disconnected- of Mr. David Palmer and his current relation to Premier and to the Jefferson Henrietta warehouse.

Rest assured that I welcome any other comment on Mr. Stilwell's letter attached hereto and any other information about what Mr. Palmer and Mr. Dworkin knew about the condition of their businesses in general as it affected my belongings in particular and when they knew it.

I thank you in advance and look forward to hearing from you soon.

Sincerely,
Dr. Richard Cordero

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

June 10, 2002

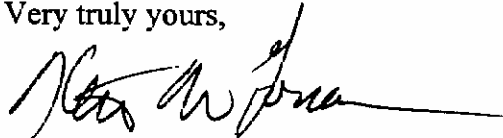
Dr. Richard Cordero, Esq.
59 Crescent Street
Brooklyn, New York 11208-1515

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Dr. Cordero:

Enclosed please find a copy of correspondence dated April 16, 2002 from myself as the Chapter 7 Trustee to Mr. Dworkin, landlord of 900 Jefferson Road, with respect to the above-referenced bankruptcy proceeding. I suggest that you retain counsel to investigate what has happened to your property.

Very truly yours,



Kenneth W. Gordon
Chapter 7 Trustee

KWG/sem
Enclosure

**Champion Moving
& Storage, Inc.**

795 Beahan Road
Rochester, New York 14624
Tel: (585) 235-3500

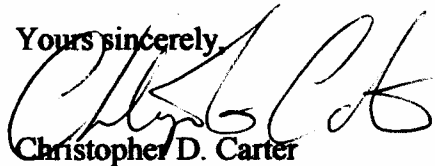
July 30, 2002

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

Dear Dr. Cordero,

Please find enclosed my letter to Mr. Busateri, a copy of an old Premier Van Lines invoice indicating the goods are in Avon. I also enclose an unsigned Bill of Sale.

Yours sincerely,



Christopher D. Carter

Enc.

ALLIED
Agent for Allied Van Lines®

**Champion Moving
& Storage, Inc.**

795 Beahan Road
Rochester, New York 14624
Tel: (585) 235-3500

July 30, 2002

Manufacturers and Traders Trust Company
255 East Avenue
Rochester, New York 14604

Dear Mr. Busateri,

Dr. Cordero has contacted us regarding his goods, which were stored by Premier Van Lines. In the transfer of goods from Premier's warehouse no containers for Dr. Cordero were received. In looking on the invoices from Premier it would appear Dr. Cordero's items are still in Avon (please see enclosed invoice). I understand that the Avon building is for rent, and there are still containers for storage their. Champion would be willing to pick up their storage lots.

Please call me at 235-3500 x 312 to discuss.

Yours sincerely,

Christopher D. Carter

Enc.

Cc: Dr. R. Cordero

ALLIED
Agent for Allied Van Lines®

BUYER'S ACKNOWLEDGMENT AND AGREEMENT

The undersigned Buyer certifies to Manufacturers and Traders Trust Company (the "Secured Party") that (1) a fully completed copy of the foregoing Bill of Sale executed by the Secured Party has been delivered to such Buyer and (2) such Buyer (a) has received and accepted all of the Property, as such term is defined in such Bill of Sale, (b) has fully inspected such Property prior to its payment of the purchase price of the Property pursuant to such Bill of Sale and (c) accepts and agrees to all terms and conditions of such Bill of Sale.

The undersigned shall indemnify, defend and hold Secured Party harmless against: (1) any and all claims which may arise out of the undersigned's assumption of Debtor's rights and obligations under the storage contracts with the Debtor's customers, including but not limited to those customers listed on the attached Schedule B, and (2) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including its reasonable attorneys' fees) of whatever kind or nature which may be imposed on or incurred by the Secured Party at any time, which arises out of the sale and transfer or ownership of the personal property of the Debtor which is the subject of this Bill of Sale.

The undersigned hereby agrees to notify the customers of the Debtor, including but not limited to those listed on the attached Schedule B, that the personal property of said customers shall now be stored at the offices of the undersigned located at 795 Beahan Road, Rochester, New York 14624, or at such other appropriate location. The undersigned also acknowledges that it will only endeavor to collect rent from the Debtor's customers going forward and has no claim to any past due rents due the Debtor prior to the date of this Bill of Sale.

Dated: June ____, 2002

CHAMPION MOVING & STORAGE, INC.

By: _____

Name: _____

Title: _____

SCHEDULE B

Customer Name	Monthly Charges	
1 Ms. Linda Hight 906 Stoney Way Farmington, NY 14425	\$ 132.00	
2 Red Wings	\$ 65.00	Removed From Warehouse
3 Gary Krolikowski 4380 Lakeshore Castile, NY 14427	\$ 65.69	
4 Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515	\$ 60.32	Has Never Paid
5 Ms. Yamize Elias Calle 12 # 1085 Villa Nevarez Puerto Rico 00927	\$ 43.52	Has Never Paid
6 Mr Michael Kelly 777 Belvidere Avenue Plainfield, NJ 07062	\$ 195.17	Current
7 Ms. Roberta Pilloise 14 Beverly Lane Shelton, CT 06484	\$ 85.56	
8 Mr. William Baroody PO Box 10727 Rochester, NY 14610	\$ 256.50	
9 Paimer Moving & Storage (Youseff Kazc C/o Shirley Mancman 24660 Dequindre Warren, MI 48091	\$ 251.94	
10 Ms. Mary Bride Lill 786 Oakridge Drive Rochester, NY 14617	\$ 26.25	
11 Eastman Kodak Company C/o Jerri Foos 343 State Street Rochester, NY 14650	\$ 68.22	
12 Ms. Georgina Walker 15 Jacqueline Way #6 Geneseo, NY 14454	\$ 123.93	

Premier Van Lines, Inc.

10 Thruway Park Dr
West Henrietta, NY 14586

Invoice

DATE	INVOICE #
9/26/00	1205

BILL TO
Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208

TERMS	CONTRACT #
Net 30	Lot 6901

DESCRIPTION	AMOUNT
Storage 10/1/00 to 11/1/00	57.60T
Valuation	2.72
Mr. Cordero Premier van Lines, Inc has two storage warehouses in Rochester, NY. Your belongings are still being stored in Avon, NY Our billing address is now 10 Thruway Park Dr. Thank You Sales Tax	4.03
<i>Paid.</i>	
<i>Inv # 598</i> <i>11/1 - 12-1</i>	
Thank you for your business.	Total \$64.35

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UNDERBERG & KESSLER LLP

1800 Chase Square
Rochester, New York 14604

Telephone: (585) 258-2800
Facsimile: (585) 258-2821
www.underberg-kessler.com

1100 Main Place Tower
Buffalo, New York 14202

Telephone: (716) 848-9000
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)

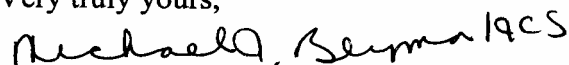
Dear Dr. Cordero:

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

UNDERBERG & KESSLER LLP

1800 Chase Square
Rochester, New York 14604

Telephone: (585) 258-2800
Facsimile: (585) 258-2821
www.underberg-kessler.com

1100 Main Place Tower
Buffalo, New York 14202

Telephone: (716) 848-9000
Facsimile: (716) 847-6004

Writer's Direct Number:

August 15, 2002

Reply to
Rochester Office

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

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

Dear Mr. Cordero:

I understand that David DeLano has informed you that your two "Pyramid" storage cabinets are located at 2140 Sackett Road, Avon, New York. The owner of the property is James Pfuntner and he is represented by David MacKnight (585-454-5650).

In response to your letter of August 7, 2002 please be advised as follows:

1. M&T Bank has obtained an order to lift the stay and does have the right but not any duty to sell the cabinets of Premier Van Lines. M&T Bank has sold the cabinets but not the contents of storage cabinets located in Rochester. At the present time, M&T Bank does not intend to sell the storage cabinets of Premier Van Lines located at Avon. We understand that the owner of the property and landlord apparently is claiming a self-storage lien against the storage cabinets and you should contact either James Pfuntner or his attorney, David MacKnight, with regard to your contents.

2. The trustee of Premier Van Lines is Kenneth Gordon, Esq. (585-244-1070).

3. With regard to any future storage fees that you may pay, you must deal directly with whoever buys the storage cabinets and/or Mr. Pfuntner.

M&T Bank claims no lien on your assets and M&T Bank consents to the removal of your stored assets.

We urge you to contact Mr. Pfuntner so that you may obtain the contents of your storage cabinets.

G:\UKM\M&TTRUST\Premier\Cordero, Dr. Richard.ltr.wpd

Dr. Richard Cordero
August 15, 2002
Page 2

Very truly yours,



Michael J. Beyma

MJB:ds

cc: Vincent Pusateri
David G. DeLano
David D. MacKnight, Esq.
Kenneth W. Gordon, Esq.

Dr. Richard Cordero, Esq.

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

August 26, 2002

Att: Thomas: kindly acknowledge receipt at (718) 827-9521.

David MacKnight, Esq.
130 East Main Street
Rochester, NY 14604

fax 585-454-6525; tel. 585-454-5650

Dear Mr. MacKnight,

I have been referred to you by Mr. Michael J. Beyma, attorney for Manufacturers & Traders Trust Bank (M&T) who copied you to his letter to me of last August 15. Mr. Beyma indicated that you represent Mr. James Pfuntner, landlord of the Avon warehouse at 2140 Sackett Road in Avon, where two "Pyramid" storage cabinets are located which contain property of mine that I entrusted for storage to the now bankrupt Premier Van Lines.

I would like to remove my property. Hence, I would like to make arrangements with your client for access to the warehouse. The removal would be carried out by either Champion Moving & Storage or a similar company. I understand that Champion bought from M&T these two cabinets as well as those of other people similarly situated as part of a batch of storage containers and other assets owned by Premier and that Champion has the right to remove them to its own warehouse. Presently, I am only interested in the storage containers holding my property. Therefore, I would like to know the following:

1. whether in addition to these two "Pyramid" storage cabinets there are any other storage containers holding property of mine at the Sackett Road warehouse or elsewhere known to Mr. Pfuntner;
2. what the dimensions, material, and condition of any such cabinets and containers are which hold property of mine;
3. whether and, if so, when I, Champion, and/or any similar company can have access to the Sackett Road warehouse to inspect the condition of such cabinets and containers and remove them as appropriate;
4. if such cabinets or containers cannot themselves be taken away from the Sackett Road warehouse, why that is so, and what it would take to be able to remove them together with my property;
5. if the cabinets or containers cannot be removed, how access to them can be arranged in order to remove only my property;
6. regardless of whether it may be to remove such cabinets and containers or just my property in them, whether a forklift or similar machine would be necessary and, if so, whether there is such forklift or machine at the Sackett Road warehouse that can be used for that purpose and, if so, under what terms.

I thank you in advance for your attention to this matter and would appreciate any other piece of pertinent information.

Yours sincerely,

Dr. Richard Cordero

cc: Michael J. Beyma, Esq.
Kenneth Gordon, Esq.
Christopher Carter, Champion Moving & Storage

UNDERBERG & KESSLER LLP

1800 Chase Square
Rochester, New York 14604

Telephone: (585) 258-2800
Facsimile: (585) 258-2821
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1100 Main Place Tower
Buffalo, New York 14202

Telephone: (716) 848-9000
Facsimile: (716) 847-6004

Writer's Direct Number:

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

August 28, 2002

Reply to
Rochester Office

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

Dear Dr. Cordero:

This letter is in reference to your letter to David MacKnight, Esq. dated August 26, 2002. As I previously advised you, M&T Bank has not sold your cabinets to Champion or any other party. M&T Bank sold only Pyramid cabinets which were located in Rochester. Nevertheless, M&T has no objection to your proceeding to obtain your belongings.

Very truly yours,



Michael J. Beyma

MJB:ds

cc: David G. DeLano, Assistant Vice President, M&T Bank
David D. MacKnight, Esq.
Kenneth W. Gordon, Esq.

Lacy, Katzen, Ryen & Mittleman, LLP

LOUIS A. RYEN
RONALD A. MITTLEMAN
MICHAEL S. SCHNITTMAN
PETER T. RODGERS
SALLY A. SMITH*
KAREN SCHAEFER
RICHARD G. CURTIS
LAWRENCE J. SCHWIND
DAVID E. ANDERSON
CRAIG R. WELCH
CHRISTOPHER B. MUMFORD
LESLIE W. KERNAN JR*
TERRANCE W. EMMENS
MARK H. STEIN
JACQUELINE M. THOMAS

ATTORNEYS AT LAW
THE GRANITE BUILDING
130 EAST MAIN STREET
ROCHESTER, NEW YORK 14604-1686

(585) 454-5650
FACSIMILE (585) 454-6525

LEON KATZEN
GEORGE F. FREY

DAVID D. MACKNIGHT*
DENINE K. CARR*
MATTHEW A. RYEN
JENNIFER L. CHADWICK
JOANNE CONSTANTINO
LARA R. BADAIN
SUZANNE L. AMICO
KEVIN MORABITO
DANIEL S. BRYSON
LISA C. ARRINGTON^o

ALSO ADMITTED IN:
* ILLINOIS
* NEW JERSEY
^o DISTRICT OF COLUMBIA

HERBERT W. LACY
(1920 - 1989)

September 19, 2002

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

Re: Stored Property

Dear Dr. Cordero:

I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfuntner and those claiming an interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint.

Very truly yours,


David D. MacKnight

DDM/cc
Cc: Trustee
Michael Beyma, Esq.

Blank

Blank

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

September 23, 2002

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

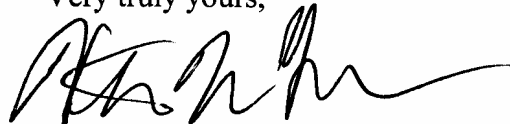
Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Mr. Cordero:

You have repeatedly contacted my office regarding the property you stored with the debtor Premier Van Lines, Inc. prior to its filing for bankruptcy. I have repeatedly advised you that I do not possess nor control any property which was stored by customers of Premier Van Lines. Assets that were stored by customers of Premier Van Lines are not property of the bankruptcy estate and I have no right nor have I asserted any control over those assets. From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York. I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets.

Further efforts by you to acquire your assets through my office are pointless. Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again.

Very truly yours,



Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs

pc: David D. MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

Dr. Richard Cordero, Esq.

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

September 27, 2002

Kenneth Gordon, Esq.
Gordon & Schaal, LLP
100 Meridian Center Blvd., Suite 120
New York, NY 14618

tel. 585-244-1070; fax (585) 244-1085

Re: Your letter of September 23, 2002, and
Premier Van Lines, bankruptcy case number 01-20692, Chapter 7

Dear Mr. Gordon,

Your letter to me of September 23, 2002, has arrived. It is as unjustified in its content as it is unprofessional in its tone. I take exception to it.

Had you deigned to take my first call or return it, I would not have had to keep calling you, to no avail. The fact is that we have spoken only once, on May 16, and only after I had called several times. Even to obtain a response from you to my May letter to you I had to call your office.

It should be quite obvious to you and everybody else why a creditor of a bankrupt company and those similarly situated would have to contact its trustee. That is particularly so in a case like this where the owner of the bankrupt company cannot be found and his lawyer will not reveal his whereabouts. It has been more necessary to contact you because only through my relentless efforts to locate my stored property, which turned out not to be where I had been told it was, has it come to light that there is another place where debtor Premier had stored property of its clients, including mine, namely the warehouse at Sackett Road, owned by Mr. James Pfuntner.

It has been still more necessary to contact you because Mr. Pfuntner's lawyer had not answered my letter to him and would not even take my calls. However, after I had no choice but to contact Mr. Pfuntner, he said on the phone that he could not release my stored belongings claiming that Premier's trustee, that is you, could then sue him. Naturally, I needed to know what your position was on the matter and whether there had even been any contact between you and Mr. Pfuntner, who would not put anything in writing either. All that you would have known had you taken any of my calls, if not out of professional duty as Premier's trustee, then out of professional courtesy to another lawyer.

Why you would not communicate with me is all the more questionable and unacceptable given the fact that you did communicate with everybody else concerning me specifically. Indeed, in your improper letter to me of September 23 you state that, "I have advised all concerned in

this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets.” You communicated with them because you entertained their communications to you, which you revealed when writing in that letter that, “From the latest communications I have read which have been sent to you by the attorneys for James Pfuntner and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York.” Why would you then advise them but not even take or return my calls? Why did you send them copies of your improper letter to me, but not send me a copy of your letters to them, even though I sent you a copy of my August letter to Mr. Pfuntner’s lawyer?

Had you communicated with me, you would have spared yourself the calls that I had to make to your office. Thus, it is utterly unjustified for you to accuse me of “harassment of my staff,” and to enjoin me not to call again and even to “have directed my staff to receive and accept no more telephone calls from you regarding this subject”. I am a professional and do not harass anybody! What I certainly do is expect and insist that those that have information directly affecting my interests do share with me that information, particularly if they are officers of the court and all the more so if they have been appointed by the court.

Given that you meet both criteria, that you are the trustee for Premier, that other parties refer me to you concerning my interests, that even you refer to other parties concerning me, and thus that you are an integral party in this transaction that affects my interests, I have a legitimate and justifiable reason for contacting you. I expect that you will play your role professionally.

Therefore, I request that you:

1. apologize for your unjustified and unprofessional letter to me,
2. assure me that the lines of communication between us will be opened, and
3. send me copies of the letters concerning me that you sent to other parties.

Meantime, I am requesting that the Hon. Judge John C. Ninfo, II, determine whether in this case your performance complies with your duties as trustee and whether you are fit to continue as such.

Sincerely,

Dr. Richard Cordero

Cc: Judge John C. Ninfo, II
Michael J. Beyma, Esq.
David D. MacKnight, Esq.
Raymond Stillwell, Esq.

Dr. Richard Cordero, Esq.

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

September 27, 2002

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

Re: Premier Van Lines, bankruptcy case number 01-20692, Chapter 7

Dear Judge Ninfo,

Kindly find herewith a copy of the letter that the trustee in the above captioned case, Kenneth Gordon, Esq., sent me last September 23. It confirms his refusal to communicate with me in this matter although I have a legitimate and justifiable interest in knowing about the course of the proceedings, and all the more so since they have taken a new turn upon the discovery of other assets of the debtor.

To assist you in understanding the context in which Mr. Gordon wrote that letter, I am sending you my reply to him and supplying a Statement of Facts, which is supported by pertinent documents.

I am submitting this material to you so that you may determine whether in this case Mr. Gordon's performance complies with his duties as trustee and whether he is fit to continue as such.

Looking forward to hearing from you, I remain,

yours sincerely,

Dr. Richard Cordero

Dr. Richard Cordero, Esq.

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

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

September 27, 2002

STATEMENT OF FACTS
and
APPLICATION FOR A DETERMINATION

In re Premier Van Lines, bankruptcy case number 01-20692, Chapter 7
and its Trustee Kenneth Gordon, Esq.

Submitted by: Dr. Richard Cordero, Esq.

to: Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

1. The bankrupt company, Premier Van Lines, located at 900 Jefferson Road, Rochester, NY 14623, was in the storage business and had received my property for storage. For more than three months beginning in early January 2002, I communicated with both Premier's owner, Mr. David Palmer, and the manager of the warehouse where my property allegedly was stored, Mr. David Dworkin of Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607, to find out where and in what condition my property was and to have them commit themselves in writing to their response. Yet throughout those months neither informed me that Premier was in bankruptcy proceedings, let alone that it was in liquidation. On the contrary, they told me that my property was safely stored in the Jefferson Henrietta warehouse and continued billing me. Then Mr. Palmer disappeared and even his telephone was disconnected
2. It was only when Mr. Dworkin referred me to a Premier lien holder, Manufacturers & Traders Trust Bank (M&T), 255 East Avenue, Rochester, NY 14604, that I first learned that Premier was in bankruptcy proceedings. By that time all the filing deadlines had passed. What is more, although Premier had filed under Chapter 11 over year earlier, in March 2001, both Mr. Palmer and Mr. Dworkin kept billing me for storage for a year thereafter and for months after the conversion of the case to Chapter 7 in December 2001, as if the company were a going concern.
3. Lien holder M&T referred me to Premier's lawyer, Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883. Mr. Stilwell would not put me in contact with Mr. Palmer. Instead, he wrote me that Mr. Dworkin, "with the trustee' knowledge, had assumed responsibility for, and the right to rentals

concerning, the stored belongings. The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company." I wrote to Mr. Dworkin, but he refused to commit himself in writing concerning the whereabouts and condition of my stored property.

4. Likewise, M&T referred me to the trustee, Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618. I had to call Mr. Gordon several times until he first took my call on May 16, 2002, and requested information from him about the case and the parties dealing with him. When no information or documents were forthcoming, I had to write to him on May 30. I had to follow up with calls to him, which were neither taken nor returned. It was not until two weeks later that for all communication with me Mr. Gordon sent me copy of his letter to Mr. Dworkin dated April 16, 2002, and a letter to me simply suggesting "that you retain counsel to investigate what has happened to your property."
5. I kept investigating. I found out that even the information that M&T provided to me was, at the very least, incorrect. M&T informed me that it sold the crates containing the stored property of Premier's clients, but not the property itself, to Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624. M&T let me know that the crates with my property were included in the sale and referred me to Champion. But Champion indicated that it had not received either my property or that of other Premier clients. At my instigation, M&T launched another investigation. It then found out that Premier had stored crates in a warehouse on 2140 Sackett Road, in Avon, NY 14414. His owner is Mr. James Pfuntner and M&T referred me to him and his lawyer. I was being bandied yet to another party.
6. I wrote to Mr. Pfuntner's lawyer, Mr. David MacKnight, of Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604. In light of the discovery of new assets of Premier and the appearance of another of its creditors, who according to M&T was "claiming a self-storage lien against the storage cabinets," I copied Mr. Gordon. For weeks Mr. MacKnight would neither answer my letter nor take my calls; neither would Mr. Gordon.
7. Thus, I had to contact Mr. Pfuntner by phone. He expressed his wish to be paid for the storage of my property in his warehouse. I asked and he promised to find out and let me know the number of crates in which my property was stored. Yet, he failed to provide that information. When I called him again, he told me that he would not release my property because the Premier trustee, Mr. Gordon, could then sue him. I asked him to put that in writing. Mr. Pfuntner refused and then hung up on me.
8. Once more, I had no other source of information but Trustee Gordon. Consequently, I called him. But he would not take or return any of my calls. In my last call to his office, on Monday, September 23, I asked to speak with him. His secretary Brenda put me on hold. When she came back she said that Mr. Gordon was not taking any more calls concerning Premier. I asked why and she said that I could write. I told her that I had sent Mr. Gordon a copy of my letter to Mr. Pfuntner's lawyer, Mr. MacKnight, but that Mr. Gordon had not given me any feedback on it. Therefore, I asked whether Mr. Gordon would reply to any letter from me. Brenda said that she was only a secretary following instructions and hung up on me. A few days later I received Mr. Gordon's letter of September 23. In my response to his letter, which I hereby incorporate by

reference, I have stated why Mr. Gordon's letter is unjustified in its content and unprofessional in its tone.

9. I respectfully request that the Court determine whether Mr. Gordon, as a court appointed trustee in bankruptcy with fiduciary duties to all the parties,
 - a. failed to recognize that clients of Premier, who had entrusted it with their property for storage for a fee, are parties in these bankruptcy proceedings and should have been informed of such proceedings as were creditors of the debtor,
 - b. failed to provide me -and perhaps others similarly situated- with adequate information when I was referred to him by lien holder M&T, and I contacted him and specifically requested such information in May and June 2002,
 - c. failed to identify debtor's assets, such as those in Mr. Pfuntner's warehouse, and/or to take a position on them so that Mr. Pfuntner's lawyer now has "drafted a complaint to determine the obligations and duties of the Trustee....,"
 - d. fails in his basic duty of fairness as a fiduciary by having refused to communicate with me and explicitly enjoining me not to contact his office again, although he has provided other parties with information concerning me,
 - e. fails to recognize his duty to allow me access to him and provide me with information, particularly since I have been referred to his role as trustee by a creditor, Mr. Pfuntner, who refuses to release my property lest the Trustee sue him; and
 - f. is not fit to continue as trustee in this case.

Dr. Richard Cordero

TABLE OF EXHIBITS

- 1) Dr. Richard Cordero's letter of September 27, 2002, to Trustee Gordon.....[A:2]
- 2) Letter of Kenneth Gordon, Esq., Chapter 7 Trustee, of September 23, 2002, to Dr. Richard Cordero, with copy to Hon. Judge John C. Ninfo, II, United States Bankruptcy Judge for the Western District of New York, and others.....[A:1]
- 3) Letter of David MacKnight, Esq., attorney for James Pfuntner, plaintiff in the Adversary Proceeding, case no. 02-2230, of September 19, 2002, to Dr. Richard Cordero[A:14]
- 4) Dr. Cordero's letter of August 26, 2002, to Att. MacKnight.....[A:15]
- 5) Trustee Gordon's letter of June 10, 2002, to Dr. Cordero[A:16]
- 6) Trustee Gordon's letter of April 16, 2002, to David Dworkin, manager/owner of the Jefferson-Henrietta warehouse[A:17]
- 7) Letter of Raymond Stilwell, Esq., attorney for Premier Van Lines, Debtor in the Chapter 7 bankruptcy case no. 01-20692, of May 30, 2002, to Dr. Richard Cordero.....[A:18]

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

October 1, 2002

Hon. John C. Ninfo, II
U.S. Bankruptcy Justice
100 State Street
Rochester, New York 14614

Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Judge Ninfo:

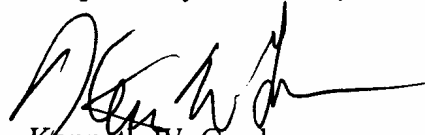
Please accept this letter as my response to the application made by Richard Cordero dated September 27, 2002 in the above-referenced matter in which he seeks my removal as Trustee. This converted Chapter 11 filing involves a corporation which provided both moving and storage services for its customers. Since conversion of this case to Chapter 7, I have undertaken significant efforts to identify assets to be liquidated for the benefit of creditors. Unfortunately, I have discovered that the assets of the corporation which remained upon conversion are insubstantial or otherwise liened in amounts exceeding the value of the assets. Accordingly, I am in the process of abandoning the remainder of the assets of the corporation and will shortly be filing a No Distribution Report.

Richard Cordero is apparently a former customer of Premier Van Lines whose possessions were stored by the company. It has been my position consistently since my appointment as Trustee in this case that the property owned by customers of Premier Van Lines and stored by it was not property of the bankruptcy estate for administration. Moreover, as the Court is aware, I have not sought to operate the corporation under Chapter 7. Accordingly, I have instructed my staff to advise former customers of Premier Van Lines that items stored with Premier Van Lines were not property of the bankruptcy estate, were not to be administered by me and could be accessed by contacting either the landlord from whom Premier Van Lines rented its facilities or the attorney's for M&T Bank who held a lien on the assets of Premier Van Lines. Mr. Cordero was so advised when he contacted my office in the early spring of 2002. In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them. I spoke myself with Mr. Cordero on at least one occasion to reemphasize

the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys. I wrote to the landlord of the Jefferson Road facility in April of 2002 and later provided a copy of that letter to Mr. Cordero. Copies of my letters dated April 16, 2002 and June 10, 2002 are enclosed herewith. Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff. After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets. A copy of my September 23, 2002 letter is also enclosed herewith.

I have tried to explain to Mr. Cordero that I am not his attorney and that he should seek his own legal representation if he is having difficulty reacquiring his assets. Apparently, he has chosen not to seek his own legal counsel. I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application. As I will soon be issuing a No Distribution Report, this case will be closed and my duties as Trustee will come to an end. Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application. However, should the Court desire to calendar this matter, please let me know so that I may appear in Court and answer any questions that the Court may have regarding this matter.

Respectfully submitted,



Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs
Enclosure

pc: Kathleen Dunivin Schmitt, Esq.
Richard Cordero ✓
David MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

UNDERBERG & KESSLER LLP

1800 Chase Square
Rochester, New York 14604

Telephone: (585) 258-2800
Facsimile: (585) 258-2821
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1900 Main Place Tower
Buffalo, New York 14202

Telephone: (716) 848-9000
Facsimile: (716) 847-6004

Writer's Direct Number:

October 4, 2002

Reply to
Rochester Office

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

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

Re: Premier Van Lines

Dear Dr. Cordero:

The following is in reply to your letter of September 27, 2002.

I do not know of any documents that relate to the storage of your goods. As I have previously indicated to you and which I reiterate herein, M&T Bank claims no interest whatsoever in your goods. I believe that the trustee in bankruptcy similarly does not claim any interest in your goods. Therefore, it would appear to me that James Pfuntner should allow you to remove your goods. As I have also told you on several occasions, I believe you ought to make arrangements to take possession of your goods from Mr. Pfuntner and store them near your residence.

Very truly yours,



Michael J. Beyma

MJB:ds

cc: David D. MacKnight, Esq.
Kenneth W. Gordon, Esq.

Dr. Richard Cordero, Esq.

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

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

October 7, 2002

Please acknowledge receipt at (718) 827-9521.

David MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman
130 East Main Street
Rochester, NY 14604

fax 585-454-6525; tel. 585-454-5650

Dear Mr. MacKnight,

Despite your letter of last September 19, I have not yet received from either you or your client, Mr. James Pfuntner, any information concerning my property that the now bankrupt Premier Van Lines stored in your client's warehouse at 2140 Sackett Road in Avon. Therefore, I request that you provide the information that I already requested in my letter to you of August 26, as restated below, to which you never replied.

As indicated before, Mr. Michael J. Beyma, attorney at Underberg & Kessler for Manufacturers & Traders Trust Bank (M&T), copied you to his letter to me of last August 15. Therein Mr. Beyma stated that "Pyramid" storage cabinets containing property of mine are in your client's warehouse at 2140 Sackett Road. I want to make arrangements with your client for access to his warehouse and removal of my property. Therefore, I would like to know the following:

1. whether in addition to those "Pyramid" storage cabinets there are any other storage containers holding property of mine at the Sackett Road warehouse or elsewhere known to Mr. Pfuntner;
2. how many of any such cabinets and containers are there which hold property of mine and what are their dimensions, material, and condition;
3. whether and, if so, when I and/or a moving company can have access to the Sackett Road warehouse to inspect the condition of such cabinets and containers and remove them if appropriate;
4. if such cabinets or containers cannot themselves be taken away from the Sackett Road warehouse, why that is so, and what it would take to be able to remove them together with my property;
5. if the cabinets or containers cannot be removed, how access to them can be arranged in order to remove only my property;
6. regardless of whether it may be to remove such cabinets and containers or just my property in them, whether a forklift or similar machine would be necessary and, if so, whether there is such forklift or machine at the Sackett Road warehouse that can be used for that purpose and, if so, under what terms.

I trust that this time you will be kind enough to provide me with this and any other piece of pertinent information. If I do not receive that information by next Saturday, October 12, I will make every effort to obtain it from your client directly, who also promised to give me that information but then failed to do so.

Yours sincerely,

Dr. Richard Cordero

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

In Re:

PREMIER VAN LINES, INC.,

Case No: 01-20692

Debtor

JAMES PFUNTER,

Plaintiff,

-vs-

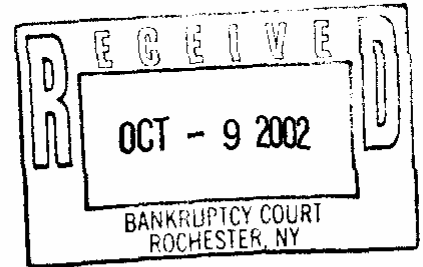
TRUSTEE'S ANSWER

Adversary Proceeding

Case No: 02-2230

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

Defendants



Defendant, Kenneth W. Gordon, as the Chapter 7 Trustee in Bankruptcy for Premier Van
Lines, Inc., answering the Complaint:

1. Denies the allegations set forth in paragraph 17 of the Plaintiff's Complaint.
2. Denies knowledge and information sufficient to form a belief as to the remaining allegations of this Complaint.
3. Affirms that all of the assets of the estate have been abandoned on due notice and that there are no assets out of which to pay any claims.

WHEREFORE, Kenneth W. Gordon, as Trustee, requests dismissal of the Complaint
against the Trustee together with such other and further relief as is just and proper.

Dated: Rochester, New York
October 9, 2002

By:

Kenneth W. Gordon
Chapter 7 Trustee
100 Meridian Centre Blvd.
Suite 120
Rochester, New York 14618
(585) 244-1070

Blank

Blank

Dr. Richard Cordero, Esq.

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

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

October 14, 2002

Ms. Kathleen Dunivin Schmitt
Assistant United States Trustee
U.S. Department of Justice
100 State Street, Suite 609
Rochester, NY 14614

tel. 585-263-5706; fax. 585-263-5862

Re: Kenneth Gordon, Esq., Trustee for Premier Van Lines,
Chapter 7 bankruptcy case number 01-20692

Dear Ms. Schmitt,

Thank you for your letter of 8 instant informing me that my letter of last September 27, to Judge John C. Ninfo concerning the above-captioned case was transmitted to you.

I understand that you were also copied by the trustee in this case, Kenneth Gordon, Esq., to his letter of October 1, 2002, to U.S. Bankruptcy Judge John C. Ninfo, II. In that letter, Mr. Gordon makes allegations to refute the contents of my Statements of Facts with a view to moving the Court and persuading you not to take any action on my application. Hence, I am submitting to you a Rejoinder that analyzes Trustee Gordon's allegations.

Please rest assured of my willingness to cooperate with you and your office in the review of this matter.

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

Cc: Judge John C. Ninfo, II
Trustee Kenneth Gordon, Esq.
Michael J. Beyma, Esq.

Dr. Richard Cordero, Esq.

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

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

October 14, 2002

REJOINDER
and
APPLICATION FOR A DETERMINATION

In re Kenneth Gordon, Esq., Trustee for Premier Van Lines,
Chapter 7 bankruptcy case number 01-20692

Submitted by: Dr. Richard Cordero, Esq.

to: Ms. Kathleen Dunivin Schmitt
Assistant United States Trustee
U.S. Department of Justice
100 State Street, Suite 609
Rochester, NY 14614

1. On September 27, 2002, I submitted to U.S. Bankruptcy Judge John C. Ninfo, II,¹ (hereinafter referred to as the Court) a Statement of Facts and Application for a Determination concerning the performance and fitness to serve of Kenneth Gordon, Esq.,² Chapter 7 Trustee for Premier Van Line³, (hereinafter referred to as Premier), a company formerly engaged in the business of moving and storing property of customers. Trustee Gordon sent an Answer dated October 1, 2002, to the Court with copy to the U.S. Trustee. The Court transmitted my Statement and the Trustee's Answer to Assistant U.S. Trustee Kathleen Dunivin Schmitt (hereinafter referred to as the U.S. Trustee). This is my Rejoinder to that Answer.
2. Trustee Gordon's performance has adversely affected the steps that I have taken since early January 2002 to locate and retrieve the property that I entrusted for storage to Premier, which packed it in storage containers owned by and constituting assets of Premier. Till this day, I have no certainty of the whereabouts of all my property, let alone its condition. This property interest justifies my concern in the proper handling and disposition of the bankruptcy proceedings relating to Premier.

I. Trustee Gordon's "significant efforts" as Premier's trustee

3. In his answer dated October 1, 2002, to the Court with copy to the U.S. Trustee, Trustee Gordon alleges that, "Since conversion of this case to Chapter 7, I have undertaken significant efforts to identify assets to be liquidated for the benefit of creditors."

¹ Judge John C. Ninfo, II, U.S. Bankruptcy Judge, United States Bankruptcy Court, Western District of New York, 1400 United States Courthouse, Rochester, NY 14614, tel. (585) 263-3148.

² Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618, tel. (585) 244-1070, fax (585) 244-1085.

³ Premier Van Lines, 900 Jefferson Road, Rochester, NY 14623.

4. By the common sense standard that when success is possible, efforts that failed were poor, Mr. Gordon's efforts, and consequently, his performance, were poor. Indeed, he failed to find out that Premier had assets at a warehouse located in Avon,⁴ and owned by Mr. James Pfuntner.⁵ It fell upon me, in my quest for my property, to instigate other parties to this case to launch a search for other assets of Premier. It was through those parties that the discovery of other Premier's assets was made, including storage containers in which my property is said to be contained. The facts surrounding this discovery raise some very troubling questions about what efforts, let alone significant ones, Mr. Gordon has been making in this case. The facts are as follows:

a. The facts of Trustee Gordon's performance

5. Premier never informed me that it had filed for bankruptcy in March 2001. Instead, it kept billing me and I kept paying it. Neither Premier nor Trustee Gordon informed me that the case had been converted from Chapter 11 to Chapter 7 in December 2001. Far from it, in January 2002, Mr. David Palmer, owner of Premier,⁶ assured me repeatedly that my property was safe and referred me to the manager of the warehouse where he had stored the containers with my property, Mr. David Dworkin.⁷
6. Mr. Dworkin also assured me that my property was safe and in good condition in his warehouse and then billed me on March 7, 2002, on Jefferson Henrietta stationery for storage fees. However, he failed to give me his assurances in writing, as I had requested and he had agreed to do. This was well before Mr. Gordon wrote to Mr. Dworkin on April 16, as follows:
- "Please be advised that M&T Bank has a blanket lien against the assets of Premier Van Lines. As the Chapter 7 Trustee, I will not be renting or controlling the storage units or any of the assets at the Jefferson Road location. Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank..."
7. It was not Trustee Gordon, but rather Mr. Dworkin who in March had referred me to M&T Bank.⁸ I had to find out on my own who were the officers in charge of the Premier case. They turned out to be Mr. Vince Pusateri,⁹ and Mr. David Delano.¹⁰ Mr. Delano told me that he had seen containers with my name at Mr. Dworkin's warehouse. After being bandied between these parties and by them to yet other parties, I found out that M&T Bank had sold the Premier's assets stored at Mr. Dworkin's warehouse to Champion Moving & Storage.¹¹
8. Champion's owner is Mr. Christopher Carter.¹² He informed M&T Bank and me by letter of July

⁴ Avon warehouse, located at 2140 Sackett Road, Avon, NY 14414.

⁵ James Pfuntner, (585) 738-3105, owner of the Avon warehouse; see footnote above; also an officer of Western Empire Truck Sale, 2926 West Main Street, Caledonia, NY 14423, tel. (585) 538-2200.

⁶ David Palmer, tel. (585) 292-9530, owner of the now bankrupt Premier Van Lines.

⁷ David Dworkin, manager of the warehouse of Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607, tel. (585) 442-8820; fax (585) 473-3555; and of Simply Storage, tel. (585) 442-8820; officer also of LLD Enterprises, tel. (585) 244-3575; fax 716-647-3555.

⁸ M&T Bank, Manufacturers & Traders Trust Bank, 255 East Avenue, Rochester, NY 14604.

⁹ Vince Pusateri, M&T Bank Vice President in Rochester, tel. (716) 258-8472.

¹⁰ David Delano, M&T Bank Assistant Vice President in Rochester, tel. (585) 258-8475; (800) 724-2440.

¹¹ Champion Moving & Storage, 795 Beahan Road, Rochester, NY 14624, tel. (585) 235-3500; fax (585) 235-2105.

¹² Christopher Carter, cellphone (585) 820-4645, owner of Champion; see footnote above.

30, 2002, that my property was not among the storage containers and other assets that he had bought from M&T Bank and picked up at Mr. Dworkin's warehouse. By contrast, among those assets were Premier's business files. There Mr. Carter was able to find Premier invoices indicating that in 2000, Premier had stored my property in a warehouse in Avon.

9. The ensuing search discovered that not only at least one storage container there is said to bear my name, but that other assets belonging to Premier are also at that warehouse in Avon owned by Mr. Pfuntner; see footnotes 4 and 5 above. The latter has acknowledged that there is property belonging to me in his warehouse, but refused to state its condition. In addition, he claimed that he wanted compensation for storage and that if he let me take my property, the Trustee could sue him.
10. Mr. Pfuntner's lawyer is Mr. David MacKnight.¹³ The latter has not answered any of my letters to provide me the requested information concerning the number of containers with property of mine and the condition of such property. Nor has he taken or returned any of my calls. However, Mr. MacKnight sent me a letter dated September 19, 2002, stating that:

"I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfunter [sic] and those claiming on [sic] interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint."

11. From a copy of Trustee Gordon's answer, I have learned that I am a named defendant in the lawsuit brought by Mr. Pfuntner against Trustee Gordon et al, although I have not yet being served.

b. Questions to assess Trustee Gordon's "significant efforts"

12. Did Trustee Gordon ever look at the Premier business files at Mr. Dworkin's warehouse, which would have allowed him to discover that Premier had assets at the Avon warehouse, just as Mr. Carter of Champion did? Where else did Trustee Gordon, or for that matter any trustee, look for assets of the debtor when he does not look at the debtor's business files?
13. If Trustee Gordon did not look at those files, why did he not do so given that with due diligence he would have found out that, as Mr. Dworkin told me, Premier had also rented office space at the Dworkin's warehouse and had his office equipment and cabinets there?
14. If Trustee Gordon did look at those files and that enabled him to write to Mr. Dworkin on April 16 that, "I will not be renting or controlling the storage units or any of the assets at the Jefferson Road" warehouse, that is, Mr. Dworkin's, why did he not notify the Premier clients with property in Premier's storage containers? Without notifying them, Trustee Gordon could not properly dispose of Premier's assets. Indeed, professional experience or common sense would have told Trustee Gordon that such Premier clients would want to have their property back or know its whereabouts. Therefore, they had claims on Premier, but would run into difficulty with Premier creditors, including those that had possession or control of Premier's containers and assets stored elsewhere. The correctness of this elemental reasoning is shown by Mr. Pfuntner's refusal to release Premier's assets in the Avon warehouse, including the property of Premier customers stored in Premier's storage containers.

¹³ David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604, tel. (585) 454-5650, fax 585-454-6525.

15. Trustee Gordon wrote to me on September 23, 2002, that, "From the latest communications I have read which have been sent to you by the attorneys for James Pfuntner [sic] and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York." Did Trustee Gordon try to ascertain with due diligence what other Premier assets were at that Avon warehouse? Or did he just wait until receiving the summons and complaint of Mr. Pfuntner's lawsuit against him et al?
16. That suit shows that Trustee Gordon made a gross mistake in his way of handling this case, which he thus expressed in his October 1 Answer to the Court and the U.S. Trustee: "It has been my position consistently since my appointment as Trustee in this case that the property owned by customers of Premier Van Lines and stored by it was not property of the bankruptcy estate for administration." With that statement, the disposition of Premier' assets, including containers with customers' property, is not solved as if by magic. Far from it! Now Trustee Gordon is facing a lawsuit. Therefore, how can the Trustee affirm in that same letter that, "this case will be closed and my duties as Trustee will come to an end. Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application." Are bankruptcy cases closed when the trustee is sued?
17. Since Trustee Gordon abandoned Premier assets at Mr. Dworkin's warehouse, failed to identify other Premier assets elsewhere, and after third parties without his help found more such assets at the Avon warehouse, satisfied himself with "it appears as if your property is" there, to what were Trustee Gordon's "significant efforts" addressed and what were their results? Can another trustee find other Premier assets by making "efforts" to that end, particularly "significant" ones, which could avoid issuing a No Distribution Report?

II. Whether the Trustee's statements to Court & U.S. Trustee are true

18. When on September 27, I applied to the Court for a review of Trustee Gordon's performance and fitness to continue as trustee in this case, I also protested the unjustified content and unprofessional tone of Trustee Gordon's letter to me of September 23. Therein the Trustee wrote, among other things, that "Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject." In his October 1 Answer, submitted to the Court with copy to the U.S. Trustee, Trustee Gordon made the following allegations, among others:
 - "In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them..."
 - "Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff..."
 - "After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets."
19. With these statements Trustee Gordon casts aspersions on me and my conduct. With them he also intends to make the Court as well as the U.S. Trustee believe that his own conduct was

justified. Moreover, he intends to obtain a personal benefit, namely, that the Court take no action on my application for review of his performance and fitness as trustee. Since Trustee Gordon is both an officer of the court and an appointee under federal law, he must know that when he addresses either, his declarations must be truthful. His character and his fitness, not only as trustee, but also as an officer of the court, would be revealed by the truthfulness or lack thereof of his declarations.

20. By the same token, both the Court and the U.S. Trustee must require that officers that have been sworn to uphold the law make truthful declarations before them. The insistence that this requirement be satisfied is indispensable for the application of the law and the administration of justice. Likewise, ethical considerations requiring that lawyers conduct themselves with honesty and candor are predicated on lawyers being truthful.
21. Therefore, let Trustee Gordon present the evidence supporting his statements. It should be very easy for him to do so. To begin with, he says that "In fact" his staff has received more than 20 calls from me. Thus, he must have a record keeping system for phone calls whereby incoming calls are logged, whether manually or electronically. Such systems do exist and they make it possible to bill clients for the time that the staff spent answering phone calls pertaining to their cases. Anyway, since Trustee Gordon asserts as a matter of his own knowledge that it is a "fact," then he can prove it. Let him do so.
22. By contrast, in the second part of the sentence, Trustee Gordon relies on hearsay to impugn my conduct and move the Court to favor him: "my staff has advised me that he has been belligerent... became more demanding and demeaning to my staff... became very angry at my staff." These are categorical statements. No reasonable person would have any doubt as to what constitutes such conduct. Hence, the Trustee's staff should easily state the details that describe such conduct, particularly since the Trustee submits as a "fact" that his staff received more than 20 of my calls. Let Trustee Gordon provide, not hearsay, but rather affidavits from his staff to substantiate his statements. Let him also describe in an affidavit of his own the tenor of our phone conversation, for he acknowledges that we spoke on the phone "on at least one occasion."
23. Meantime, the degree of Trustee Gordon's due care in preparing his statements and of their reliability can begin to be assessed when he writes thus:

""Richard Cordero is apparently a former customer of Premier Van Lines...Mr. Cordero was so advised...that former customers of Premier[s] items...were not to be administered by me...when he contacted my office in the early spring of 2002...I spoke myself with Mr. Cordero on at least one occasion to reemphasize the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys."

24. If Trustee Gordon is truthfully submitting to the Court and the U.S. Trustee that he and his staff have received more than 20 calls from me, how come he cannot state for sure but only "apparently" that I am a former Premier customer? Or does it take still more calls for him to make a truthful determination? For the sake of truthfulness, it should also be noted that I did not contact his office in early spring. Nor was it in March or April, but only as late as mid-May. His intended implication in the statement that "on at least one occasion" he spoke with me is that he may have spoken with me more than once. His implication is misleading. He has spoken with me exactly one single time, on May 16, 2002. On that single occasion, he could not possibly have

spoken with me “to reemphasize” anything, not only because there had been no previous occasion in which he could ‘emphasize’ it, but also because nobody else had told me his position on the Premier case. Trustee Gordon should be able to easily challenge this assertion of mine since he must have a record keeping system that allows him to state as a “fact” that I called his staff more than 20 times and he knows from his staff what transpired in those calls.

III. The understanding of Trustee Gordon’s role

25. Trustee Gordon not only impugns my character and conduct, but also belittles my competence when he writes that:

“I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application.”

26. If Trustee Gordon’s role were so unambiguously understandable, there should be no reason for Lawyer David MacKnight, who represents Mr. Pfuntner, the Avon warehouse owner, to be suing him “to determine the obligations and duties of the Trustee...,” or for Mr. Pfuntner both to refuse to release my property in Premier’s storage containers for fear that the Trustee may sue him and to refer me to the Trustee. Nor would there be any reason for Lawyer Raymond Stilwell,¹⁴ who represents Mr. Palmer, the owner of Premier, to have engaged in conduct objected to by the Trustee, as shown in Mr. Stilwell’s letter of last May 30. Nor would Lawyer Michael Beyma,¹⁵ who represents M&T Bank, have referred me to the Trustee, just as did M&T Bank Vice President Vince Pusateri and Assistant Vice President David Delano. Nor would Lawyers MacKnight and Beyma feel compelled to copy the Trustee to letters that they wrote to me. Likewise, there should have been no need for the Trustee to write to Mr. Dworkin, in whose warehouse Premier had leased storage and office space, in April 2002, four months after the conversion of the case from Chapter 11 to Chapter 7, to let him know what the Trustee would be or not be renting or controlling and how Mr. Dworkin should handle Premier clients. Nor would Mr. Dworkin too deem it necessary to refer me to the trustee for Premier.
27. Is it because Trustee Gordon understands his role as being so limited that he is issuing a No Distribution Report? After all, he gave Lawyer Stilwell to understand, as the latter stated in his May 30 letter, “Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee’s knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings.” Why did Trustee Gordon let one creditor, Mr. Dworkin, keep running the Premier as if it still were an ongoing business and without distributing its income?

IV. Request for review of Trustee Gordon’s performance and fitness

28. I respectfully request that the U.S. Trustee, taking into account this Rejoinder as well as my Statement of September 27, determine whether Trustee Gordon, as trustee of Premier Van Lines:

¹⁴ 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; see footnote 6 above.

¹⁵ Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604, tel. (585)-258-2800; fax (585) 258-2821; attorney for M&T Bank; see footnotes 8-10 above.

1. failed to recognize that clients of Premier, who had entrusted it with their property for storage for a fee, are parties in these bankruptcy proceedings and should have been informed of such proceedings as were creditors of the debtor;
2. failed to provide me -and perhaps others similarly situated- with adequate information when I was referred to him by lien holder M&T, and I contacted him and specifically requested such information in mid-May and June 2002;
3. failed to identify Premier's assets, such as those in Mr. Pfuntner's warehouse, and take such action as to render unnecessary his being sued by Mr. Pfuntner;
4. fails in his basic duty of fairness as a fiduciary by having refused to communicate with me and explicitly enjoining me not to contact his office again, although he has provided other parties with information concerning me;
5. fails to recognize his duty to allow me access to him and provide me with information, particularly since I have been referred to him for his role as Premier's trustee by a creditor, Mr. Pfuntner, who refuses to release my property lest the Trustee sue him;
6. failed to make "significant efforts" to discharge his duties competently;
7. made untruthful statements to the Court and the U.S. Trustee;
8. cast aspersions on me, my conduct, and my competence; and
9. is not fit to continue as trustee in this case.

Sincerely,

Dr. Richard Cordero

Cc: Judge John C. Ninfo, II
Kenneth Gordon, Trustee
Michael J. Beyma, Esq.

TABLE OF EXHIBITS

- a. Trustee **Gordon's** letter of **April 16, 2002, to Dworkin**, manager/owner of the Jefferson-Henrietta warehouse [A:17]
- b. Letter of Raymond **Stilwell**, Esq., attorney for Premier Van Lines, of **May 30, 2002, to Dr. Cordero** [A:18]
- c. Trustee **Gordon's** letter of **June 10, 2002, to Dr. Cordero** with copy of his April 16 letter to Warehouser David **Dworkin**, manager/owner of the Jefferson Henrietta Associates' warehouse where Premier rented space to store the storage containers holding the property of its clients..... [A:16]
- d. Letter of **July 30, 2002**, of Christopher **Carter** -owner of Champion Moving & Storage, Inc., which bought storage containers of Bankrupt Premier Van Lines sold by Lienholder M&T Bank- **to Dr. Cordero** stating that his stored property is in a warehouse in Avon, NY..... [A:45]

- e. Christopher **Carter**'s letter of **July 30, 2002, to Vince Pusateri**, Vice President of M&T Bank, general lienholder against Bankrupt Borrower Premier Van Lines, Inc., stating that his company did not receive containers with property of Dr. Cordero among the containers bought from M&T Bank..... [A:46]
 - 1) **Bill of sale** from M&T Bank for Mr. Carter to sign to acknowledge receipt of containers bought from M&T, which liquidated its lien on them after Premier bought them with an M&T loan and subsequently went bankrupt..... [A:47]
 - 2) **List of former Premier clients** whose property was allegedly in storage containers sold by M&T Bank to Champion's Mr. Carter, who received no containers with Dr. Cordero's name so he did not sign the acknowledgment..... [A:48]
 - 3) **Premier Van Lines' invoice** of September 26, 2000, for storage of Dr. Cordero's property..... [A:49]
- f. Att. **MacKnight**'s letter of **September 19, 2002, to Dr. Cordero** [A:14]
- g. Trustee **Gordon**'s letter of **September 23, 2002, to Dr. Cordero**..... [A:1]
- h. Trustee **Gordon**'s **Answer of October 9, 2002, to Plaintiff Pfuntner's complaint** [A:31]

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Lacy, Katzen, Ryen & Mittleman, LLP

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RONALD A. MITTLEMAN
MICHAEL S. SCHNITTMAN
PETER T. RODGERS
SALLY A. SMITH*
KAREN SCHAEFER
RICHARD G. CURTIS
LAWRENCE J. SCHWIND
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JOANNE CONSTANTINO
LARA R. BADAIN
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KEVIN MORABITO
DANIEL S. BRYSON
LISA C. ARRINGTON°

ALSO ADMITTED IN:
* ILLINOIS
* NEW JERSEY
° DISTRICT OF COLUMBIA

HERBERT W. LACY
(1920 - 1989)

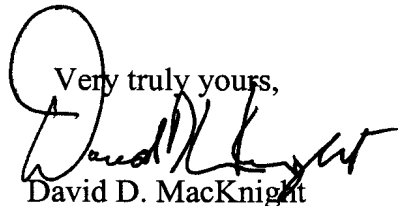
October 16, 2002

Mr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208

Re: Your October 7, 2002 Letter

Dear Mr. Cordero:

You should have received a copy Mr. Pfutner's complaint to have the court determine the rights and interest of all parties who have claimed or may claim an interest in the property left by the Debtor at Mr. Pfutner's Sackett Road warehouse. If the complaint has not reached you before this letter, you should anticipate receiving a copy of the summons and complaint in the near future.

Very truly yours,

David D. MacKnight

DDM/cc

Dr. Richard Cordero

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

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

October 17, 2002

Please acknowledge receipt at (718) 827-9521.
faxed to (585) 454-6525

COPY for David MacKnight, Esq.

Att.: Margie

Mr. James Pfuntner
Western Empire Truck Sale
2926 West Main Street
Caledonia, NY 14423

Faxed to (585) 538-9858; tel. 585-538-2200

Dear Mr. Pfuntner,

You may remember that we spoke in September concerning my property stored in your warehouse at Avon. You were going to inspect it and let me know about its condition. However, I have not received the information yet. Nor has Mr. David MacKnight provided it to me, as requested in my letters of August 26 and October 7.

I want to make arrangements to go to your warehouse and remove my property. Therefore, I would like to know the following:

1. whether in addition to the storage containers –Pyramid cabinets, crates, storage boxes, shipping container, whatever it is my property is contained in- at the Sackett Road warehouse there are any such containers holding property of mine elsewhere that you know;
2. how many of any such containers are there which hold property of mine and what are their dimensions, material, and condition;
3. whether and, if so, when I and/or a moving company can have access to the Sackett Road warehouse and any other place to inspect the condition of such property and remove it if appropriate;
4. if such containers cannot themselves be taken away from the Sackett Road warehouse, why that is so, and what it would take to be able to remove them together with my property;
5. if the containers cannot be removed, how access to them can be arranged in order to remove only my property;
6. regardless of whether it may be to remove such containers or just my property in them, whether a forklift or similar machine would be necessary and, if so, whether there is such forklift or machine at the Sackett Road warehouse that can be used for that purpose and, if so, under what terms.

I trust that this time you will be kind enough to provide me with this information in writing and any other piece of pertinent information.

Yours sincerely

Dr. Richard Cordero

cc: David MacKnight, Esq.

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

In re PREMIER VAN LINES, INC.,

Debtor

Chapter 7 bankruptcy
case no. 01-20692

JAMES PFUNTNER,

Adversary proceeding
no. 02-2230

Plaintiff,

-vs-

CORDERO'S VOLUNTARY

WAIVER OF SERVICE OF SUMMONS

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

AND

PETITION FOR CLARIFICATION

Defendants

Dr. Richard Cordero, co-defendant, gives the Court notice of the following:

1. Dr. Cordero has become aware that he is a named co-defendant in the above-captioned Adversary Proceeding because Co-Defendant Kenneth Gordon sent him a copy of his answer.
2. The Plaintiff's lawyer sent Dr. Cordero by regular mail a summons and copy of the complaint but failed to comply with the applicable rules in that he:
 - a) Failed to send a notice of lawsuit
 - b) Failed to request a waiver of service
 - c) Failed to serve the summons and complaint
 - d) Failed to obtain the seal of the court on the summons (see the copy attached hereto)
 - e) Failed to provide an extra copy of the notice and request
 - f) Failed to include a prepaid means of compliance in writing.
3. However, in order to satisfy the duty to avoid unnecessary costs of serving the summons, Dr. Cordero hereby voluntarily tenders a waiver of service of a summons, without prejudice to any objection to the venue or to the jurisdiction of the court over his person.

4. Dr. Cordero petitions that the Court states a certain date by which he must file his answer given that:
- a) the date written on the summons sent by Plaintiff's lawyer is "10/3/02",
 - b) but a date stamp on it reads, "RECEIVED OCT 04 2002," and
 - c) Dr. Cordero only received it much late (see the attached copy of the letter of Plaintiff's lawyer).
 - d) Moreover, under FRCP Rule 4(d)(2)(F), the plaintiff, "shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent."
 - e) However, since the Plaintiff failed to send such request, Dr. Cordero submits that the period for him to file the answer should begin to run from the day when he volunteered a waiver of service of summons, and
 - f) that such period should last 60 days as provided under FRCP Rule 4(d)(2)(G)(3), "A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent..."
 - g) Consequently, Dr. Cordero should provide his answer by December 23, 2002.
5. Dr. Cordero kindly requests that the Court send him the mailing address of the other co-defendants.

Dated: October 23, 2002
59 Crescent Street
Brooklyn, NY 11208

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

Mailed on Wednesday, October 23, 2002, to:

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



Lacy, Katzen, Ryen & Mittleman, LLP

DAVID D. MacKNIGHT, ESQ.
dmacknight@lacykatzen.com

December 5, 2002

Honorable John C. Ninfo, II
United States Bankruptcy Judge
100 State Street
Rochester, New York 14614

Re: Premier Van Lines, Inc.
Bankruptcy No.: B01-20692
Pfunter vs. Gordon as trustee, et al
AP No.: 02-2230

Dear Judge Ninfo:

Dr. Cordero's latest pleading certainly has cast a different light on events. When the court sets a pretrial conference, it might be helpful to have the Trustee provide a listing from the Debtor's records of whose property Debtor placed in the Henrietta location and whose property Debtor placed in the Avon property. It would also be helpful if the Trustee provided the Debtor's listing or inventory of what it received from, stored for, and released to each of its customers with property stored at the Avon property. It would probably be helpful for Dr. Cordero to provide a copy of the inventory, packing list, or receipt Debtor provided to him when it accepted his goods for storage. It would also seem appropriate for M&T Bank to provide a bill of sale listing what it sold to Champion, as well as Champion providing a schedule of what it removed from the two locations.

Absent records it seem unlikely that a pretrial will advance matters to the point that those who have stored property with Debtor can be identified, the property each customer stored can be identified, customers and their property can be reunited, and Mr. Pfunter's warehouse can be emptied.

The Granite Building – 130 East Main Street – Rochester, NY 14604-1686 – Tel. 585-454-5650 – Fax 585-454-6525
www.lacykatzen.com

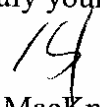
Bankruptcy and Debtor Relief • Civil and Criminal Litigation • Collection & Creditor Services • Corporate Banking and Business Law
Divorce and Family Law • Employment Law • Estates, Trusts and Elder Law Services • Municipal Law
Personal Injury and Wrongful Death • Real Estate Services • Wills & Estate Planning

Att. MacKnight's letter of 12/5/2 to J Ninfo re need to obtain info from parties before pretrial conference A:353-61

Hon. John C. Ninfo, II
December 5, 2002
Page 2

Dr. Cordero certainly has a point when he suggests that Debtor's management, and those who billed him for storage and insurancing his property should be able to shed light on matters.

Very truly yours,


David D. MacKnight

DDM/cc

Cc: Client
Michael Beyma, Esq.
Dr. Richard Cordero
Kenneth Gordon, Esq.
Ray Stilwell, Esq.
David Dworkin
Jefferson Henrietta Associates
United States Trustee

Blank

Blank

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

December 9, 2002

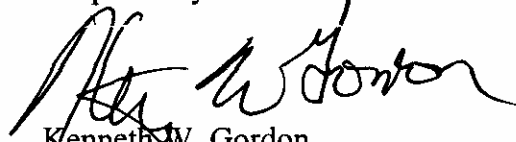
Hon. John C. Ninfo, II
U.S. Bankruptcy Court Justice
100 State Street, Room 1400
Rochester, New York 14614

Re: Premier Van Lines Inc.
Case No.: 01-20692
A.P. No.: 02-2230

Dear Judge Ninfo:

In regards to David MacKnight's December 5, 2002 letter to you, please be advised that I have never been provided with records regarding the personal property stored by debtor for debtor's customers. Accordingly, I have no ability to produce the type or kind of documentation Mr. MacKnight suggests in his letter to you. I believe the people in the best position to provide such documentation would be the customers themselves, the debtor or the landlords, such as Mr. MacKnight's client, who has possession of the customer's property. It is my understanding from my conversations with Mr. MacKnight that his client has located and identified one storage container with Dr. Cordero's name on it which his client has, as yet, failed to surrender to Dr. Cordero. I fail to understand why Mr. MacKnight's client has not already released Dr. Cordero's property to him.

Respectfully submitted,



Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs

pc: David MacKnight, Esq.
Dr. Richard Cordero ✓
Raymond Stilwell, Esq.
Michael Beyma, Esq.
Kathleen Dunivin Schmitt, Esq.
David Dworkin
Jefferson Henrietta Associates
Rochester Americans Hockey Club

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

In Re:

PREMIER VAN LINES, INC.

Debtor

Case No. 01-20692

Chapter 7

JAMES PFUNTER

Plaintiff

Adversary Proceeding

Case No. 02-02-2230

v.

KENNETH GORDON, et al.

Defendant.

REQUEST OF THE UNITED STATES TRUSTEE FOR STATUS CONFERENCE

Carolyn S. Schwartz, the duly appointed United States Trustee for Region 2 (the "United States Trustee"), by her undersigned counsel, respectfully requests the court, pursuant to 11 U.S.C. § 105(d)(2)(B)(i), to hold a status conference and or pre-trial hearing in this adversary proceeding.

The Bankruptcy Court may conduct status conferences to effectively manage its docket. See *Colliers on Bankruptcy* ¶ 105.LH[5] (15th Ed. 2001).

A status conference is necessary in this case because certain parties to the above-named action have been unable to resolve the issue of who controls items that have been determined to be non-estate assets and abandoned by the trustee. The items in question are undisclosed property stored with the debtor by private parties pre-petition. The debtor apparently had moved the items to a location not under the control


of the debtor or trustee. At least one party has reported that he is unable to have his stored items returned to him. The United States Trustee has communicated with the parties in an attempt to resolve this matter without success. Judicial intervention appears necessary, and early intervention may resolve this dispute without need of a formal hearing.

WHEREFORE, the United States Trustee respectfully requests that this matter be set in for a status conference or pre-trial hearing at the Court's earliest opportunity.

Respectfully submitted

Carolyn S. Schwartz
United States Trustee for Region 2
By Counsel

Dated: December 10, 2002

A handwritten signature in black ink, reading "Kathleen Dunivin Schmitt". The signature is written in a cursive style with a horizontal line underneath.

Kathleen Dunivin Schmitt
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, NY 14614
(585) 263-5706

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

In Re:

PREMIER VAN LINES, INC.

Debtor

JAMES PFUNTER

Plaintiff

v.

KENNETH GORDON, et al.

Defendant.

Case No. 01-20692

Chapter 7

Adversary Proceeding

Case No. 02-02-2230

ORDER SETTING MATTER IN FOR STATUS CONFERENCE/PRETRIAL HEARING

The Court having held a hearing on January 8, 2003 and based on the representations and statements of counsel, and pursuant to its powers under 11 U.S.C. § 105(d)(2)(B), it is hereby:

ORDERED, that the Motion is GRANTED; and it is further

ORDERED, that on _____, 200__ at _____m.,

the Court will schedule the above referenced case for a status conference and pretrial hearing.

This ____ day of _____, 200__.

John C. Ninfo, II,
Chief United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2002, the Request for Status

Conference was mailed via first class mail, prepaid to:

David MacKnight, Esquire
130 East Main Street
Rochester, NY 14604

Ken Gordon, Esquire
100 Meridian Centre Blvd., Suite 120
Rochester, NY 14618

Michael Beyma, Esquire
1800 Lincoln First Tower
Rochester, NY 14604

Dr. Richard Cordero
58 Cresent Street
Brooklyn, NY 11208

Kathleen D. Schmitt

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

1220 U.S. Courthouse
100 State Street
Rochester, New York 14614
Phone # (585) 263-3148
www.nywb.uscourts.gov

IN RE:
PREMIER VAN LINES, INC.,

Debtor(s)

Chapter: 7

JAMES PFUNTER,

Case No. 01-20692

Plaintiff(s),

AP No: 02-2230

vs.

KENNETH GORDON, TR., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC.,
AND M&T BANK,

Defendant(s).

RICHARD CORDERO,

Third Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES,
Third Party Defendants.

NOTICE OF PRE-TRIAL CONFERENCE

TO THE PARTIES:

By Order of the Court, you are directed to appear at a Pre-trial Conference in the above-captioned matter before the Honorable John C. Ninfo, II, at 100 State Street, Room 1400, Rochester, NY 14614 on the **January 10, 2003 at 10:00 a.m.** Failure to appear may result in the Court's granting of judgment in favor of your opponent.

If the parties are negotiating for a settlement, you may choose to conduct this Pre-trial Conference by telephone or you may elect to have this action immediately set down on one of the next two Trial Calendars wherein an appearance will be required. If you should elect to place the matter on the Trial Calendar without a Pre-Trial Conference being conducted, please note that **Trial Calendar adjournments will not be granted.**

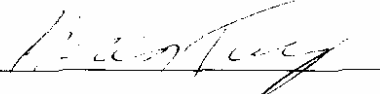
At the Calendar, the matter will be given a date certain for Trial if it has not been settled.

If the above criteria is met and you elect a telephonic Pre-trial Conference or placement on the Trial Calendar, you must file the attached Pre-Trial Option Form with the Court within 14 days from the date of this notice.

Paul R. Warren, Clerk of Court

Dated: December 18, 2002

xc: David MacKnight, Esq.
Kenneth Gordon, Tr.
Michael Beyma, Esq.
Richard Cordero, Pro Se
Raymond Stilwell, Esq.
U.S. Trustee


Case Administrator

1220 U.S. Courthouse
100 State Street
Rochester, New York 14614
phone # (585) 263-3148; www.nywb.uscourts.gov

Chapter 7 bankruptcy
case no. 01-20692

Adversary proceeding
no. 02-2230

Defendants

-VS-

Third party defendants

A:363

Lacy, Katzen, Ryen & Mittleman, LLP

LOUIS A. RYEN
RONALD A. MITTLEMAN
MICHAEL S. SCHNITTMAN
PETER T. RODGERS
SALLY A. SMITH
KAREN SCHAEFER
RICHARD G. CURTIS
LAWRENCE J. SCHWIND
DAVID E. ANDERSON
CRAIG R. WELCH
CHRISTOPHER B. MUMFORD
LESLIE W. KERNAN JR.
TERRANCE W. EMMENS
MARK H. STEIN
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ATTORNEYS AT LAW
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LEON KATZEN
GEORGE F. FREY

DAVID D. MACKNIGHT*
DENINE K. CARR*
MATTHEW A. RYEN
JENNIFER L. CHADWICK
JOANNE CONSTANTINO
LARA R. BADAIN
SUZANNE L. AMICO
KEVIN MORABITO
DANIEL S. BRYSON
LISA C. ARRINGTON*

ALSO ADMITTED IN:
* ILLINOIS
* NEW JERSEY
* DISTRICT OF COLUMBIA

December 30, 2002

HERBERT W. LACY
(1920 - 1989)

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

Re: Your December 26, 2002 fax concerning the pretrial conference

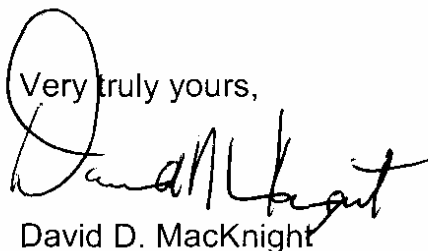
Dear Dr. Cordero:

I have no objection to you appearing at the pretrial conference by telephone.

The judge has the final say as to whether you can appear by telephone. All I am doing is telling you that I have no objection if that is how you wish to proceed.

I would very much like to receive a copy of the inventory and/or bill of lading given to you when Premier took possession of your goods. Without a listing of your property no one will be in a position to identify your goods. As I understand matters, the most that anyone has said is that there is a storage container at the Sackett Road, Avon warehouse with your name on the outside. There is another storage container with the Rochester Amerks' name on the outside. The Amerks don't believe that they have any property in storage.

Very truly yours,



David D. MacKnight

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 29, 2003

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,

At the pre-trial conference you requested that I submit to you three dates when I can travel to Rochester to participate in the inspection of my property in storage at the Avon warehouse of Plaintiff James Pfuntner. I am now in a position to do so and am submitting the following six dates:

- | | | |
|---------------------------|---------------------------|-----------------------|
| 1) Wednesday, February 19 | 3) Wednesday, February 26 | 5) Wednesday, March 5 |
| 2) Thursday, February 20 | 4) Thursday, February 27 | 6) Thursday, March 6 |

In order for a flight ticket —non-refundable and non-reschedulable- for one of these dates to be available for me to buy, it is important that at least 14 days in advance I receive the date chosen by you and the other parties. At the conference you indicated that within two days of your receipt of my proposed dates you could let me know and I confirm that such timeframe is acceptable and that it is important to stick to it.

Please note that I neither know where the Avon warehouse is located nor will have transportation to get there. Hence, will I be able to ride to and from the warehouse with you or your representative? Upon arriving at the Rochester airport, I will take public transportation to downtown and go to the Courthouse to ask for you at the Clerk's office. If the plane arrives on time at 10:45 am. —the airline assures me that nationally its flights have an 85.6% on-time rate-, is it reasonable to estimate, given the distance between the airport and the Courthouse and the time of day, that I can be at the Courthouse by 12 noon? Considering the distance between the Courthouse and the Avon warehouse and taking into account what you want the parties to do there, is it realistic to plan that I will be back at the airport by 6:30p.m.?

Since it is at your request that this site inspection is been organized, I respectfully suggest that you might wish to make sure with Mr. Pfuntner that the storage containers in question will be accessible. This may sound obvious, but if the containers are stacked on top of others, as storage containers are in a warehouse, there must be an appropriate means, such as a forklift, to quickly bring them down to the floor where they can be opened. Likewise, the forklift must have gasoline and somebody must have the key to it and know how to operate it. It goes without saying that Mr. Pfuntner must insure that he has the keys or other tools necessary to open the warehouse and the storage containers.

These observations are justified because from what I have found out, the Avon warehouse has been closed for a long time and is not being actively used. I make them in the

interest of conducting an inspection smoothly, efficiently, and with optimal use of time. After all, this trip may cost me hundreds of out-of-pocket dollars, not to mention the opportunity cost of being away from my desk.

In the same vein, one must insure that there will be electricity to turn the lights on so that we can see the condition of the property. Flashlights won't do. This is a very important point, for 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. Since Mr. Pfuntner is in the warehousing business and was dealing with a storage company, he must certainly have been aware of the conditions that the warehouse had to meet for the intended use. To protect my property against these types of damage, among others, Premier had me pay for the highest type of insurance, namely, replacement insurance..., and I have paid for it since 1993! Likewise, Mr. Dworkin and Jefferson Henrietta Associates billed me for it.

Please note that I intend to take pictures during the inspection of the warehouse, inside and outside, as well as of the storage containers and of my property.

Attached hereto, I am sending you a copy of the receipt of items of property of mine of which the moving company took possession for storage. It was sent to me by Mr. Christopher Carter of Champion Moving & Storage, the company that bought Premier's assets, together with its business files, when they were auctioned by M&T Bank, the holder of a general lien on the assets of Premier. Mr. Carter found the receipt in the business files of Premier Van Lines. I requested that he copy it and send me the copy; he did so. I also asked him to keep in a safe place the original and all other papers in the Premier's files that he has.

Since those files constitute evidence in this case, it would be appropriate for the court to issue a conservatory order so that Champion's Mr. Carter may not to give away those files to anybody or dispose of them otherwise. You may remember that I made this request at the pretrial conference.

It should be noted here that had Trustee Kenneth Gordon examined those files, he too would have found that receipt. Not only are Premier's customers, such as myself, parties in interest to whom he owes duties as trustee, but their property was in storage with Premier under contract, each of which constitutes an income generating asset. Now those contracts are generating income for Champion. A Chapter 7 trustee is duty bound under 11 U.S.C. §704(4) to "investigate the financial affairs of the debtor," and under §2-2.2.1 of the Trustee Manual, Chapter 7 Case Administration, "A trustee must also ensure that a debtor surrenders non-exempt property of the estate to the trustee, and that records and books are properly turned over to the trustee." One obvious use of those "records and books" is to find out where debtor's assets may be located. Only after finding the Debtor's assets can the Chapter 7 trustee proceed to liquidate them for the benefit of the creditors and the parties in interest. Trustee Gordon failed to do so. He should be held accountable for it.

Can you imagine how much of all this legal entanglement could have been avoided if the Trustee, back in December 2001 when he was appointed trustee of Premier, had given notice to Premier's customers that the company holding their property had gone bankrupt and was in liquidation? Instead, he abandoned all the assets to Mr. David Dworkin and Jefferson Henrietta Associates, the company running the warehouse out of which Premier operated its business. These two parties too had an obligation to notify Premier's customers, such as me, for they knew since much earlier, that is, March 2001, that Premier had filed for bankruptcy. Far from it, they

kept that information from me -even though I asked Mr. Dworkin about the condition of my property and the insurance covering it- and just billed me for the storage and insurance of storage containers that were not even in their warehouse.

For their part, M&T Bank and its officer, Mr. David Delano, should have made sure that my storage containers were at the Jefferson Henrietta warehouse before telling me so and should have notified all customers before conducting the auction and allowing a third party, namely, Champion, to come in and take everything away, and that without M&T Bank or Mr. Delano making an inventory or monitoring the removal.

If these parties had only cared a little for others! Now I end up paying the consequences of their acts and omissions. How would they like it if due to what they did or failed to do, they had to travel to New York City, at their expense of time, money, and effort, or for more than a year had to learn how to handle or hire somebody to handle a case in a New York City court?

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.

Looking forward to hearing from you at your earliest convenience, I remain,

yours sincerely,

Dr. Richard Cordero

Certificate of Service

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
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tel. (585) 248-3800; fax (585) 248-4961

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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

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 29, 2003

David MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
The Granite Building
130 East Main Street
Rochester, NY 14604-1686

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

Dear Mr. MacKnight,

Please find herewith a copy of my letter and attachment to Judge John C. Ninfo, II, concerning the requests that he made at the pre-trial conference, namely that I travel to Rochester for an all-party inspection of my property found at the Avon warehouse of Plaintiff James Pfuntner.

As Judge Ninfo requested, I have provided dates when I can travel to Rochester. So that he can quickly ascertain a date suitable to him and you all, you might wish to call him and let him know your preferred dates.

Sincerely,

Dr. Richard Cordero

cc. to Stilwell; Beyma; Essler; Gordon; Schmitt

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

January 31, 2003

Honorable John C. Ninfo, II
United States Bankruptcy Court
1220 U.S. Courthouse
100 State Street
Rochester, New York 14614

RE: Premier Van Lines
Case No: 01-20692
Chapter 7

Dear Judge Ninfo:

This letter will serve to confirm my earlier statement at the pre-trial conference that I will not be attending the inspection of Dr. Cordero's personal property in storage at the Avon location.

Respectfully submitted,



Kenneth W. Gordon
Chapter 7 Trustee

KWG/sem

p.c.: Dr. Richard Cordero ✓
Kathleen Dunivin Schmitt, Asst. U.S. Trustee
Raymond Stilwell, Esq.
David D. MacKnight, Esq.
Mike Beyma, Esq.
Rochester Americans Hockey Club
David Palmer
Jefferson Henrietta Associates
David Dworkin



U.S. Department of Justice

Office of the United States Trustee

Western District of New York

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

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

February 4, 2003

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

Re: Premier Van Lines
Chapter 7, No. 01-20692

Dear Dr. Cordero:

Thank you for your letter dated January 29, 2003. Neither I nor my staff will be attending the inspection of your property in Avon, New York.

In reading your letter to Judge Ninfo attached to my correspondence, I noticed that it does not state that you have made arrangements to have your property moved to a new storage facility or to take it back with you to Brooklyn after the inspection. As the chapter 7 trustee has stated, your property is not property of the estate. As such, the estate will not be paying to ship your belongings to a new location. You will need to make these arrangements yourself.

Sincerely,

Kathleen Dunivin Schmitt
Assistant United States Trustee

UNDERBERG & KESSLER LLP

1800 Chase Square
Rochester, New York 14604

Telephone: (585) 258-2800
Facsimile: (585) 258-2821
www.underberg-kessler.com

1900 Main Place Tower
Buffalo, New York 14202

Telephone: (716) 848-9000
Facsimile: (716) 847-6004

Writer's Direct Number:

February 20, 2003

Reply to
Rochester Office

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

Honorable John C. Ninfo, II
United States Bankruptcy Justice
Federal Building
100 State Street
Rochester, New York 14614

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

Dear Judge Ninfo:

At this time, M&T Bank has not decided whether someone from the Bank or this office will attend the opening of the warehouse's boxes in Avon. We are confident that if we do decide to attend that we would have a person available for any date selected by Dr. Cordero. Therefore, we have no conflicting dates.

If you should have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,



Michael J. Beyma

MJB:ds

cc: David G. DeLano
Mr. David Dworkin (Jefferson Henrietta Associates)
Kenneth Gordon, Esq., as Trustee
David MacKnight, Esq.
Dr. Richard Cordero
Kathleen Dunivin Schmitt, Esq.
David Palmer
Rochester Americans Hockey Club
Raymond Stilwell, Esq.

G:\KMM&T\TRUST\Premier\Ninfo, John ltr.wpd



Lacy, Katzen, Ryen & Mittleman, LLP

DAVID D. MacKNIGHT, ESQ.
dmacknight@lacykatzen.com

March 26, 2003

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

Re: Premier Van Lines, Inc.
Chapter 7 Bankruptcy
Case No.: 01-20692
Adversary Proceeding No.: 02-2230

Dear Dr. Cordero:

My assistant called the court seeking a date on which the court would be available to supervise the inspection. The court has informed us that they will not be available for the inspection and that this matter is to be mutually agreed between you and Mr. Pfuntner.

My assistant called the court based on your statement that only the court could set the date. Mr. Pfuntner advised my assistant that you refused to set a date when he called. Whatever caused you to make such a claim and delay a resolution of this matter doesn't matter to Mr. Pfuntner or me. What does matter is that you choose a date and inspect.

The best dates for the inspection on Mr. Pfuntner's part that meet your request for two weeks notice are April 23, 2003, April 24, 2003, or April 25, 2003. Mr. Pfuntner is available at your convenience on those dates. If you would like to set an earlier date, please feel free to do so. Mr. Pfuntner will be unavailable for several weeks in May and thereafter.

Please call with your selection.

Very truly yours,


David D. MacKnight

DDM/cc

Cc: Judge John C. Ninfo, II
Client
Service List

The Granite Building – 130 East Main Street – Rochester, NY 14604-1686 – Tel. 585-454-5650 – Fax 585-454-6525
www.lacykatzen.com

Bankruptcy and Debtor Relief • Civil and Criminal Litigation • Collection & Creditor Services • Corporate Banking and Business Law
Divorce and Family Law • Employment Law • Estates, Trusts and Elder Law Services • Municipal Law
Personal Injury and Wrongful Death • Real Estate Services • Wills & Estate Planning

A:372 Att. MacKnight's letter of 3/26/3 to Dr. Cordero providing dates for the inspection at Pfuntner's warehouse

Kenneth Gordan, Esq.
100 Meridian Center
Suite 120
Rochester, New York 14618

Michael J. Beyma, Esq.
1800 Chase Square
Rochester, New York 14604

Dave M. DeLaus, Esq.
28 East Main Street, Suite 600
Rochester, New York 14614

United States Trustee
100 State Street
Rochester, New York 14614

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

Rochester Americans Hockey Club, Inc.
100 Exchange Boulevard
Rochester, New York 14614

Raymond C. Stillwell, Esq.
Adair Law Firm
300 Linden Oaks
Suite 220
Rochester, New York 14625

Karl Essler, Esq.
1400 Crossroads Building
Rochester, New York 14614

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

April 2, 2003

David MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
The Granite Building
130 East Main Street
Rochester, NY 14604-1686

Re: Adversary proceedings case no. 02-2230

Dear Mr. MacKnight,

I am in receipt of your letter dated March 26, 2003, which I received on March 31, concerning my trip to Rochester to inspect my property, which was left at the Avon warehouse of your client, Mr. James Pfuntner, by his client Premier Van Lines. Since you attended the pre-trial conference on January 10, you know that it was the Hon. John C. Ninfo, II, who required that this trip and the inspection take place and that I send him three dates when I could travel from New York City to Rochester for that purpose. Upon receiving those dates, he was to have contacted the other parties and within two days determined a date suitable to all and communicated it to me. Since the Judge required this inspection, it is my understanding that he would set the date and either he or his representative would participate in the inspection. In my letter of last January 29, to Judge Ninfo concerning this matter, I made statements to that effect. I have not been disabused by him. On the contrary, at a hearing on February 12, Judge Ninfo stated that he was waiting to hear from you on a date for the inspection.

In my January 29 letter, I provided not just three dates, but six; and to speed up matters, I not only sent it to Judge Ninfo, but also to each of the parties, including you. I never heard from you. Nor did you take or return my call to your office on February 11, when I spoke with Cindy and left a message for you on this matter. When on March 25 Mr. Pfuntner called me for the first time to set a date for the inspection, I told him that you were supposed to contact Judge Ninfo on this matter. You know that is so.

Consequently, I find it most unjustified and inappropriate that you should state in your letter of March 26, "You refused to set a date when he [Mr. Pfuntner] called. Whatever caused you to make such a claim and delay a resolution of this matter..." Had you or Mr. Pfuntner been interested in expediting the inspection, you would have taken action within two days of receiving my January 29 letter, and all the more so since already at the January 10 pre-trial conference you stated that Mr. Pfuntner would be agreeable to that inspection. Likewise, you would have done me the courtesy of taking or returning my call to your office on February 11. Here it should be pointed out that you have never done me the courtesy of taking or returning any of my calls.

Your call to Judge Ninfo would give you the opportunity to state whether Mr. Pfuntner objected to any of the conditions for the trip that I laid out in my January 29 letter. However, Mr. Pfuntner told me not only that he did not know of any conditions, but also that he did not know of any such letter. I told him that I found it very strange that you would not have shown him that letter. My purpose in writing and sending it with a cover letter to you is quite clear: I want to make sure that the inspection takes place smoothly and accomplishes the intended purpose.

Under auspicious circumstances, I am still willing to travel to Rochester for the

inspection. That way we can avoid compounding the issues and claims in this case. At this point in time, however, such auspicious circumstances do not obtain. Thus, I have raised the accompanying motion. Meantime, some headway can be made by your providing the following information:

I. Assurances. I need to obtain assurances from you that Mr. Pfuntner has read and understood my January 29 letter and does not object to anything in it. A copy of it is attached hereto. It is important to make arrangements to take the measures that I have pointed out there as well as all other necessary for conducting the inspection effectively.

II. Transportation. As I indicated in my letter, I do not know where the warehouse is and will not have transportation of my own to get there. Hence, if it is the case, as you wrote, that the court “will not be available for the inspection,” I need to know whether I can ride with you or Mr. Pfuntner to and from the warehouse, and if so, whether to and from the airport or the courthouse. If the plane is on time, I would arrive at the Rochester airport at 10:45a.m.; and given the current schedules and requirements, I would have to be back at the airport by 6:00p.m., rather than 6:30p.m. Will that leave us enough time for the inspection?

III. Mr. Pfuntner’s future unavailability. You conclude your letter by stating that, “Mr. Pfuntner will be unavailable for several weeks in May and thereafter.” I hardly understand what that could possibly mean. It was Mr. Pfuntner who brought this Adversary Proceeding; neither disclosure nor discovery have even begun; he is facing my counterclaims regardless of the inspection; and he is represented by counsel, you. Indeed, by refusing to release my property and then naming me defendant in his lawsuit and forcing me to defend, Mr. Pfuntner has caused me an enormous waste of time, effort, and money as well as tremendous aggravation. Thus, whether he goes to Florida or elsewhere, is not dispositive of anything. I trust you have made or will make him aware thereof.

IV. Mr. Pfuntner’s intent and arrangements. The fact is that I cannot begin to understand why Mr. Pfuntner has neither begun with disclosure nor pressed Judge Ninfo to schedule discovery. Ironically, it is I who, upon your requests, have disclosed the list of items that I placed in storage. What was Mr. Pfuntner’s whole purpose in bringing this suit? I am by no means the only party that he named defendant. When and how does he intend to pursue his claims against the other defendants? If some arrangements have been worked out, I request that you let me know, and all the more so if the court has been involved.

V. Mr. DeLaus. You indicated that you served a copy of your letter to me on a Dave M. DeLaus, Esq., at 28 East Main Street, suite 600, in Rochester. I have never heard of him. I kindly request that you state who he is, what party he represents, and how come this late in the proceedings and without giving notice to the other parties.

Please note that the response to this letter must be in writing. However, in the interest of expediting this matter, you may have your assistant call me to make arrangements for faxing it.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY 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
case no. 02-2230

-vs-

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

Defendants

NOTICE OF MOTION
FOR MEASURES RELATING
TO TRIP TO ROCHESTER AND
INSPECTION OF PROPERTY

RICHARD CORDERO,

Third party plaintiff

-vs-

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on April 16, 2003, or as soon thereafter as he can be heard, pursuant to Rule 7007 of the Federal Rules of Bankruptcy Procedure and Rule 7 of the Federal Rules of Civil Procedure, for measures relating to the trip to Rochester and the inspection of property that the court required at the pre-trial conference on January 10, 2003.

Dated: April 3, 2003

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
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Dated: April 3, 2003
59 Crescent Street
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Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY 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

CORDERO'S AFFIRMATION
IN SUPPORT OF MOTION FOR
MEASURES RELATING TO
TRIP TO ROCHESTER AND
INSPECTION OF PROPERTY

RICHARD CORDERO,

Third party plaintiff

-vs-

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

Third party defendants

I, Dr. Richard Cordero, affirm under penalty of perjury as follows:

1. Last March 31, I received a letter dated March 26, 2003, from David MacKnight, Esq., attorney for Plaintiff James Pfuntner, concerning my trip to Rochester that the court required at the pre-trial conference held on January 10, 2003, to inspect my property left at Mr. Pfuntner's Avon warehouse by his client Premier Van Lines. Mr. Pfuntner had called me on this matter the day before, March 25.

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A. Whether the court changed its requirements for trip and inspection

2. In addition to all the other occasions for bafflement that I have experienced in this case, both Mr. Pfuntner and Mr. MacKnight have provided fresh ones in these communications with me. The latter writes that: "The court has informed us that they will not be available for the inspection and that this matter is to be mutually agreed between you and Mr. Pfuntner."
3. However, at the January 10 pre-trial conference, the court indicated that I was to submit to it three dates for my trip to Rochester to participate in the inspection and that the court would then find out the one acceptable to the other parties and let me know within two days. Likewise, at the hearing on February 12, the court stated that it was waiting for Mr. MacKnight to let it know his preferred date.
4. How could it be now, months later, for Mr. Pfuntner and me to set a date and conduct the inspection on our own? What was the court waiting for? What did the court keep me waiting for? Does the court not consider it necessary to take appropriate measures in advance to insure the success of the trip and inspection?
5. A successful trip and inspection do not occur just because the court says, 'Let there be agreement between the parties,' and agreement comes to be between us. Reliable and effective agreement between people requires the capacity to put oneself in the position of the other and be reasonable as well as the willingness to show consideration for him. The facts reveal that these conditions are not met by most of the parties involved.

B. Inexcusable disregard of six proposed dates for trip and inspection

6. Indeed, the court required that the inspection take place and as a result, I am the only party likely to have to spend hundreds of dollars and have days disrupted by it. Yet, I made myself available to travel to Rochester by clearing my schedule not just on three days, as the court required, but to show consideration for the many other parties and accommodate their many schedules, I cleared six days. What is more, I kept those days cleared for almost two months.
7. Yet neither Mr. MacKnight, who at the January 10 pre-trial conference told the court that Mr. Pfuntner was agreeable to the inspection, nor Mr. Pfuntner, who is held responsible for his attorney's statements on his behalf, bothered to pick and choose any of those six days

8. Thereby they showed inexcusable lack of prosecution. This becomes all the more evident upon realizing that it was Plaintiff Pfuntner who instituted this lawsuit by filing a complaint to “determine the ownership and interests in the Debtor’s property located in the Property [that is, Mr. Pfuntner’s Avon warehouse]” and hold me, among others, “liable for the fair use and occupancy...of the leased premises.”
9. Of all the parties, it was Mr. Pfuntner who should have shown the greatest interest in having me participate in the court-mandated inspection so that I would recognize that my property was in his warehouse and thereby establish his claim on me.
10. Far from doing so, Mr. Pfuntner and Mr. MacKnight disregarded their duty to inform the court of their preferred date among the proposed six so that the court could within two days of the receipt of my proposed dates determine the most suitable for all the parties. Both of them knew of that duty: Mr. MacKnight knew it because he was at the conference where the court laid it down and Mr. Pfuntner knew it because constructive knowledge is imputed to him. In addition, I restated the court’s two-day turnaround term in my January 29 letter, which I served on Mr. MacKnight. Hence, I can claim that the court was going to make such determination and that they have such duty.
11. Moreover, both of them also let the six dates slip by without doing as little as informing me that they were not available on any of them so that I would not have to keep those days blocked for almost two months, which curtailed my freedom of action for no purpose at all. Their gross lack of consideration worked to my detriment.
12. Nonetheless, Mr. MacKnight has the audacity to write in his March 26 letter in reference to me that, “You refused to set a date when he [Mr. Pfuntner] called. Whatever caused you to make such a claim and delay a resolution of this matter...” How outrageous!

C. Unreasonableness in the request for yet another date

13. And unreasonable too. So on the spot, when it just so pleased Mr. Pfuntner to pick up the phone and summon me to Rochester, I was supposed to drop everything and clear a day to appear before him for inspection. This is a token of the reasonableness that I can expect from them during the trip and at the inspection.
14. But that is not the only such token. Mr. MacKnight laid down in his March 26 letter three days in the same week when it suits them that the inspection take place. Then he wrote, “Please call with your selection.” However, when I called him on February 11 to ask about his

selection of any of my six dates in three different weeks, he would neither take my call nor return it, although I left a message with his assistant Cindy. What is more, Mr. MacKnight has never done me the courtesy of taking or returning any of my calls. Likewise, Mr. Pfuntner last year told me on several occasions that he would call back with information and send me a letter, but he never did.

15. What is certain that both of them have done is repeatedly set dismal precedents of unreliability and unreasonableness. How could I ignore such precedents and try to reach an agreement with them on the basis of which I am supposed to travel hundreds of miles to them to conduct an inspection that would put me at their mercy, particularly since the other parties have either stated that they will definitely not participate in it or have not yet decided whether they will, or have not cared to state what they will do one way or the other?
16. Mr. Pfuntner too has provided cause for my bafflement. When he called me on March 25, to tell me to come to Rochester to inspect my property before he took off for Florida, I indicated that I was willing to go on the conditions that I had stated in my January 29 letter. He asked me what letter was that. I told him that was the letter in which, as required by the court, I had provided a slate of dates when I could travel there for the inspection, and that I had served it on Mr. MacKnight (which I did together with a cover letter to Mr. MacKnight) He said that he did not know of such letter, so much so that he asked me what conditions those were. I referred him to his lawyer, who had the duty to show him that letter. (Mr. Pfuntner also said that he had not opened the containers in which my property is stored.) This means that Mr. Pfuntner himself cannot rely on his own attorney to keep him abreast of developments in this case. How could the court reasonably expect me to rely on either of them?
17. Since Mr. Pfuntner has not read my letter, he may not have made sure -as I therein pointed to the need to do- that he has access to the containers, has the keys or tools to open them, and can provide for their content to be seen. The reason why this might not be possible are explained the letter.

D. The need to prepare the trip and inspection thoroughly

18. In my January 29 letter, I also discussed the issues of transportation and timing. Since Mr. Pfuntner has not read the letter, he may not have taken them into account either. Nevertheless, they are of critical importance for the success of the trip and the inspection. Let me restate some reasons.

19. I do not know where the Avon warehouse is and would not have transportation to travel between there and the Rochester airport or the courthouse. Given the apparent lack of communication between Mr. MacKnight and Mr. Pfuntner, I could make an arrangement to meet and ride with one of them only to find out once I was in Rochester that the other one either did not know or agree to it. As a result, I could be left 'waiting for Godot' at the airport or the courthouse or even worse, stranded in Avon.
20. Timing is of course important, for there must be enough time between my flight arrival and departure for me to take a ride from the airport, or first to travel to the courthouse and then take a ride to the Avon warehouse, wherever it is, conduct the inspection, and get back to the airport in time.
21. A half-backed trip and inspection plan will not solve any issues. It may only give rise to new and nasty ones. If a detailed plan is agreed upon, one must be able to rely on the other parties adhering to it; and be confident that if any element of the plan is disrupted for reasons beyond our control, one will be able to work out with the others alternative solutions in a reasonable way. Those assumptions are not warranted by the precedents set by Mr. MacKnight and Mr. Pfuntner.
22. Nor by their current demand: Now, after they disregarded the court and my slate of six dates, Mr. MacKnight and Mr. Pfuntner are asking me to clear again my schedule so that at their convenience, before Mr. Pfuntner takes off for sunny Florida, I scramble to Rochester...without even one communicating to the other, let alone discussing among themselves, not to mention with me, my January 29 letter which is directly on point! While I stand ready to comply with the court's requirement that I travel to Rochester to inspect my property, I am entitled to ask for measures reasonably calculated to insure that the trip and inspection will be a success rather than a failure.

E. Consequences of the untimely scheduling of the trip and inspection

23. Moreover, my willingness to comply with the court's requirement does not mean that the untimeliness of Mr. MacKnight's and Mr. Pfuntner's availability to participate in the inspection may be overlooked.
24. As it is known, the court is big on timeliness. Very much so! The paramount value that it places on timeliness prompted it to find that although I, a pro se defendant, timely mailed a

notice of appeal and then a motion to extend time to file such notice, both were untimely filed by a weekend or one single day. As a result, it imposed on me the drastic consequence of denying me my day in court to try claims of mine against Trustee Kenneth Gordon that it had dismissed before disclosure or discovery had even begun.

25. On this matter the court must want, of course, to be consistent and coherent with itself – despite it being said to consider now my trip and the inspection to be a matter for Mr. Pfuntner and me to deal with by ourselves-. It must impose consequences for the untimeliness of Mr. MacKnight and Mr. Pfuntner that lasted, not a weekend or one single day, but rather almost two months.

F. Mr. Pfuntner is leaving the jurisdiction

26. Mr. MacKnight also baffles me with his statement that “Mr. Pfuntner will be unavailable for several weeks in May **and thereafter**; (emphasis added). What does that mean, Judge Ninfo? That Mr. Pfuntner files a complaint back in September 2002, thereby forcing not one, but four defendants to incur the expense and disruption of defending, and then one day he feels like moving to balmy Florida and ‘This’s it, boys. Nothing has happened here. Good-bye!,’ and that is really the end of it all? How come he has not begun with disclosure or pressed the court to schedule discovery? Yet, Mr. MacKnight asked for disclosure from M&T Bank and me, and even from a non-party, Champion, in his letter to the court of December 5, 2002, and then directly from me in his letter to me of December 30, 2002. It should be noted that I did comply with the request by providing the list of items in storage.
27. Moreover, I have brought counterclaims against Mr. Pfuntner and they do not go away just as he leaves the State of New York. How does he intend to respond to them “thereafter” when he remains away from the jurisdiction? Or does he intend to demand of the court too that it scramble and do in the month before he leaves what it has not done in more than six?

G. Relief sought

28. Therefore, I respectfully request the court that it:
29. due to Mr. Pfuntner’s lack of prosecution and failure to comply with the court’s requirements for the trip and inspection, dismiss his claims against me;
30. order Mr. MacKnight and Mr. Pfuntner to compensate me in the amount of \$1,200 for not having chosen a date for the inspection within two days of the receipt of my slate of dates and

letting all the six dates slip by without informing me that they would not choose any, thus forcing me unnecessarily to keep myself available to travel on those dates;

31. order Mr. MacKnight and Mr. Pfuntner to compensate me in the amount of \$250 because due to their untimeliness I must again clear another day to travel to Rochester for the inspection;
32. order Mr. MacKnight and Mr. Pfuntner to bear all the costs of that trip to and from Rochester and the Avon warehouse;
33. take into account my letter to the court of January 29, make sure that Mr. Pfuntner does so too, and insure that measures are taken for a successful trip and inspection;
34. inform me whether any arrangement or settlement has been worked out between Mr. Pfuntner and any or all the other parties;
35. order Mr. MacKnight to identify Dave M. DeLaus, Esq., at 28 East Main Street, suite 600, in Rochester, on whom he served a copy of his letter to me of March 26;
36. state whether and, if so, when it intends to schedule discovery and move this case forward;
37. allow me to present my arguments by phone given the hardship in terms of cost and time that requiring my appearance in person would cause; and
38. award me any other relief as may seem just and proper.

Dated: April 3, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

H. Table of Exhibits

1. Letter of David MacKnight, Esq., of March 26, 2003, to Dr. Cordero.....	372
2. Dr. Cordero's letter of April 2, 2003, to Attorney MacKnight	374
3. Dr. Cordero's letter of January 29, 2003, to Judge Ninfo.....	365
4. Dr. Cordero's letter of January 29, 2003, to Attorney MacKnight	368

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Dated: April 3, 2003
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Brooklyn, NY 11208

Dr. Richard Cordero

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United States Bankruptcy Court
Western District of New York
1400 UNITED STATES COURTHOUSE
ROCHESTER, NEW YORK 14614

Hon. John C. Ninfo, II
CHIEF UNITED STATES
BANKRUPTCY JUDGE

April 7, 2003

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

Re: Premier Van Lines, Inc. (Case No. 01-20692)
James Pfuntner v. Kenneth Gordon, et al. (AP No. 02-2230)

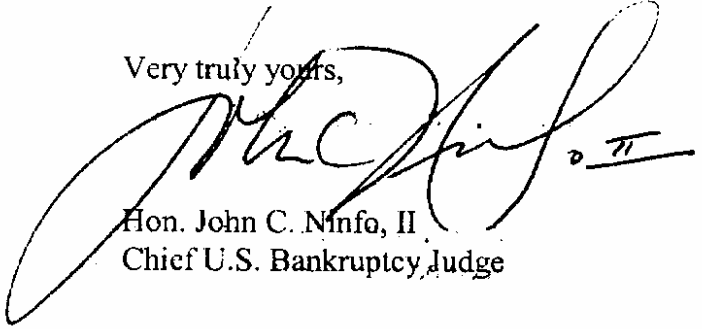
Dear Dr. Cordero:

The Court has preliminarily reviewed your Inspection of Property motion dated April 3, 2003 and the relief requested therein. Regrettably, the Court must deny your request to appear by telephone on this motion.

During the course of your litigation, the Court has made every effort to accommodate your requests to appear by telephone when your appearances were required. However, due to the complexity of the legal issues you have now raised, the Court requires that you appear in person to argue the motion which you initiated. Although the Court recognizes the inconveniences associated with distant litigation, your personal appearance will insure a complete and accurate record that is necessary for the proper administration of justice. For all other matters that you are made a party to, the Court will consider any future requests to appear by telephone.

Accordingly, please re-notice your motion for April 23, 2003, as April 16, 2003 is not a motion calendar date, or for one of the Court's motion dates that accommodates your schedule. To the extent that you require a list of the Court's future motion calendar dates, please do not hesitate to contact the Clerk's Office or access our web site at www.nywb.uscourts.gov.

Very truly yours,


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

JCN/ams

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTER,

Plaintiff,

AP02-2230

-vs-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-vs-

DAVID PALMER, et al.,

Third-Party Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will move this Court for an Order pursuant to Federal Rules of Bankruptcy Procedure 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfuntner from any liability to any of the parties to

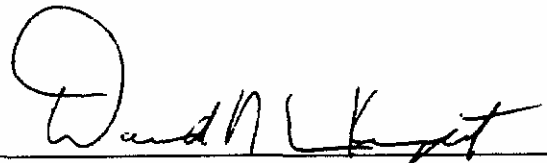
Pfunter/NOTC(Motn-DischargeLiability)

Att. MacKnight's notice of 4/10/3 of mtn to discharge Pfuntner from any liability for containers & contents A:387

this adversary proceeding, for an order directing and authorizing James Pfuntner to store the interpled property in a public warehouse with the costs of such storage to be paid by the person(s) found to be the owner(s) of the property, and for such other and further relief as to the Court seems just and proper. This motion will be heard at the United States Bankruptcy Court, 100 State Street, Rochester, New York on April 23, 2003 at 9:30 a.m., or as soon thereafter as counsel can be heard.

PLEASE TAKE FURTHER NOTICE that answering and opposing papers, if any, must be served upon the Court and the undersigned no later than three (3) days before the return date of this motion.

Dated: Rochester, New York
April 10, 2003



David D. MacKnight, Esq., of Counsel
LACY, KATZEN, RYEN & MITTLEMAN, LLP
Attorneys for Plaintiff, James Pfuntner
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTER,

Plaintiff,

AP02-2230

-vs-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-vs-

DAVID PALMER, et al.,

Third-Party Defendants.

**MOTION TO DISCHARGE PLAINTIFF
FROM ANY LIABILITY TO THE PERSONS OR
ENTITIES WHO OWN OR CLAIM AN INTEREST IN THE
FOUR STORAGE CONTAINERS AND THE CONTENTS
THEREOF PRESENTLY LOCATED IN THE PLAINTIFF'S
SACKETT ROAD WAREHOUSE AND FOR OTHER RELIEF**

TO: HON. JOHN C. NINFO, II, Chief United States Bankruptcy Judge:

The motion of James Pfuntner ("Plaintiff") respectfully shows:

Pfunter/MOTN(DischargeLiability)

1. Heretofore Plaintiff commenced an adversary proceeding in the nature of interpleader to determine the ownership and possible conflicting rights of various persons or entities in four crates and the contents of such crates stored by the Debtor in space leased by the Debtor at Plaintiff's Sackett Road, Avon, New York warehouse.

2. The Complaint named as Defendants the Debtor's Trustee in bankruptcy, Richard Cordero, Rochester American Hockey Club, Inc. and Manufacturers and Traders Trust Company, which constituted all of the persons or entities known to Plaintiff to have or claim an interest in the property. See Complaint, attached as Exhibit "A."

3. Plaintiff does not know the contents of the containers and does not know whether any third party owns or may have a claim to the contents of the containers. The containers themselves apparently are owned by the Debtor and subject to a security interest held by Manufacturers and Traders Trust Company ("M&T Bank"). M&T Bank had relinquished any claim to possession of the storage containers or the contents thereof. The Trustee claims to have abandoned all right, title and interest to the containers, the contents of the containers and various motor vehicles parked by the Debtor outside the Plaintiff's warehouse premises. The Rochester American Hockey Club, Inc. has requested that if hockey equipment or other property identifiable with the Amerks is found, that it be notified. Richard Cordero asserts a claim to a list of goods heretofore furnished to the Court and the parties. No one knows if any of his property is present. See Answers attached as Exhibit "B." Other parties with an interest possibly may be identified through an examination of the contents.

4. The contents of the four containers is unknown to the Plaintiff.

5. Plaintiff has refrained to date from bringing a motion to the discharged from liability to any of the persons or entities who own, may own, or may claim to own the containers and/or the contents or to have any interest therein. Plaintiff refrained from washing his hands of the issue as an accommodation to the parties. After the commencement of the adversary proceeding, the Plaintiff underwent a medical procedure to replace a heart valve. Plaintiff's recovery from the heart valve surgery was much slower than Plaintiff anticipated. When Plaintiff felt able to address issues involving the warehouse, Plaintiff's counsel requested that Plaintiff contact Dr. Cordero to set a time for an inspection.

6. Thereafter, Plaintiff's attorney again contacted Plaintiff to determine whether a date and time had been set. Plaintiff advised that, despite his efforts, he had been unable to fix a date for Dr. Cordero to inspect the contents of the containers.

7. On March 26, 2003, a hearing was held on Dr. Cordero's motion to amend an Order of the Court in connection with proceedings in the adversary proceeding that did not involve Plaintiff. During the course of those proceedings, Plaintiff's counsel briefly brought up the status of the inspection by Dr. Cordero and some of the misapprehensions on Dr. Cordero's part that might have interfered with the process of setting a date for an inspection.

8. Plaintiff's attorney followed up by sending the letter to Dr. Cordero, marked as Exhibit "C," seeking to solicit a date for an inspection by Dr. Cordero during April 2003.

9. In response to Exhibit "C," Dr. Cordero sent the correspondence and motion, collectively annexed as Exhibit "D."

10. It appears to Plaintiff that Plaintiff's and counsel's efforts to accommodate Dr. Cordero have failed. Dr. Cordero has unilaterally made demands and sought an order from

the Court regulating the inspection and demanding redress or relief that are entirely unwarranted. the motion was entirely unnecessary because Dr. Cordero had the option of picking a date and undertaking whatever inspection he cared to make.

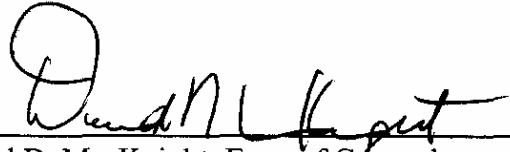
11. Plaintiff cannot be of further assistance in moving the process forward. It is appropriate that the Court relieve Plaintiff of any obligation to any of the parties and from any further obligation to maintain possession of the property.

12. Plaintiff believes that the containers and contents should be removed to a public warehouse and stored, initially, at Dr. Cordero's expense. Dr. Cordero is the only person who presently has a desire to inspect the contents of the containers. Plaintiff's medical condition has led him to wish to have nothing further to do with Dr. Cordero or to incur further legal expenses due to Dr. Cordero's indiscriminate and unnecessary resort to court proceedings. Although, at the start, Plaintiff was somewhat concerned about applying to the Court for assistance is disentangling himself from problems flowing from dealings with Dr. Cordero, in retrospect

WHEREFORE, Plaintiff moves this Court for an order pursuant to Federal Rules of Bankruptcy Procedures 7022 and 7056 and Federal Rules of Civil Procedure 22 and 56 for an order relieving Plaintiff of any claim by any person who owns, may own, claims to own, or has an interest in the four containers and the contents thereof; authorize the Plaintiff to remove the containers and the contents to a public warehouse and store the containers at a public warehouse at the expense of Dr. Cordero with leave for Dr. Cordero to seek relief in the future; authorize the Plaintiff to remove the motor vehicles abandoned by the Debtor and Trustee at the Plaintiff's Sackett Road, Avon property, and sell or junk such vehicles and use the proceeds first to pay the cost of removal and sale, next to pay for the storage of such vehicles, and lastly, if any amount is

left over, to pay such amount to the Debtor's Trustee; and granting Plaintiff such other and further relief as to the Court seems just and proper.

Dated: Rochester, New York
April 10, 2003

A handwritten signature in black ink, appearing to read "David D. MacKnight", written over a horizontal line.

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**UNITED STATES BANKRUPTCY 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-

NOTICE OF POSTPONEMENT

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

Defendants

OF MOTION
FOR MEASURES RELATING
TO TRIP TO ROCHESTER AND
INSPECTION OF PROPERTY

RICHARD CORDERO

Third party plaintiff

-vs-

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE, that on 3 instant Dr. Richard Cordero raised a motion for measures relating to the trip to Rochester and the inspection of property that the court required at the pre-trial conference on January 10, 2003. It was to be heard on April 16, 2003, in this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614. However, the return date has turned out to fall on a non-calendar day. Therefore, that motion will be renoticed for another day upon the resolution of other issues that have arisen in the meantime.

Dated: April 14, 2003

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**UNITED STATES BANKRUPTCY 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., ROCHESTER
AMERICANS HOCKEY CLUB, INC.,
RICHARD CORDERO, and M&T BANK,

Defendants

BRIEF IN OPPOSITION
TO PFUNTNER'S
MOTION TO DISCHARGE,
FOR SUMMARY JUDGMENT,
AND OTHER RELIEF
OF APRIL 10, 2003

RICHARD CORDERO,
Third party plaintiff

-vs-

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

Third party defendants

Dr. Richard Cordero affirms under penalties of perjury as follows:

1. Dr. Cordero does not oppose Plaintiff James Pfuntner if he wants to relinquish all the claims against Dr. Cordero that he raised in his complaint.
2. However, Dr. Cordero opposes his motion, set for April 23, by his attorney David MacKnight, Esq., to be discharged from liability for the storage containers and their contents. His motion, brought under Rule 56 FRCP, made applicable to adversary proceedings by Rule 7056 FRBkRP, amounts to a motion to dismiss by summary judgment the counterclaims that Dr. Cordero brought against him. However, the Plaintiff is not entitled to such relief because he has failed to comply with the requirements for summary judgment.
3. Nor is Plaintiff Pfuntner entitled to an order for the removal of the containers from his warehouse, because due to his failure to provide the discovery required by the Court at the January 10, 2003, pre-trial conference, he has prevented the determination of the genuine issues

of material fact concerning the whereabouts and condition of Dr. Cordero's property. The removal of the containers before ascertaining through discovery what is being removed, to whom it belongs, and in what condition it is would deprive Dr. Cordero of his right to have those issues factually established and his counterclaims determined judicially and would only gravely compound the issue of the Plaintiff's liability.

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I. Requirement for summary judgment: no genuine issues of material fact

4. Rule 56(c) requires that for summary judgment to be granted, the movant must "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."
5. The Supreme Court has stated that for summary judgment to be granted, there must be no genuine issue as to a material fact that must be proved at trial. See *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 327, 119 S.Ct. 765, 772, 142 L.Ed.2d 797 (1999); *Nebraska v. Wyoming*, 507 U.S. 584, 589, 113 S.Ct. 1689, 1694, 123 L.Ed.2d 317 (1993).
6. The rationale for that statement is that the purpose of summary judgment is to show that claims and defenses are not supported by the facts and, thus, should be terminated. Hence, it has established the principle that summary judgment is only properly entered after the non-moving party has had an adequate time for discovery; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106

S. Ct. 2548, 91 L.Ed.2d 265 (1986).

7. To meet the requirement for summary judgment, an issue of fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). For its part, an issue of fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*
8. Laying down how this standard of Rule 56 is to be applied in practice, the Court of Appeals for the Second Circuit has stated that a party can only be entitled to summary judgment "when there is no genuine issue of material fact. The court must draw all inferences in favor of the non-moving party, and affirm only when no reasonable trier of fact could have found for the non-moving party." *In Re: Rockefeller Center Properties & Rcp Associates*, 46 Fed. Appx. 40; 2002 U.S. App. LEXIS 19601 (2nd Cir. 2002); *Grappo v. Alitalia Linee Aeree Italiane, S.p.A.*, 56 F.3d 427, 431 (2d Cir. 1995).

II. All issues of material fact remain to be determined

9. Mr. Pfuntner's liability to Dr. Cordero as well as other parties is predicated on the issue of what and whose property he has and in what condition it is and should be. Indisputably, these are issues of fact. By their own admissions in their pleadings, the Plaintiff and his attorney, Mr. MacKnight, have made it possible for a reasonable trier of fact to find for Dr. Cordero.
10. Indeed, in paragraphs 3 and 4 of his motion, Mr. MacKnight writes thus:

"3. Plaintiff does not know the contents of the containers and does not know whether any third party owns or may have a claim to the contents of the containers...Richard Cordero asserts a claim to a list of goods heretofore furnished to the Court and the parties [attached to Dr. Cordero's January 29 letter proposing six dates for the trip to Rochester]. No one knows if any of his property is present . See Answer attached as Exhibit "B." Other parties with an interest possibly may be identified through an examination of the contents.

4. The contents of the four containers is unknown to the Plaintiff."

11. Therefore, the situation right now is factually as muddled as it was when Plaintiff Pfuntner filed this Adversary Proceeding almost seven months ago, for he does not yet know what and whose property he has, let alone its condition.
12. What is certain is this: He was in the business of warehousing and entered into a business relation with Mr. David Palmer, who ran a moving and storage company, Premier Van Lines, the Debtor in this Adversary Proceeding. Mr. Pfuntner knew from the earliest time that his

tenant Premier was in bankruptcy proceedings. Yet, he did not care to adopt appropriate measures for the disposition of the property that Premier had in his warehouse, although due to the kind of business that he and Premier carried on, he knew that the property belonged to third parties, such as Dr. Cordero, whose name was on at least one label affixed to a storage container in the warehouse. This set of facts provides the basis of his liability on grounds, among others, of an explicit or implicit third-party beneficiary contract. There may also be business regulations that imposed on him a certain standard of care and due diligence. Whether he complied with them is an issue of material fact that must still be ascertained.

13. What is more, as quoted above, Mr. Pfuntner admits that “Other parties with an interest possibly may be identified through an examination of the contents.” Mr. Pfuntner cannot responsibly take property in his warehouse whose owner he does not yet know and move it to yet another warehouse –remember, the Jefferson-Henrietta warehouse used by Mr. Palmer and Premier is run by a third-party defendant in this proceeding-. In so doing, he would only be passing to that third warehouse a bucket of uncertain facts soaked in legal liability.
14. For instance, if owners of that property appeared and could not find all their property and what they did find was damaged, who would be responsible for having lost or damaged it, Mr. Pfuntner, the moving company, or the third warehouse? In the meantime, who would pay the moving, storage, and insurance fees? The idea that the owners would just pay those fees in order to retrieve their property is fanciful. It is very likely that they would refuse to pay it on the basis, not only that they were not given notice, but also that the fees were not negotiated in their best interest. They could plausibly claim that Mr. Pfuntner did not want to waste time and energy finding the best deal, that he just wanted to clear his warehouse –perhaps because otherwise he could not sell it- and split for sunny Florida...‘and may the owners fend for themselves later on.’
15. It should be noted that conceiving the chances of this scenario materializing does not require much imagination, for it is simply an adaptation of what is currently going on in this very Adversary Proceeding: Just substitute the owner of the third warehouse for Mr. Pfuntner and Dr. Cordero for the owner of some of that property. Should the Court be substituted too or should it be left in place? The latter option would give the Court the opportunity to show foresight and prudence by denying Mr. Pfuntner’s motion in order to require that before changing the status quo, fact finding be undertaken to establish what and whose property and in

what condition is in Mr. Pfuntner's warehouse and to what extent Mr. Pfuntner is liable for what property is there and its condition.

16. It is most unlikely that a moving company, not to mention a warehouse, would want to have anything to do with the removal and warehousing of that property if Mr. Pfuntner were to disclose to them the fact that thereby they were hauling and storing a lawsuit against themselves. So what is Mr. Pfuntner going to do, conceal from them that fact? Would the Court condone, let alone encourage, such concealment?

III. Plaintiff's failure to meet the requirements for summary judgment

17. In the instance case, not even initial disclosure has taken place, except by Dr. Cordero, who disclosed numerous documents as attachments to his answer to the complaint and counterclaims.
18. What is more, no discovery has been scheduled by the Court, except that at the January 10 pre-trial conference it required that Dr. Cordero submit three dates when he could travel from New York City to Rochester to inspect his property said to be in the Plaintiff's warehouse. Mr. MacKnight attended that conference and stated that Mr. Pfuntner was agreeable to the inspection. He was also there when the Court stated that within two days of receiving those dates, the Court would have determined the most convenient one to the parties in Rochester and inform Dr. Cordero thereof.
19. By letter of January 29, Dr. Cordero submitted, not three, as the Court had required, but rather six dates; and not only did he serve that letter on the parties, including Mr. MacKnight, but in order to expedite the process, he also sent a cover letter addressed individually to each party asking each to take the initiative to contact the Court to let it know which date that party preferred.
20. However, both Mr. MacKnight and Mr. Pfuntner allowed almost two months to go by while the six dates lapsed without bothering to choose any of them or even reject them. By their own fault of disregarding the Court's instructions for discovery, not only did Mr. Pfuntner and Mr. MacKnight fail to provide the required discovery, but also no other discovery has taken place in this case at all.
21. As a result, genuine issues of material fact must still be ascertained concerning the whereabouts and condition of Dr. Cordero's property. Likewise, it remains to be established what role Mr.

Pfuntner, Debtor Premier Van Lines, and the latter's owner, Mr. David Palmer, who stored that property in Mr. Pfuntner's warehouse, played under their storage contract and applicable business regulations in safekeeping and insuring against risks to the property.

22. Consequently, Mr. Pfuntner's motion for summary judgment should be denied. To do so would be in total harmony with none other than the district court for the Western District for New York, which in *Patton v. General Signal Corp.*, 984 F. Supp. 666, 670 (W.D.N.Y. 1997) commented that "pre-discovery summary judgment remains the exception rather than the rule, and will be 'granted only in the rarest of cases.'"

IV. Disingenuous motion detracts from Pfuntner's and MacKnight's credibility

23. The opening sentence of the motion that Mr. MacKnight raises on behalf of Mr. Pfuntner reads as follows:

"1. Heretofore Plaintiff commenced an adversary proceeding in the nature of interpleader to determine the ownership and possible conflicting rights of various persons or entities in four crates and the contents of such crates stored by the Debtor in space leased by the Debtor at Plaintiffs Sackett Road, Avon, New York warehouse."

24. This is not only not the whole truth, it is not even an accurate account of the nature of their adversary proceeding. Exhibit A to their motion, which reproduces the complaint filed in September 2002, is titled thus:

INTERPLEADER COMPLAINT TO DETERMINE RIGHTS IN
PROPERTY OF THE DEBTOR AND IN PROPERTY IN THE
DEBTOR'S POSSESSION, TO GRANT PLAINTIFF AND
**COMPEL THE TRUSTEE TO PAY ADMINISTRATIVE
EXPENSES OR OTHERWISE DETERMINE THE LIABILITY**
OF THOSE FOUND TO HOLD AN INTEREST IN THE
DEBTOR'S PROPERTY OR PROPERTY IN POSSESSION OF
THE DEBTOR **FOR THE USE AND OCCUPANCY OF THE
PLAINTIFF'S REAL PROPERTY**, AND TO VACATE THE
AUTOMATIC STAY OF ACTIONS (emphasis added)

25. Mr. MacKnight has left out of the motion that Mr. Pfuntner wanted to get paid for property stored in his warehouse by Mr. Palmer and Premier, the Debtor. To that end, as they admit now in the motion, they sued anybody whose name they could come up with, such as Dr. Cordero and the Rochester American Hockey Club, even though, as they admit in the current motion, "3.

Plaintiff does not know the contents of the containers..."

26. Consequently, they sued people that they did not even know had anything to do at all with their warehouse. As they state in paragraph 3 of their motion, "The Rochester American Hockey Club, Inc. has requested that if hockey equipment or other property identifiable with the Amerks is found, that it be notified."
27. Similarly, they sued Dr. Cordero even though the only thing that they knew about him was this, as Mr. MacKnight put it in his letter of December 30, 2002, that is, more than 3 months after suing him:

"As I understand matters, the most that anyone has said is that there is a storage container at the Sackett Road, Avon warehouse with your name on the outside."

28. Therefore, it could well be that upon opening the container or containers there is no property of Dr. Cordero there at all. Instead, the property, if any should be found there, may belong to somebody else, given that, as they admit in paragraph 3 of the motion, "Other parties with an interest possibly may be identified through an examination of the contents."
29. How incredibly irresponsible they have behaved! Without even being sure that they were holding any of Dr. Cordero's property, they sued him! Thereby they have caused him an enormous waste of time, effort, and money as well as an enormous amount of aggravation by dragging him into this most confusing adversary proceeding among multiple parties with a welter of claims...and everything may have been for naught because his property may not be in Mr. Pfuntner's warehouse after all!
30. They have no justification at all for behaving so irresponsibly. Mr. MacKnight was copied to a letter of August 15, 2002, of Mr. Michael Beyma, attorney for M&T Bank, which later on Mr. MacKnight and Mr. Pfuntner would sue too. That letter gave notice to Mr. MacKnight that Dr. Cordero's storage containers were in Mr. Pfuntner's warehouse. But Mr. MacKnight never cared to contact Dr. Cordero to ascertain whether his property was in fact in those containers.
31. Then Dr. Cordero wrote to Mr. MacKnight on August 26 to inform him that, "I would like to remove my property. Hence, I would like to make arrangements with your client for access to the warehouse." What was Mr. MacKnight's reply:

"September 19, 2002

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

Re: Stored Property

Dear Dr. Cordero:

I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfuntner and those claiming on interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint.

Very truly yours,

David D. MacKnight

32. This was the classic irresponsible response of sue first and find later if it sticks.
33. Dr. Cordero called Mr. MacKnight, but he never cared to take or return any calls.
34. On September 16, Dr. Cordero called Mr. Pfuntner, told him about Mr. MacKnight's unresponsiveness and asked him to make arrangements to let him inspect and remove his property. Mr. Pfuntner said that he could not do so because Trustee Gordon could sue him, and then referred Dr. Cordero to the Trustee.
35. However, Trustee Gordon wrote on September 23, to Dr. Cordero, with copy to Mr. MacKnight, as follows:

"I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets."
36. In the same vein, in his August 15 letter, Mr. Beyma had already informed Mr. MacKnight that:

"M&T Bank claims no lien on your assets and M&T Bank consents to the removal of your stored assets."
37. There were no conflicting claimants to Dr. Cordero's property! Nor is there any evidence of such claimants to any other property stored in Mr. Pfuntner's warehouse. The interpleader cause of action was a sham! The only reason for the adversary proceeding was to grab the money owed them by their bankrupt clients Mr. Palmer and Premier from whomever Mr. MacKnight and Mr. Pfuntner could get a hold of... 'forget whether they owe us anything or even have property in our warehouse; let them raise that defense if they want.' How extraordinarily irresponsible! It amounts to abuse of process.
38. That is not all, for their abuse of process continues in their current motion through their disingenuous claim that:

“5.Plaintiff has refrained to date from bringing a motion to the discharged from liability to any of the persons or entities who own, may own, or may claim to own the containers and/or the contents or to have any interest therein. Plaintiff refrained from washing his hands of the issue as an accommodation to the parties.”

39. What kind of “accommodation” is it to bring a lawsuit against parties whose property they have not even ascertained that they are storing in their warehouse?! And what kind of “accommodation” is it to sue Dr. Cordero rather than let him inspect his property, let alone remove it?

40. They would not even answer Dr. Cordero’s next letter of October 7, 2002, where he let Mr. MacKnight know that,

“Despite your letter of last September 19, I have not yet received from either you or your client, Mr. James Pfunter, any information concerning my property that the now bankrupt Premier Van Lines stored in your client’s warehouse at 2140 Sackett Road in Avon. Therefore, I request that you provide the information that I already requested in my letter to you of August 26, as restated below, to which you never replied.”

41. It is equally disingenuous to allege that:

“5....Plaintiff’s counsel requested that Plaintiff contact Dr. Cordero to set a time for an inspection.

6.Thereafter, Plaintiffs attorney again contacted Plaintiff to determine whether a date and time had been set. Plaintiff advised that, despite his efforts, he had been unable to fix a date for Dr. Cordero to inspect the contents of the containers.

...

10....the motion¹ was entirely unnecessary because Dr. Cordero had the option of picking a date and undertaking whatever inspection he cared to make”

42. How incredibly disingenuous! There is no mention anywhere in the motion of the six dates that Dr. Cordero submitted to Mr. MacKnight in his letter of January 29, 2003, which he allowed to lapse without even showing the minimal professional courtesy of calling Dr. Cordero to let him know that he and his client could not choose any of them so that Dr. Cordero would not have to keep the six dates open on his schedule.

¹ See Dr. Cordero’s motion of April 3, 2003, for measures relating to the trip to Rochester and the inspection of property that the court required at the pre-trial conference on January 10, 2003. It has been since postponed pending the resolution of other issues.

43. Then they have the cheek to complain because when Mr. Pfuntner called Dr. Cordero out of the blue on March 25 to ask that he come to inspect his property on April 23, 24, or 25, Dr. Cordero did not wipe his schedule clean, and committed himself to going there. Nor is there any mention either that during that call Dr. Cordero asked Mr. Pfuntner whether he agreed to the terms for the inspection stated in Dr. Cordero's January 29 letter and Mr. Pfuntner replied that he did not know of any such terms and that Mr. MacKnight had not given him any such letter.
44. Do Mr. Pfuntner and Mr. MacKnight think that they can ignore the instructions for Dr. Cordero's trip to Rochester and inspection of property that the Court adopted at the January 10 pre-trial conference, ignore the dates and terms that Dr. Cordero set forth in his January 29 letter, fail to communicate between themselves, ignore the six dates for almost two months, and then, when the urge to leave for Florida becomes pressing, call Dr. Cordero on the phone, summon him to Rochester without the faintest idea of how to deal with the practical aspects of the inspection, and expect Dr. Cordero to drop everything right then and there, stand up, and say, 'Yes, Sir! At your orders!' How unbelievably unreasonable on their part!
45. And disingenuous too, for what may well be behind their current motion is likely this (and let Mr. MacKnight or Mr. Pfuntner challenge this scenario, despite its plausibility, for they will in the process only confirm the need for discovery):
46. Mr. Pfuntner wants to go for Florida for reasons totally irrelevant to the Adversary Proceeding which he filed back in September 2002. Perhaps he wants to retire and to that end, he wants to sell the warehouse. But what to do with all the third-parties' property in his warehouse? He is on record as being in possession of it? Hence, he cannot junk it. Likewise, it is hardly conceivable that a buyer is going to buy the warehouse while a lawsuit is still hanging over it. So he calls Dr. Cordero and asks him to come to Rochester.
47. However, Dr. Cordero is mindful that his trip from New York City to Rochester and the inspection are supposed to be coordinated by the Court pursuant to the discovery instructions that it gave at the January 10 pre-trial conference. He also knows full well that measures must be taken in advance to insure the success of that discovery, such as transportation from Rochester to the warehouse in Avon, accessibility to the containers, ability to open them, illumination to inspect in a warehouse closed for almost a year, timing between arrival and departure flights, etc. Mr. Pfuntner had not even been told by Mr. MacKnight about these

issues, which Dr. Cordero discussed in his January 29 letter.

48. Therefore, Dr. Cordero raises a motion on April 3, 2003, to bring to the attention of the Court Mr. Pfuntner's and Mr. MacKnight's lack of communication between themselves, their unpreparedness and unreasonableness; the need for measures; and his claim for compensation for the six dates that they forced him to keep open and the other one that they asked him to clear. Bummer! Now this Adversary Proceeding has become a real drag for Mr. Pfuntner! He filed it to get money, but may end up being taken to the cleaners. So now he just wants to get rid of it.
49. Mr. MacKnight comes to the rescue with an 'ingenious' plan: Ignore Dr. Cordero's motion of April 3, do not provide the information that he requested in his letter to Mr. MacKnight of April 2; raise a motion where suing everybody around is spun as a generous "accommodation... in the nature of interpleader," don't even mention that you ever asked for administrative expenses and use and occupancy fees; make Dr. Cordero appear confused with "misapprehensions that might have interfered with the process of setting the date for an inspection" (paragraph 7), that he "has unilaterally made demands...for redress or relief that are entirely unwarranted [and was the one who] had the option of picking a date and undertaking whatever inspection he cared to make" (paragraph 10); that you want to go to Florida?...ummm...no, don't say that, rather say "Plaintiffs medical condition has led him to wish to have nothing further to do with Dr. Cordero or to incur further legal expenses due to Dr. Cordero's indiscriminate and unnecessary resort to court proceedings. [How disingenuous! Who sued whom?] Although, at the start, Plaintiff was somewhat concerned about applying to the Court for assistance is disentangling himself from problems flowing from dealings with Dr. Cordero, in retrospect [paragraph 12, sic, no period, no end to the sentence, no sense because Mr. MacKnight got entangled spinning his own story; it is known to happen].
50. "...in retrospect" Mr. Pfuntner may have realized that he made a big mistake suing Dr. Cordero (a realization that others may come to make too) and he wants to cut his loses and run to Florida, leaving all the defendants holding the bag of legal expenses and an enormous amount of wasted time and effort accumulated over more than nine months of aggravation. But he cannot do that before first compensating the defendants: *his* defendants!
51. Nor can he cut and run before the genuine issues of material fact have been resolved. To convince himself of the need to engage in fact-finding, Mr. Pfuntner only needs to listen to Mr. MacKnight, who wrote a laundry list of discovery that he wanted, none of which has been had,

because in this case, no discovery has taken place.

“December 5, 2002

“Dear Judge Ninfo:

Dr. Cordero’s latest pleading² certainly has cast a different light on events. When the court sets a pretrial conference, it might be helpful

1. to have the Trustee provide a listing from the Debtor’s records of
 - a) whose property Debtor placed in the Henrietta location and
 - b) whose property Debtor placed in the Avon property.
2. It would also be helpful if the Trustee provided the Debtor’s listing or inventory of
 - a) what it received from,
 - b) stored for, and
 - c) released to each of its customers with property stored at the Avon property.
3. It would probably be helpful for Dr. Cordero to provide a copy of
 - a) the inventory,
 - b) packing list, or
 - c) receipt Debtor provided to him when it accepted his goods for storage.
4. It would also seem appropriate for
 - a) M&T Bank to provide a bill of sale listing what it sold to Champion, as well as
 - b) Champion providing a schedule of what it removed from the two locations.
5. Absent records it seem unlikely that a pretrial will advance matters to the point that
 - a) those who have stored property with Debtor can be identified,
 - b) the property each customer stored can be identified,
 - c) customers and their property can be reunited, and
 - d) Mr. Pfunter’s warehouse can be emptied.

² The reference is to Dr. Cordero’s cross-claims and third-party complaint of November 21, 2002.

6. Dr. Cordero certainly has a point when he suggests that
- a) Debtor's management, and
 - b) those who billed him for storage and insurancing his property
- should be able to shed light on matters.

Very truly

David D. MacKnight

(listing format added)

52. Did you notice, Mr. Pfuntner, everything that your own attorney, Mr. MacKnight, says has to be done before "Mr. Pfunter's warehouse can be emptied"? To be stabbed by your own attorney's pen must be a real bummer! He should have told you and done all that months before ever thinking of suing anybody. And he should certainly have told you to allow Dr. Cordero to inspect and remove his property from the moment in August he learned that Dr. Cordero had property there. Now because of him you are stuck with a warehouse in Avon and a wallet bleeding legal fees. Have you considered whether the best way of "insurancing" that you will ever be able to fly to balmy Florida with enough money to enjoy a tall, cool piña colada may be a malpractice suit?

V. Relief sought

53. Therefore, Dr. Cordero respectfully requests that the Court:
- 1) deny the motion for summary judgment and for relief relating to the interpleader that concerns the storage containers;
 - 2) dismiss Mr. Pfuntner's claim against Dr. Cordero;
 - 3) hold that Mr. MacKnight and Mr. Palmer engaged in abuse of process for having sued Dr. Cordero without even making sure that any of his property was at Mr. Pfuntner's warehouse, and order them to pay compensation to him for the time and effort that he has had to invest and all the aggravation that he has had to endure in defending against their complaint, and assess punitive damages against them;
 - 4) find that Mr. Pfuntner and Mr. MacKnight failed to either choose or reject any of the six dates that Dr. Cordero proposed, thereby forcing him to keep open those dates in his calendar, and hold them liable therefor to Dr. Cordero in the amount of \$1,200 and for

the cost of Dr. Cordero's trip to Rochester and inspection for which he will again have to clear more time in his calendar;

- 5) schedule discovery and move this case forward;
- 6) after discovery and at the appropriate time for the removal of Dr. Cordero's property in the Plaintiff's warehouse, charge the Plaintiff and Mr. MacKnight with the removal charges, for if they would only have allowed Dr. Cordero to remove his property, at the instigation of Dr. Cordero Mr. Christopher Carter, as he stated in his July 30 letter, would have removed that property to Champion's warehouse at no charge to Mr. Pfuntner or Dr. Cordero, whereby now Mr. MacKnight and Mr. Pfuntner must bear the consequences of unjustifiedly ignoring and refusing Dr. Cordero's request and missing that opportunity for free removal;
- 7) place in an escrow account the proceeds of the sale of other property, such as vehicles, so that such proceeds may be used to satisfy any judgment that Dr. Cordero may obtain against Mr. Pfuntner;
- 8) order Mr. MacKnight to identify Dave M. DeLaus, Esq., at 28 East Main Street, suite 600, in Rochester, on whom he served a copy of his letter to Dr. Cordero, dated March 26, 2003, and state what his role is in this adversary proceeding;
- 9) allow Dr. Cordero to present his arguments by phone given the hardship in terms of cost and time that requiring his appearance in person would cause, and all the more so given the immediacy of the return date; and
- 10) award Dr. Cordero any other relief as may seem just and proper.

Dated: April 17, 2003
59 Crescent Street
Brooklyn, NY 1120

Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY 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., ROCHESTER
AMERICANS HOCKEY CLUB, INC.,
RICHARD CORDERO, and M&T BANK,

Defendants

AFFIDAVIT
OF GENUINE ISSUES
OF MATERIAL FACTS
REQUIRING DISCOVERY AND
THE DENIAL OF THE MOTION
FOR SUMMARY JUDGMENT

RICHARD CORDERO,
Third party plaintiff

-vs-

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

Third party defendants

Dr. Richard Cordero affirms on personal knowledge and under penalty of perjury as follows:

1. Dr. Cordero opposes the grant of summary judgment that Plaintiff James Pfuntner has moved for under Rule 56 F.R.Civ.P. because in order for Dr. Cordero to establish his claims, among others, that the Plaintiff is liable for the deterioration, loss, or theft of his property wherever it may be or have been in Plaintiff's possession or under his control, and that Plaintiff must allow Dr. Cordero to gain access, inspect, and remove it therefrom, Dr. Cordero needs to conduct discovery, which has not been conducted in this case at all.
2. Dr. Cordero learned from Mr. Christopher Carter that upon examination of the invoices of the Debtor, Premier Van Lines, his property appeared to be at the Plaintiff's warehouse at 2140 Sackett Road, Avon, NY. Mr. Carter is the principal officer of Champion Moving and Storage, located at 795 Beahan Road, Rochester, NY 14624, who had removed the assets left by the

Debtor at the warehouse of third-party defendants Mr. David Dworkin and Jefferson-Henrietta Associates.

3. By letter also of July 30, 2002, Mr. Carter informed thereof Manufacturers and Traders Trust Bank (M&T Bank), which later on became a defendant in this Adversary Proceeding. Thereupon Mr. Pfuntner was contacted by Mr. David DeLano, third-party defendant and one of the principal M&T Bank officers in charge of both a loan to the Debtor and the management of M&T's lien on the Debtor's assets.
4. On August 12, 2002, Mr. DeLano called Dr. Cordero to let him know that he had found **two** crates at the warehouse of Mr. Pfutner in Avon. Mr. DeLano's attorney, Michael Beyma, Esq., confirmed this in his letter to Dr. Cordero of August 15, 2002.
5. By letter of August 26, 2002, Dr. Cordero asked the Plaintiff's attorney, David MacKnight, Esq., to confirm this and provide further information about that property and allow its removal. However, Mr. MacKnight never replied to that letter nor did he take or return any of his calls.
6. On September 16, 2002, Dr. Cordero talked on the phone with Mr. Pfuntner, who admitted that **a storage container** with Dr. Cordero's property was in his warehouse, but he did not know whether there were more than one such container.
7. The complaint states in paragraph 21 that "Plaintiff notes that the name "Cordero" appears on the outside of **one** of the shipping containers;" (emphasis added) However, Mr. Beyma's letter of August 15 states that, "I understand that David DeLano has informed you that your **two** "Pyramid" storage cabinets are located at 2140 Sackett Road, Avon, New York;" (emphasis added).
8. Mr. MacKnight admits in his motion that "3...Richard Cordero asserts a claim to a list of goods heretofore furnished to the Court and the parties. No one knows if any of his property is present...4. The contents of the four containers is unknown to the Plaintiff."
9. Consequently, there are now critical issues of fact concerning these storage containers and their contents:
 - 1) Were there two storage cabinets with Dr. Cordero's property or only one?
 - 2) If there were two, where is the other?
 - 3) Where was each of them when they were seen?
 - 4) Were they the same size? If not, which one is missing, the larger or the smaller?
 - 5) If one is gone, could the content of the other have been taken in part or in whole?

- 6) More importantly then, does any of the two containers hold any of Dr. Cordero's property at all?
 - 7) How were they closed: with nails, screws, a lock, and if the latter, who had access to the key?
 - 8) It is most unlikely that all the items in the above-mentioned "list of goods" could have fit in only two storage containers, let alone one, whose dimensions Mr. Pfuntner estimated to be about 5'x5'x7'. Could there have been earlier on more than two cabinets with Dr. Cordero's property brought to the warehouse by Premier Van Lines?
 - 9) What do the logs of movement of containers in and out of the warehouse show?
 - 10) What is the safety record of the warehouse?
 - 11) What does the contract between Premier and the Plaintiff show concerning safety and to whom does it assign the risk of loss?
 - 12) What does the contract provide in terms of insurance?
 - 13) Was any insurance policy taken and maintained as required under the contract and, if so, what are the pertinent dates and the extent of coverage, and who was or is the insurer?
 - 14) Is any such insurance policy still in force? If not, when did it lapse?
 - 15) Was any insurance policy still in force at a time when it would still have been possible for the Plaintiff to claim on it if only he had conducted his business properly or had promptly allowed Dr. Cordero to inspect his property?
 - 16) Does Plaintiff currently carry any insurance and who is the insurer?
 - 17) Etc., etc., etc.
10. The pertinence of these questions is illustrated by the letter of Mr. MacKnight of December 5, 2002, in which he asks similar questions. After all these factual questions are answered, legal questions of liability and the amount of it must have to be answered.
 11. If Mr. Pfuntner and Mr. MacKnight truthfully believed that they were subject to conflicting claims on Dr. Cordero's property held in Mr. Pfuntner's warehouse so that they were justified in invoking the provisions concerning interpleader, it is a question of fact who that other claimant or claimants are. Dr. Cordero has the right to know whether in order to obtain possession of and clear title to his property he still has to battle somebody else and, if so, who that may be.
 12. Mr. MacKnight has put in issue Mr. Pfuntner's medical problems as a reason why his client

could not take care of the matter of the inspection any earlier than he did, that is, March 25, 2003. The purpose of his statement is to influence the Court toward not holding Mr. Pfuntner liable for his failure to choose or reject any of the dates that he knew that at the pre-trial conference, held on January 10 and attended by Mr. MacKnight, the Court had required Dr. Cordero to propose for his trip to Rochester and the inspection of his property in Mr. Pfuntner's warehouse.

13. Dr. Cordero complied with the Court's requirement by proposing not just the required three, but rather six dates in his letter of January 29. Mr. MacKnight implicitly acknowledges receipt of that letter in paragraph 3 of the motion, where he states that "3....Richard Cordero asserts a claim to a list of goods heretofore furnished to the Court and the parties." Dr. Cordero sent that list to the Court and the parties, including Mr. MacKnight, as an attachment to his January 29 letter.
14. However, Dr. Cordero has obtained information that casts doubt on Mr. MacKnight's statements about Mr. Pfuntner's medical problems.
15. Therefore, it is now a question of fact whether Mr. Pfuntner's medical problems are as described by Mr. MacKnight or as described to him by Mr. Pfuntner and, if not, whether he, an officer of the Court, intentionally submitted, or Mr. Pfuntner caused him to submit, false statements to the Court in order to influence its ruling on his motion to the benefit of Mr. Pfuntner and the detriment of Dr. Cordero.

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Dated: April 17, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

Blank

Dr. Richard Cordero

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

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April 30, 2003

David MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
The Granite Building
130 East Main Street
Rochester, NY 14604-1686

Re: Adversary proceedings case no. 02-2230

Dear Mr. MacKnight,

Please find herewith my letter for reaching an agreement for my trip to Rochester and the inspection of my property in the warehouse of your client James Pfuntner.

Kindly note that I need to receive a confirmation in writing as soon as possible so that I can book my flight to Rochester.

Also note that I am still waiting for your answer to my letter of April 2.

Sincerely,

Dr. Richard Cordero

[cc. letter of April 30, 2003, to Mr. Pfuntner
and of April 2, 2003, to Mr. MacKnight, see page A:374]

Dr. Richard Cordero

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

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April 30, 2003

Mr. James Pfuntner
in Florida

faxed to (585) 538-9858 as requested

Dear Mr. Pfuntner,

This morning I called 585-538-2200, to find out whether your company Western Empire Truck Sale was in business so that I could fax to you a letter proposing that the inspection of my property at your Avon warehouse take place on Monday, May 19, after my arrival at 10:45a.m. on a JetBlue flight. I had no idea that the call would be forwarded to where you are, as you said, in Florida. I also wanted to let you know that I do not drive so I could not just lease a car at the airport and drive to the warehouse, but would depend on public transportation. Thus, your offer to pick me up at the airport to take me to and from the warehouse can facilitate this exercise considerably. Hence, I accept it and will rely on it.

You indicated that there are two containers with my name in your warehouse. I told you that at the hearing last April 23, Mr. MacKnight had stated that they were closed with metal bands that had to be cut. You corrected that statement by saying that they are closed by a different device and that you will not have any difficulty opening them. You also assured me that there will be enough light inside the warehouse to see the property and its condition. In this vein, I stated that it was important that you read my letter of January 29 addressed to Judge Ninfo and served on Mr. MacKnight since it contains important observations on the practical aspects that must be taken care of in order to insure the success of the trip and inspection; you said that you now have it. This trip and inspection are going to be expensive in terms of time and money and we should plan it well. I certainly do not want to find myself improvising when I am hundreds of miles from home and under the time constraints of flight and work schedules.

I also pointed out the need for you to read my papers in opposition to your motion of April 10, which was heard last Wednesday, April 23. That way you know what is at stake now. While Judge Ninfo has made the trip and the inspection necessary, their completion are by no means sufficient to put an end to this lawsuit. You said that you did not know how this matter had grown into such a big problem and I told you that the reason was that I had been sued.

Yet, there should have never been a suit. From the moment last July 2002 when Mr. David DeLano of M&T Bank let you know that my property was in your Avon warehouse, it should have been released to me, particularly since both M&T and Trustee Gordon expressed their agreement to such release. Likewise, Mr. MacKnight should have replied to my letters, beginning with that of August, way before this lawsuit was commenced. In this context, please note that after you called me on March 25 and Mr. MacKnight wrote to me the following day, I sent him a letter dated April 2; but again your attorney failed to reply to it and to provide the requested information.

Both the decision to sue me and the lack of communication between you and your attorney and with me have caused me an enormous waste of time, effort, and money as well as immense aggravation, and given rise to the serious problems that must now be faced. Meanwhile, I look forward to your written letter of confirmation of our agreement so that I can book the flight. Kindly call me before faxing it to 718-827-9521.

Yours sincerely,

Dr. Richard Cordero

Enclosures: Copy of my letter of April 2 to Mr. MacKnight and opposition brief of April 17.

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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

case no: 01-20692

JAMES PFUNTNER,

Plaintiff

-vs-

Adversary proceeding 02-2230

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

Appellant

-vs-

KENNETH W. GORDON and

DAVID PALMER

Appellees

ORIGINAL WAS RECEIVED AND FILED

BY: 



APR 25 2003

UNITED STATES DISTRICT COURT CLERK
WESTERN DISTRICT OF NEW YORK

**NOTICE OF APPEAL
TO THE U.S. COURT OF APPEALS
FOR THE SECOND CIRCUIT**

in Case no: 03-CV-6021L

and Case no.03-MBK-6001L

Dr. Richard Cordero, cross-defendant and third party plaintiff, appeals to the United States Court of Appeals for the Second Circuit from the final orders of the United States District Court for the Western District of New York, both entered in this court on March 27, 2003, and both denying in all respects his motions for rehearing:

- 1) of the order of March 12, 2003, docket #7 in case 03-CV-6021L, granting Trustee Kenneth Gordon's motion to dismiss as untimely filed Dr. Cordero's appeal from the dismissal of his cross-claims against the Trustee; and
- 2) of the order of March 11, 2003, in case 03-MBK-6001L, denying the motion to enter default judgment against D. Palmer and to withdraw proceeding.

Notice is hereby also given of Dr. Cordero's appeal from

a) the order dated April 4, 2003, in Adversary proceeding 02-2230, of the Bankruptcy Court

page 1 of 2

denying Dr. Cordero's motion for relief from
b) the order dated February 18, 2003, of the Bankruptcy Court denying Dr. Cordero's motion for
an extension of time to file notice of appeal.

The April 4 order states that it is based on the Bankruptcy Court's findings of fact and conclusions of law, one of which is that the order of the District Court of March 12, 2003, is the law of the case establishing that Richard Cordero's appeal was not timely filed. Hence, the March 12 order of the District Court, which is being appealed from, rendered moot an appeal to the District Court of the Bankruptcy Court's order of April 4.

The parties to the orders appealed from and the names and addresses of their respective known attorneys as well as those of the parties in the Adversary Proceeding are as follows:

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David Delano, Third-party
defendant

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Dated: April 22, 2003

Appellant pro se

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U.S. Bankruptcy Court

Western District of New York (Rochester) [as of May 14, 2006 at A:565]

- *Bankruptcy Petition #:* 01-20692 *Date filed:* 3/5/01
- *Assigned to:* Hon. John C. Ninfo, II
- Chapter 7, voluntary, no asset

* Parties *	* Attorneys *
PREMIER VAN LINES, INC., A CORPORATION dba North American Van Lines c/o 1829 Middle Road Rush, NY 14543 <i>Tax ID:</i> 16-1542181 * debtor *	Raymond C. Stilwell The Law Center at Williamsville 17 Beresford Court Williamsville, NY 14221 716-565-2000
KENNETH W. GORDON Chapter 7 Trustee 100 Meridian Centre Blvd. Suite 120 Rochester, NY 14618 * trustee *	
BONADIO & CO. LLP Corporate Crossings 171 Sully's Trail Suite 201 Pittsford, NY 14534-4557 * Accountant *	
WILLIAM E. BRUECKNER Ernstrom & Drete, LLP 2000 Winton Road South Building One, Suite 300 Rochester, NY 14618-3922 * Attorney for Trustee *	
ROY TEITSWORTH 6502 Barber Hill Road Geneseo, NY 14454 * Auctioneer *	

Docket Proceedings

Date	Doc. No.	Docket Entry
3/5/01	1	Voluntary petition; [1-1] missing documents: Schedule A - J Exhibit A List of Equity Security Holders Statement of <i>Affairs</i> : business Statement of Executory Contracts Disclosure statement of counsel Summary of debts & property <i>Documents due</i> : 3/20/01 (gw) [EOD 03/07/01] [01-20692]
3/5/01	2	Filing fee paid; Receipt No.: 22039647 [2-1] (gw) [EOD 03/07/01] [01-20692]
3/7/01	3	Deficiency Notice and Designation of David J. Palmer as principal. [3-1] (gw) [01-20692]
3/7/01	4	Clerk's Note: DIP Information Sheet mailed to debtor and attorney and Chapter 11 Monograph mailed to Debtor's Attorney (gw) [01-20692]
3/8/01	5	Notice of Section 341 Meeting [5-1] 2:00 4/3/01 at Rochester Room 6080 (gw) [01-20692]
3/8/01	6	Order authorizing method of compensation or remuneration to debtor or insider of debtor for 30 days from date of Order for Relief and requiring Court approval for any compensation after 30 days; [6-1] Notices Mailed: 3 on 3/9/01 (gw) [EOD 03/09/01] [01-20692]
3/10/01	7	Court's BNC Certificate of Service re: Ch. 11 341 notice [5-1] . # of Notices: 38 were sent. (auto) [EOD 03/12/01] [01-20692]
3/16/01	8	Letter to debtor's attorney re returned 341 notices; 1 return [8-1] NYS Workers Compensation Board (gw) [01-20692]
3/20/01	9	Filed [9-1] missing documents: Summary of debts & property Schedule A - I Statement of affairs: non-business Disclosure statement of counsel. Case caption: dba. Supp. mailing matrix. Fee paid: #22040006. (rh) [01-20692]
3/22/01	10	US Trustee statement [10-1] re: Inability to Appoint Committee of

		Unsecured Creditors. (gw) [01-20692]
4/2/01	11	Order and Application to Employ Raymond C. Stilwell, Adair Law Firm, as Attorney for the DIP [11-1] (gw) [EOD 04/04/01] [01-20692] INTERNAL USE ONLY:
4/3/01	12	Notice of Motion for approval of salary to David Palmer, President [12-1] Hearing date and time: 9:30 4/11/01 at Rochester Courtroom. Filed by: Raymond Stilwell, Atty for DIP. Affidavit of service: Not Filed (gw) [EOD 04/04/01] [01-20692]
4/3/01	13	MINUTES [13-1] Section 341 Meeting - Adj. to 10:30 7/10/01 at Rochester Room 6080. Debtor, David Palmer, Pres. and atty for debtor appeared. D.L. Rasmussen for Primus Automotive Finance appeared. Debtor sworn & examined. Need to amend for pre-petition taxes IRS; Schedule E. Need to resolve landlord claims & reduce rental costs to turn to profitability. No plan available until tenancy issues are crystalized. (gw) [EOD 04/04/01] [01-20692]
4/5/01	14	Affidavit of US Trustee's Office in Opposition [14-1] re: motion for approval of salary to David Palmer, President [12-1] (gw) [01-20692]
4/11/01	15	Minutes [15-1] re: motion for approval of salary to David Palmer, President - granted. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; Trudy Nowak, U.S. Trustee, objections withdrawn. (lp) [01-20692]
4/11/01	16	Notice of Motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for deb Affidavit of service: filed (pz) [EOD 04/12/01] [01-20692]
4/11/01	17	Notice of Motion for turnover of property from Jim Pfutner, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for debtor. Affidavit of service: filed (pz) [EOD 04/12/01] [01-20692]
4/12/01	18	Affidavit of Mailing re: motion for approval of salary to David Palmer, President [12-1] [18-1] (pz) [EOD 04/16/01] [01-20692]

4/16/01	19	Affidavit filed by David MacKnight for James Pfuntnr in Opposition [19-1] re: motion for turnover of property from Jim Pftuner, for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (gw) [EOD 04/17/01] [01-20692] INTERNAL USE ONLY:
4/17/01	20	Order [20-1] granting motion for approval of salary to David Palmer, President. ORDERED that provided debtor is current on all other post-petition payables at the time of issuance of payroll, said debtor may compensate David Palmer in the sum of \$334 per week pending further Order of this Court. [12-1] (pz) [01-20692]
4/18/01	21	Order [21-1] granting motion for turnover of property from Jim Pftuner no later than 4/18/01 @8:00 pm, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (gw) [01-20692]
4/18/01	22	Minutes [22-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. to 9:30 4/26/01 at Rochester Courtroom. If there is no objection to the motion by the U.S. Trustee, the motion will be granted and will be removed from the calendar. (lp) [EOD 04/19/01] [01-20692]
4/18/01	23	Minutes [23-1] Turnover of property and contempt: Motion granted. Restraints on the property are to be removed by today. Reserve on the request for attorney's fees. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Raymond Stilwell, Atty. for Debtor. Appearing in opposition: David MacKnight, Atty. for James Pfuntnr. (lp) [EOD 04/19/01] [01-20692]
4/18/01	24	Amendment [24-1] re: Schedules D, E and G. Supplemental Matrix filed. FEE PAID #22040750 (gw) [EOD 04/19/01] [01-20692]
4/19/01	25	Notice of motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] Hearing Date and Time: 9:30 5/2/01 at Rochester Courtroom; Filed by: Ingrid Palermo, Atty for Harry & Gretchen Voss; Receipt No.: 22040773. Affidavit of Service Filed. (gw) [01-20692]
4/26/01	26	Minutes [26-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. prior to calendara call to 9:30 5/2/01 at Rochester Courtroom. No appearances. (lp) [01-20692]

4/30/01	27	Letter filed by Raymond Stilwell confirming adjournment to 5/2/01 [27-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (gw) [01-20692] INTERNAL USE ONLY:
5/2/01	28	Minutes [28-1] re: motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta - granted effective on the close of business on 5/11/01 provided that the rent, pro-rated taxes and utilities for ten days are paid by the close of business on 5/3/01. If they are not paid the stay will be lifted. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: John Weider of counsel to Ingrid Palermo, Atty. for Harry and Gretchen Voss.; Trudy Nowak, US Trustee. Appearing in opposition: Raymond Stilwell, Atty. for Debtor. (lp) [EOD 05/03/01] [Edit date 05/04/01] [01-20692]
5/2/01	29	Minutes [29-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP - granted. A statement that Harry and Gretchen Voss are not taking a position on the motion is to be in the order. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; John Weider, Atty. for Harry and Gretchen Voss; Trudy Nowak, U.S. Trustee. (lp) [EOD 05/03/01] [01-20692]
5/7/01	30	Order [30-1] granting motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (gw) [EOD 05/09/01] [01-20692]
5/11/01	31	Order [31-1] granting motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] (see order for details) NOTICE OF ENTRY ISSUED TO: John Weider, Raymond Stilwell and US Trustee on 5/14/01 (gw) [EOD 05/14/01] [01-20692]
7/11/01	32	MINUTES [32-1] Section 341 Meeting - Adj. to 1:00 10/2/01 at Rochester Room 6080. Debtor appeared and examined - Dave Palmer. Atty for Debtor appeared. Debtor has effectuated move, will save considerable expense (\$9K). O/S Financials and UST fees to be paid by 7/17/01 or UST to move to convert. Dentor expects plan to be filed in late fall. (gw) [01-20692]
7/12/01	33	Address change for Debtor (gw) [01-20692]
7/12/01	37	Application for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 for the period 1/26/01 - 7/10/01 [37-1] Filed by: Raymond Stilwell (gw) [EOD 07/19/01] [01-20692]

7/12/01	39	Application for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 for the period 5/15/01 - 6/19/01 [39-1] Filed by: Raymond Stilwell, Atty for DIP. (gw) [EOD 07/19/01] [01-20692]
7/16/01	34	Monthly report of operation for March 2001 [34-1] (gw) [01-20692] INTERNAL USE ONLY:
7/16/01	35	Monthly report of operation for April 2001 [35-1] (gw) [01-20692]
7/16/01	36	Monthly report of operation for May 2001 [36-1] (gw) [01-20692]
7/19/01	38	Notice to creditors [38-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] : Last day to file objections: 8/13/01 ; (gw) [01-20692]
7/19/01	40	Notice to creditors [40-1] re: motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] : Last day to file objections: 8/13/01 ; (gw) [01-20692]
7/21/01	41	Court's BNC Certificate of Service re: default notice [38-1] . # of Notices: 50 were sent. (auto) [EOD 07/23/01] [01-20692]
7/21/01	42	Court's BNC Certificate of Service re: default notice [40-1] . # of Notices: 50 were sent. (auto) [EOD 07/23/01] [01-20692]
7/24/01	43	Amended Notice to creditors [43-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1]; Last day to file objections: 8/13/01; (Amended to clearly identify name of Attorney) (gw) [01-20692]
7/25/01	44	Affidavit of US Trustee's Office Supporting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] (gw) [01-20692]
7/25/01	45	Affidavit of U.S. Trustee's Office Supporting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] (gw) [01-

		20692]
7/27/01	46	Certificate of mailing from BNC with original notice re: Amended default notice [43-1] ; [46-1] (gw) [EOD 07/30/01] [01-20692]
9/17/01	47	Monthly report of operation for June 2001 [47-1] (gw) [01-20692]
10/2/01	56	MINUTES [56-1] Section 341 Meeting - Adjourned to 10/23/01 @1:00 Room 6080. Hearing canceled. (gw) [EOD 11/09/01] [01-20692] INTERNAL USE ONLY:
10/11/01	48	Order [48-1] granting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] (gw) [EOD 10/12/01] [01-20692]
10/11/01	49	Order [49-1] granting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] (gw) [EOD 10/12/01] [01-20692]
10/22/01	50	Ex Parte Application & Order [50-1], shortening time for hearing on sale of debtor's base business and to employ its principal Returnable 10/29/01 @11:00 am Rochester Courtroom. (gw) [01-20692]
10/23/01	51	MINUTES [51-1] Section 341 Meeting - Adj. to 1:00 10/30/01 at Rochester Room 6080. No appearances. Counsel for debtor requested adjournment. (gw) [EOD 10/24/01] [01-20692]
10/29/01	52	Minutes [52-1] Sale of property outside the ordinary course of business for the debtor's base of business: Motion withdrawn. The buyer does not want to go forward. Appearances: Raymond Stilwell, Atty. for Debtor; David MacKnight, Atty. for James Pfuntner, landlord; Trudy Nowak, U.S. Trustee. (lp) [EOD 11/01/01] [01-20692]
11/6/01	55	MINUTES [55-1] Section 341 Meeting - Adj. to 1:00 2/26/02 at Rochester Room 6080. Debtor, David Palmer, appeared and examined. Atty for Debtor appeared. Business ceased trucking operations. F/S not filed. UST fees not current. Debtor to consent to conversion upon UST motion unless buyer can be located in the interim. (gw) [EOD 11/08/01] [01-20692]

11/8/01	53	Motion re: for conversion to Chapter 7 and in the alternative, for dismissal of case Returnable 12/20/01 @9:30 Rochester Courtroom [53-1] Filed by: US Trustee's Office. No Fee Required. (gw) [01-20692]
11/8/01	54	Letter to debtor and debtor's attorney advising that they must both appear on the return date of the Motion to Dismiss or Convert in the event written opposition is filed. [54-1] (gw) [01-20692]
11/13/01	57	Certificate of mailing from BNC with original notice re: motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] ; [57-1] (gw) [EOD 11/14/01] [01-20692]
12/18/01	58	Affidavit of Ingrid Palermo, Atty for Harry and Gretchen Voss in Support [58-1] of motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] (gw) [01-20692] INTERNAL USE ONLY:
12/18/01	59	Affidavit of Mailing re: affidavit/in support of motion to Dismiss or Convert [58-1] [59-1] (gw) [01-20692]
12/20/01	60	Order [60-1] granting motion for conversion to Chapter 7 [53-1] (gw) [01-20692]
12/21/01	--	Utility event to update the Estimated Number of Employees, Estimated Number of Equity Security Holders and the Small Business fields after conversion to a Chapter 7 . (gw) [01-20692]
12/21/01	61	Clerk's Note: Copy of petition, schedules and amendments sent to US Trustee's office on 12/21/01 [61-1] (gw) [01-20692]
12/27/01	62	Order [62-1] directing debtor to file final report and account within 15 days; and directing the attorney for debtor to file a fee application within 60 days (See Order for further details.) Copy mailed to Debtor, Debtor's Attorney and U.S. Trustee. (cc) [01-20692]
12/28/01	63	Notice of Sec. 341 Meeting : Meeting set for: 11:00 1/24/02 at Rochester Room 6080 Government Claim Deadline: 7/1/02 Last day to file claims: 4/24/02 . Kenneth Gordon appointed trustee (asf) [01-20692]
12/30/01	64	Court's BNC Certificate of Service re: 341 notice [63-1] . # of Notices: 51 were sent. (auto) [EOD 12/31/01] [01-20692]

1/14/02	65	Letter to debtor's attorney re returned 341 notices; 1 returns [65-1]Premier Van Lines Inc. (pf) [01-20692]
1/18/02	66	Order [66-1], to extend time to file DIP Final Report and account Time extended to:1/22/02 (pf) [EOD 01/22/02] [01-20692]
1/24/02	67	Final report and account [67-1] with statement as to additional creditors. Amendment cover sheet filed also Amending Schedule E. (pf) [EOD 01/25/02] [01-20692]
1/25/02	68	Administrative Claims Bar Notice under Rule 1019: [68-1] Administrative Claims Deadline: 3/29/02 (pf) [01-20692]
1/26/02	70	MINUTES [70-1] 341 Mtg. - Adj. to: 2:00 2/8/02 at Rochester Courtroom. Asset Case. Need Completer List of all assets at both locations. Payroll info and W2, Corp. Tax return for 2000., Revenue & Expense reports and disk masters and bank records. Accts Receivable details and Closeout Corp. accts. (pf) [EOD 01/30/02] [01-20692]
1/27/02	69	Court's BNC Certificate of Service re: administrative claims bar notice [68-1] . # of Notices: 39 were sent. INTERNAL USE ONLY: (auto) [EOD 01/28/02] [01-20692]
2/6/02	--	Debtor's home address:Premier Van Lines c/o 1829 Middle Road, Rush, NY 14543 (pf) [01-20692]
2/8/02	71	MINUTES [71-1] 341 Mtg. - Debtor(s) sworn,examined; MC; Tr, db atty appeared. Debtor to produce 1999 and 2000 Corp. Tax Returns, Receipts for expenses not shown in Quicken, Registration information for vehicles, invoices for A/R and details on jobs still needing invoicing, info on \$4000.00 security deposit held by Ryder, Franchise agreement from Jeff Rd. and Quicken printout, CNB register and M & T Equity Loan by 2/28/02. ASSET CASE. Appearance by debtor and President of Corporation David Palmer. (pf) [EOD 02/14/02] [01-20692]
2/28/02	73	Application re: for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] Filed by: Raymond C. Stilwell, Esq. Afddt of service filed. Period of Services: 7/16/01-2/26/02. (pf) [EOD 03/05/02] [Edit date 04/05/02] [01-20692]

3/4/02	72	Order [72-1], To employ Attorney for Trustee William E. Brueckner (pf) [01-20692]
3/8/02	74	Notice to creditors [74-1] re: motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$3957.92 [73-1] : Period of services 7/16/01-2/26/02 Last day to file objections: 4/1/02 ; (pf) [01-20692]
3/10/02	75	Court's BNC Certificate of Service re: default notice [74-1] . # of Notices: 91 were sent. (auto) [EOD 03/11/02] [01-20692]
3/19/02	76	Objection - No hearing requested. Filed by Kenneth W. Gordon, chapter 7 t opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] (pf) [EOD 03/21/02] [Edit date 03/21/02] [01-20692]
3/20/02	77	Statement of the United States Trustee regarding Application for Fees filed by Trudy Nowak, UST not opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$3957.92 [73-1] (pf) [EOD 03/21/02] [Edit date 04/05/02] [01-20692]
3/25/02	78	Application for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1]for the period 7/1/02-12/20/01. Filed by: Raymond C. Stilwell as atty for debtor (pf) [EOD 04/03/02] [01-20692] INTERNAL USE ONLY:
3/29/02	80	Motion re: Request for payment to pay landlords the sum of \$40,001.32Sec. 503 (b) [80-1] Filed by: John Weider, Esq. (Clerk's note: called atty to send in Notice of Motion to set hearing date). (pf) [EOD 04/05/02] [01-20692]
4/3/02	79	Notice to creditors [79-1] re: motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] : Last day to file objections: 4/26/02 ; (pf) [01-20692]
4/5/02	81	Court's BNC Certificate of Service re: default notice [79-1] . # of Notices: 91 were sent. (auto) [01-20692]
4/8/02	82	Certificate of mailing from BNC with original notice re: motion for payment of professional fees to Bonoadio & Co as Accountants in the

		amount of \$4699.50 [78-1] ; [82-1] (pf) [EOD 04/10/02] [01-20692]
4/10/02	83	Statement of the United States Trustee regarding Application of Fees filed by, Trudy Nowak, Esq, supporting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] No objection. (pf) [01-20692]
4/15/02	84	Notice of Motion Sec. 503 (b) directing payment of an administrative expense for base rent, taxes, and interest related to Premier Van Lines Inc. occupancy of 10 Thruway Park, West Henrietta, NY for landlords Harry F & Gretchen A. Voss. [84-1] Hearing date and time: 9:30 5/8/02 at Rochester Courtroom Filed by: John R. Weider, Esq. Affidavit of service: filed. (Clerk's note: called atty to amend time to 11:00 a.m.). (pf) [EOD 04/17/02] [01-20692]
4/29/02	85	Amended Notice [85-1] re: Motion for an Order pursuant to Sec. 503(b) directing payment of an administrative expense for base rent, taxes and interest related to Premier Van Lines, Inc.'s occupancy of 10 Thruway Park, West Henrietta, NY [84-1] Hearing Date & Time: 11:00 5/8/02 at Rochester Courtroom. Filed by John R. Weider, Atty for Harry F. and Gretchen A. Voss. Affidavit of service filed. (cc) [01-20692]
5/8/02	86	Minutes [86-1] re: motion Sec. 503 (b) directing payment of an administrative expense - granted. Order to be submitted. Appearances: John Weider, Atty. for Harry & Gretchen Voss; Kenneth Gordon, Trustee. (lp) [EOD 05/09/02] [01-20692] INTERNAL USE ONLY:
5/8/02	87	Motion re: by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] Filed by: Timothy P. Johnson, Esq of Underberg & Kessler. Affidavit of service: Filed. FEE PAID #22049708. Returnable 5/15/02 at 11:30, Rochester Courtroom. (asf) [EOD 05/09/02] [01-20692]
5/10/02	88	Order [88-1] granting motion Sec. 503 (b) directing payment of an administrative expense [84-1] (pf) [EOD 05/13/02] [01-20692]
5/17/02	89	Order [89-1] granting motion by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] (cc) [EOD 05/20/02] [01-20692]

5/29/02	90	Order [90-1] granting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] (pf) [01-20692]
6/13/02	91	Notice to creditors [91-1] re: Trustee's Intent to abandon Property: All assets of Premier Van Lines, Inc. ; Deadline for objections: 7/2/02 Scheduled date: 7/3/02 at 11:00, Rochester Courtroom. (asf) [EOD 06/14/02] [01-20692]
6/18/02	92	Certificate of mailing from BNC with original notice re: abandonment notice [91-1] ; [92-1] (asf) [01-20692]
6/18/02	93	Affidavit of Mailing re: order [89-1] [93-1] (pf) [EOD 06/24/02] [01-20692]
7/23/02	94	Notice to creditors [94-1] re: Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentucky trailer ; Deadline for objections: 8/16/02. Returnable: 8/28/02 11:00 a.m.at Rochester Courtroom. (pf) [01-20692]
7/24/02	95	Letter from trustee stating that this is now an asset case and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set). (pf) [01-20692]
7/26/02	96	Certificate of mailing from BNC with original notice re: sale notice [94-1] ; [96-1] (pf) [EOD 08/12/02] [01-20692]
8/28/02	97	Order [97-1], To employ Auctioneer Roy Teitsworth (pf) [EOD 08/29/02] [01-20692] INTERNAL USE ONLY:
9/26/02	98	Notice to creditors [98-1] re: Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately \$139.00 for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankruptcy estate. Deadline for objections: 10/15/02. Returnable: 10/16/02 @11:00 a.m. @ Rochester Courtroom. (pf) [01-20692]

9/27/02	--	Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (kt) [02-2230]
9/30/02	99	Letter [99-1]from Dr. Cordero re: his concerns about his assets in storage, and other matters in this case. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/03/02] [01-20692]
9/30/02	101	Certificate of mailing from BNC with original notice re: abandonment notice [98-1] ; [101-1] (pf) [EOD 10/07/02] [01-20692]
10/3/02	100	Letter [100-1]in response to Dr. Richard Cordero's letter of filed 9/30/02. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/04/02] [01-20692]
10/8/02	102	Letter [102-1]to Dr. Richard Cordero, in response to his letter of 9/27/02, requesting that the Court make a determination as to whether the Chapter 7 Trustee, is satisfactorily administering this estate. The Court advised Dr. Cordero that the appointment of a Chapter 7 trustee is a function of the Department of Justice, Office of the U.S. Trustee. Accordingly, any concerns that Dr. Cordero may have regarding the Chapter 7 Trustee in this case should first be addressed to Kathleen Dunivin Schmitt, Esq.,Assistant U.S. Trustee. SEE LETTER FOR FURTHER DETAILS. (kt) [01-20692]
10/10/02	103	Letter [103-1]from Kathleen Dunivin Schmitt, U.S. Trustee, advising that the Office of the U.S. Trustee is currently conducting an investigation re: the allegations made by Dr. Cordero of the Trustee. SEE LETTER FOR FURTHER DETAILS. (kt) [01-20692]
10/17/02	104	Letter [104-1]from Dr. Richard Cordero, Esq., regarding the matter with Kenneth Gordon, Tr. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/23/02] [01-20692] INTERNAL USE ONLY:
10/23/02	105	Letter [105-1]from Kathleen Dunivin Schmitt, U.S. Trustee, to Dr. Richard Cordero, Esquire, in response to Dr. Cordero's concerns re: regaining possession of items that he paid to store with the debtors and various parties involved in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/24/02] [01-20692]

11/5/02	106	Order [106-1] granting motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$2,380.92 for services between 7/16/01 and December 21, 2001 as a Chapter 11 administrative expenses; and the sum of \$1577.00 for service between January 1, 2002 and February 26, 2002 as a Chapter 7 administrative expense, for a total of 3957.92 [73-1] (kt) [EOD 11/06/02] [01-20692]
11/18/02	--	Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (kt) [EOD 11/21/02] [Edit date 11/26/02] [02-2230]
12/16/02	107	Trustee's report of no assets (kt) [EOD 12/18/02]
1/13/03	--	Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (kt) [02-2230]

Report Criteria

Case Num: 01-20692

Filed between: 01/01/31 and 03/21/03

End of Report

U.S. Bankruptcy Court
Western District of New York (Rochester)

Adversary Proceeding #: 02-2230

Date filed: 9/27/02

Assigned to: Hon. John C. Ninfo, II

Related Bankruptcy Case #: 01-20692

In Re: Premier Van Lines, Inc., a Corporation,

Demand: \$20,000

Nature of Suit: 456

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* Attorneys *

JAMES PFUNTNER
* plaintiff *

David D. MacKnight
Lacy, Katzen etal
130 East Main St.
Rochester, NY 14604
585-454-5650

v.

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

Kenneth W. Gordon
Gordon & Schaal
100 Meridian Centre Blvd.
Suite 120
Rochester, NY 14618
585-244-1070

RICHARD CORDERO
* defendant *

ROCHESTER AMERICANS HOCKEY
CLUB, INC.
* defendant *

M & T BANK
* defendant *

Michael J. Beyma
Underberg & Kessler
1800 Lincoln First Tower
Rochester, NY 14604
585-258-2890

v.

RICHARD CORDERO
59 Crescent Street
Brooklyn, NY 11208
* third party plaintiff *

v.

Docket as of May 19, 2003 2:14 pm

Page 1 NON-PUBLIC

DAVID J. PALMER

* 3rd party defendant *

DAVID DWORKIN

* 3rd party defendant *

Karl S. Essler
Fix, Spindelman, Brovitz, Turk,
Himelein
500 Crossroads Building
2 State Street
Rochester, NY 14614
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JEFFERSON HENRIETTA ASSOCIATES

* 3rd party defendant *

Karl S. Essler
(See above)

DAVID DELANO

* 3rd party defendant *

Michael J. Beyma
Underberg & Kessler
1800 Lincoln First Tower
Rochester, NY 14604
585-258-2890

- 9/27/02 1 Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] FEE NOT PAID, CALLED D. MacKnight's office, and will send check on Monday. (kt) [02-2230]
- 10/1/02 2 Filing fee paid; Receipt No.: 22052838 [2-1] re: adversary proceeding. (kt) [EOD 10/03/02] [02-2230]
- 10/3/02 3 Summons issued. [3-1] Answer due: 11/4/02 for M & T Bank, for Rochester Americans Hockey Club, Inc., for Richard Cordero, for Kenneth W. Gordon (kt) [02-2230]
- 10/8/02 4 Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [4-1] Clerk's Note: Defendant, M&T Bank was not served, per D. MacKnight's office, will serve and send in an Affidavit of Service. (kt) [EOD 10/09/02] [02-2230]
- 10/9/02 5 Answer filed on behalf of Kenneth W. Gordon [5-1] by Kenneth W. Gordon, Esq. (kt) [02-2230]
- 10/15/02 6 Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [6-1] served on: M & T Bank, attn: David DeLano, Assistant Vice President. (pf) [EOD 10/16/02] [02-2230]
- 10/17/02 7 Letter [7-1] from Dr. Richard Cordero, advising that he has not yet been served in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/23/02] [02-2230]
- 10/25/02 8 Waiver of Service of Summons and Petition for Clarification of Richard Cordero, Pro Se [8-1] (kt) [EOD 11/05/02] [02-2230]
- 11/1/02 9 Clerk's Note: Richard Cordero called to inquire when his answer was due; he was advised that the date certain is 11/4/02; he said that he will mail out his answer. Further on 10/31/02, Mr. Cordero was advised that an extension of time for the answer would need to be stipulated to, or a motion may be brought, but an extension of time to answer cannot be done ex-parte. 9-1] (kt) [EOD 11/05/02] [02-2230]
- 11/6/02 10 Answer filed on behalf of Richard Cordero, Defendant. Filed by R. Cordero, pro se defendant. [10-1] by , Esq. (kt) [02-2230]
- 11/6/02 11 Answer filed on behalf of M & T Bank [11-1] by Michael J. Beyma, Esq. (kt) [02-2230]

INTERNAL USE ONLY: Events between 1/1/31 and 5/19/03.

02-2230 James Pfuntner v. Kenneth W. Gordon, et al DISMIS

11/12/02 12 Plaintiff's Reply to Richard Cordero's Counterclaim, filed by David MacKnight, Atty. [12-1] (kt) [02-2230]

11/12/02 13 Affidavit of Mailing re: Reply filed by D. MacKnight, Atty. [12-1] [13-1] (kt) [02-2230]

11/18/02 -- Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (kt) [EOD 11/21/02] [Edit date 11/26/02] [02-2230]

11/19/02 14 Third Party Summons issued. [14-1] Answer due: 12/19/02 for David Delano, for Jefferson Henrietta Associates, for David Dworking, for David J. Palmer (kt) [EOD 11/21/02] [02-2230]

11/25/02 17 Affidavit of Mailing re: [17-1]third party complaint and summons. Served on essential parties. (kt) [EOD 12/09/02] [02-2230]

11/25/02 18 Amended Answerwith cross-claims filed by Richard Cordero, Pro Se Defendant. [18-1] (kt) [EOD 12/09/02] [02-2230]

12/2/02 19 Copy of Appeal filed with the U.S. Trustee's office by Richard Cordero, Pro Se Defendant. [19-1] (kt) [EOD 12/09/02] [02-2230]

12/5/02 15 Notice of Motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] Hearing date and time: 9:30 12/18/02 at Rochester Courtroom Filed by: Kenneth Gordon, Esq. Affidavit of service: filed (pf) [EOD 12/06/02] [02-2230]

12/6/02 16 Letter [16-1]dated 12/5/02 from David MacKnight, Esq. to the Court that it might be helpful that the Trustee provide a listing from the debtors records of whose property debtor placed in the Henrietta location and whose property debtor placed in the Avon property. SEE LETTER FOR MORE DETAILS. (pf) [02-2230]

12/9/02 20 Letter [20-1] to Plaintiff's attorney to expedite prosecution of AP; matter will be set on trial calendar for 9:00 1/22/03 Deadline to file documents: 12/19/02 ; (kt) [02-2230]

12/10/02 21 Letter [21-1]from K. Gordon, Tr., re:records of stored property by debtor. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (kt) [EOD 12/11/02] [02-2230]

Docket as of May 19, 2003 2:14 pm

Page 4 NON-PUBLIC

- 12/12/02 22 Memorandum of Law in opposition, filed by Dr. Richard Cordero, Defendant, and Third Party Plaintiff(Pro Se) [22-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] . (kt) [02-2230]
- 12/13/02 23 Letter [23-1]from Amber Barney, Atty.,advising that Underberg & Kessler will not be representing David Dworkin a party in this action, but are requesting an extension of time to answer from Dr. Cordero. (kt) [EOD 12/16/02] [02-2230]
- 12/17/02 24 Answer filed on behalf of M&T Bank David Delano, Third Party Defendant [24-1] by Michael J. Beyma, Esq. (kt) [EOD 12/18/02] [02-2230]
- 12/17/02 26 Letter [26-1]from K. Gordon to Dr. Cordero, advising that he does not consent to an adj. in this matter. (kt) [EOD 12/18/02] [02-2230]
- 12/18/02 25 Notice of Pre-trial Conference: [25-1] 10:00 1/10/03 at Rochester - Judge's Chambers; sent to David MacKnight, Atty; Kenneth Gordon, Tr.; Michael Beyma, Atty; Richard Cordero, Pro Se; Raymond Stilwell, Atty., and U.S. Trustee. (kt) [02-2230]
- 12/18/02 27 Minutes [27-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding - granted. The Court finds that Mr. Gordon's letters were not defamatory and that he was not negligent. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Kenneth Gordon, Trustee/Defendant; and in opposition: Dr. Richard Cordero, Pro Se Third Party Plaintiff (by telephone). (kt) [EOD 12/19/02] [02-2230]
- 12/19/02 28 Copy of Letter from Dr. Cordero to Underberg and Kessler, conditionally granting extension of time to file answer to 12/31/02, on behalf of David Dworkin and Jefferson Henrietta Associates, third party defendants, subject to certain conditions required by Dr. Cordero. [28-1] (kt) [EOD 12/20/02] [02-2230]
- 12/23/02 29 Letter [29-1]from Raymond Stilwell, Atty., advising that he is unable to attend the 1/10/03 pretrial as he has a conflict. Mr. Stilwell further advises that his appearance may not be necessary. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 12/24/02] [02-2230]
- 12/23/02 30 Order [30-1] granting motion for dismissal of cross-claim against trustee in an adversary proceeding, and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed. [15-1]Notice of Entry Issued To: Kenneth Gordon, Atty; Dr. Richard Cordero, Defendant/Third Party Plaintiff; and U.S. Trustee. (kt) [EOD 12/30/02]

[02-2230]

12/26/02 51 Affidavit of Mailing re: [51-1]Default Judgment in a Non-Core Matter. Filed by Dr. Richard Cordero. (kt) [EOD 02/04/03] [02-2230]

12/30/02 31 Answer filed on behalf of David Dworkin, Jefferson Henrietta Associates [31-1] by Karl S. Essler, Esq. (kt) [02-2230]

12/30/02 32 Letter [32-1]from Dr. Cordero, requesting that he appear by telephone for the 1/10/03 pretrial(submitted the pre-trial option form). (kt) [02-2230]

12/30/02 33 Letter [33-1] from Michael Beyma, Atty., advising that he does not have an objection to Dr. Cordero appearing by telephone for the 1/10/03 pretrial. (kt) [02-2230]

1/2/03 34 Clerk's Note: Advised R. Stilwell, Atty., that his appearance will not be necessary at the 1/10/03 Pretrial. [34-1] (kt) [02-2230]

1/2/03 35 Affidavit of Mailing re: [35-1]filed by Dr. Richard Cordero, Defendant/Third Party Plaintiff, re: pt option form and application to enter a default judgment against David Palmer. (kt) [EOD 01/03/03] [02-2230]

1/3/03 36 Order [36-1], that Dr. Richard Cordero, Defendant and Third Party Plaintiff may appear by telephone for the 1/10/03 pretrial (kt) [EOD 01/06/03] [02-2230]

1/6/03 37 Pre-Trial option form Order of 1/3/03 was mailed to Dr. Richard Cordero, Defendant; Michael Beyma, Esq. Kenneth Gordon, Esq.; David MacKnight, Esq., and delivered to the U.S. Trustee. [37-1] (kt) [02-2230]

1/6/03 38 Copy of Letter [38-1]from K. Gordon, Tr., to Dr. Cordero, Defendant/Third Party Defendant, advising that he has no objection to Dr. Cordero appearing by telephone re: the pretrial. (kt) [02-2230]

1/13/03 39 Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (kt) [02-2230]

1/13/03 40 Civil Cover Sheet filed. [40-1] (kt) [02-2230]

1/14/03 41 Letter [41-1]to Dr. Richard Cordero, Defendant/Third Party Plaintiff, advising him that his designation of items on appeal are due on or before 1/27/03. Copy of letter served on essential parties. (kt) [02-2230]

1/15/03 42 Notice of Appeal and Certified copy transmitted to District Court. Civil Case #03-cv-6021L [42-1] (kt) [EOD 01/17/03] [02-2230]

1/27/03 43 Apellant's designation by Richard Cordero of Contents for Inclusion in Record on Appeal. (kt) [EOD 01/29/03] [02-2230]

1/27/03 54 Letter [54-1] from Dr. Richard Cordero, re: transcript of hearing of 12/18/02. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 02/05/03] [02-2230]

1/29/03 44 Affidavit of Mailing re: appellant designation [43-1] by Richard Cordero [44-1] (kt) [02-2230]

1/30/03 47 Notice of Motion to extend time to of time to file Notice of Appeal [47-1] Hearing date and time: 9:30 2/12/03 at Rochester Courtroom Filed by: Richard Cordero, Defendant Affidavit of service: not filed (kt) [EOD 02/03/03] [02-2230]

1/31/03 45 Letter [45-1] from Dr. Cordero re: his available travel dates to come to Rochester to inspect his property in storage. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

2/3/03 46 Letter [46-1] from Dr. Richard Cordero, Defendant, Third Party Plaintiff, re: entry of a default judgment. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

2/3/03 48 Letter [48-1] from K. Gordon, Tr., advising that he will not be attending the inspection of Dr. Cordero's personal property in storage in Avon, NY. (kt) [02-2230]

2/4/03 49 Clerk's Certificate of Default [49-1] (kt) [02-2230]

2/4/03 50 Affidavit of Dr. Richard Cordero [50-1] re: Non-Military Service. (kt) [02-2230]

2/4/03 52 Order [52-1], to Transmit Record to District Court, re: non-core default judgment, with attachment to Recommendation of the Bankruptcy Court The Default Judgment Not Be Entered By the District Court (kt) [02-2230]

2/4/03 53 Letter [53-1] to District Court enclosing the required Documents re: Non Core Default Application for Default. Clerk's Note: Proposed original order submitted to District Court. (kt) [02-2230]

2/6/03 55 Memorandum of Law [55-1] re: motion to extend time to of time to file Notice of Appeal [47-1] . (kt) [02-2230]

- 2/12/03 56 Minutes [56-1] re: motion to extend time to of time to file Notice of Appeal - denied; This motion was not filed timely as required by Rule 8002(a). Appearances: Dr. Richard Cordero, Defendant/Third Party Plaintiff(appeared by telephone); in opposition: Kenneth Gordon, Tr., Defendant. Mr. Gordon will submit Order. NOTICE OF ENTRY TO BE ISSUED. (kt) [EOD 02/14/03] [02-2230]
- 2/12/03 58 Letter [58-1]from Raymond Stilwell, Atty., re: various issues in this matter, and that he does not represent David Palmer in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 02/19/03] [02-2230]
- 2/18/03 57 Order [57-1] denying motion to extend time to file Notice of Appeal [47-1]that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on 1/13/03; and thereby not timely filed; that the provisions of Bankruptcy Rule 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a); that the last date for Richard Coredero, Defendant and Third Party Plaintiff, to file a motion seeking an extension under Bankruptcy Rule 8002(c) of his time to file his Notice of Appeal was 1/29/03; that the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03; and that a motion to dismiss the appeal is pending in the District Court. NOTICE OF ENTRY ISSUED TO: Dr. Richard Cordero, Third Party Plaintiff; Ken Gordon, Defendant and U.S. Trustee. (kt) [02-2230]
- 2/21/03 59 Letter [59-1]from M. Beyma, Atty., for M&T Bank, advising that M&T Bank has not yet decided whether someone from the bank will attend at the warehouse opening. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 02/24/03] [02-2230]
- 2/27/03 60 Notice of Motion for relief from order denying motion to extend time to file notice of appeal [60-1] Hearing date and time: 9:30 3/12/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Defendant Affidavit of service: filed. Clerk's Note: Advised Dr. Cordero that 3/12/03 is not a motion date, he will re-notice the motion for 3/19/03 or 3/26/03, and submit an amended affidavit of mail. (kt) [EOD 03/04/03] [02-2230]
- 3/4/03 61 Letter of Opposition filed by K. Gordon, Defendant [61-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1] Clerk's Note: Advised Mr. Gordon that the date of 3/12/03 is not a hearing date, and that an amended notice if forthcoming. (kt) [02-2230]

- 3/10/03 62 Amended Notice of Motion, re: the amended date of hearing to 3/26/03 at 9:30 at Rochester Courtroom filed by Dr. Richard Cordero, Defendant [62-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1]Affidavit of Service filed. (kt) [EOD 03/11/03] [02-2230]
- 3/10/03 63 Letter [63-1]of Dr. Richard Cordero, Defendant, re: default of David Palmer. (kt) [EOD 03/11/03] [02-2230]
- 3/11/03 65 Copy of Letter [65-1]from Dr. Richard Cordero to Hon. David Larimer, re: default judgment against D. Palmer. (kt) [EOD 03/13/03] [02-2230]
- 3/11/03 66 Copy of Decision and Order by U.S. District Judge David G. Larimer; concurring in the Bankruptcy Judge's determination that judgment is not appropriate in this case, and that 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. SEE ORDER FOR FURTHER TERMS AND CONDITIONS. [66-1] (kt) [EOD 03/13/03] [02-2230]
- 3/12/03 64 Letter [64-1]to Dr. Richard Cordero, sent by Paul Warren, Clerk of the Court, re: the application for the entry of default against David Palmer. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (kt) [EOD 03/13/03] [02-2230]
- 3/13/03 67 Decision and Order of the Hon. David G. Larimer, U.S. District Judge, re:Notice of Appeal filed on 1/13/03, re: the Decision and Order dated 12/30/02, of the Hon. John C. Ninfo, II, Chief U.S. Bankruptcy Judge. ORDERED THAT the Trustee's motion to dismiss the appeal is granted, and the appeal is dismissed. [67-1] (kt) [EOD 03/14/03] [02-2230]
- 3/26/03 70 Minutes [70-1] denying motion for relief from order denying motion to extend time to file notice of appeal [60-1]Ms. Schaal to submit order. The Court reserves the right to supplement the order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Defendant and Third Party Plaintiff(by telephone); in opposition: Deborah Schaal of counsel to K. Gordon, Trustee, and David MacKnight, Atty. for James Pfuntner. (kt) [EOD 03/28/03] [02-2230]
- 3/26/03 71 Transcript [71-1] of proceedings held 12/18/03. (kt) [EOD 03/28/03] [02-2230]
- 3/27/03 68 Copy of Letter [68-1]from David MacKnight, Atty., to Dr. Richard Cordero, Defendant, advising of the available inspection dates: 4/23/03, 4/24/03, or 4/25/03, or earlier if Dr. Cordero would like. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]

- 3/27/03 69 Copy of Decision and Order [69-1], executed by David G. Larimer, U.S. District Judge re: Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order enter 3/11/03. The motion is in all respects denied. (kt) [EOD 03/28/03] [02-2230]
- 4/2/03 72 Copy of Letter [72-1] from Dr. Richard Cordero to Court Reporter. (kt) [02-2230]
- 4/4/03 73 Order [73-1] denying Defendant, Third Party Plaintiff, Dr. Richard Cordero's motion for relief from order denying motion to extend time to file notice of appeal [69-2], that based on the findings of fact and conclusions of law, that Richard Cordero's motion for relief from the order dated 2/18/03 denying his motion for extension of time for filing a notice to appeal is hereby denied. NOTICE OF ENTRY ISSUED TO Debra Schall, of counsel to Kenneth Gordon, Atty., Dr. Richard Cordero, Defendant, and David MacKnight, Atty. (kt) [EOD 04/07/03] [02-2230]
- 4/7/03 74 Notice of entry issued to U.S. Trustee [74-1] re: Order of 4/4/03. (kt) [02-2230]
- 4/7/03 75 Notice of Motion for Measures relating to trip to Rochester and Inspection of Property [75-1] Hearing date and time: 9:30 4/16/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se, Defendant, and Third Party Plaintiff. Affidavit of service: filed. Clerk's Note: Dr. Cordero is advised by letter that 4/16/03 is not a scheduled date, and to please re-notice his motion for 4/23/03, or for one of the Court's motion dates that accommodates his schedule. (kt) [EOD 04/08/03] [02-2230]
- 4/7/03 76 Letter [76-1] to Dr. Richard Cordero, advising that due to the complexity of the legal issues that he has now raised and re: notice of motion for measures relating to trip to Rochester, the Court denies Dr. Cordero's request to appear by telephone in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 04/08/03] [02-2230]
- 4/11/03 77 Notice of Motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfuntner from any liability to any of the parties to this adversary proceeding [77-1] Hearing date and time: 9:30 4/23/03 at Rochester Courtroom Filed by: David MacKnight, Atty. Affidavit of service: not filed (kt) [EOD 04/14/03] [02-2230]

- 4/21/03 78 Brief of Dr. Richard Cordero, Pro Se [78-1] re: motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Affidavit of Mailing filed. (kt) [02-2230]
- 4/21/03 79 Letter [79-1] from Mary Dianetti, Bankruptcy Court Reporter, in response to Dr. Cordero's letter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 04/22/03] [02-2230]
- 4/23/03 81 Minutes [81-1] motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Adj. to 9:30 5/21/03 at Rochester Courtroom. The court directed Dr. Cordero to inspect the goods by 5/21/03. Appearances: David MacKnight, Atty. for J. Pfunter, Plaintiff; in opposition: Dr. Richard Cordero, Defendant, and Third Party Plaintiff (by telephone). (kt) [EOD 04/29/03] [02-2230]
- 4/29/03 80 Clerk's Note: Appeal filed transmitted to District Court, for purposes of filing in the Second Circuit. [80-1] (kt) [02-2230]
- 5/5/03 82 Copy of Letter [82-1] from Dr. Cordero to James Pfunter, confirming that Dr. Cordero will be arriving in Rochester on May 21, 2003 at 10:45, to inspect his property in Avon. Affidavit of Service filed. (kt) [02-2230]
- 5/7/03 83 Letter [83-1] from Dr. Richard Cordero, Defendant, re: his travel arrangements for the inspection in Avon, NY., on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]
- 5/13/03 84 Copy of Letter [84-1] from J. Pfunter to Dr. Cordero, confirming that the inspection of the property at Sackett Road will take place on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (kt) [02-2230]
- 5/15/03 85 Letter [85-1] from Dr. Richard Cordero, Defendant, advising that he will be in Rochester on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 05/16/03] [02-2230]

Office Of The Clerk
United States District Court

Western District Of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614-1387
(585) 263-6263 / Fax (585) 263-3178

Rodney C. Early
Clerk

May 19, 2003

Roseann MacKechnie, Clerk
United States Court of Appeals
for the Second Circuit
U.S. Courthouse
Foley Square
New York, NY 10007

RE: 03-cv-6021 (USCA# 03-5023) - CORDERO VS GORDON

Dear Ms MacKechnie,

We are transmitting herewith the Record on Appeal in regards to the above mentioned action along with a Clerk's Certificate and a certified copy of a current docket sheet for your information as requested by your Court..

If I can be of any further assistance, please do not hesitate to call.

Very truly yours,


MARGARET GHYSEL
Deputy Clerk

Enclosures

CC Richard Cordero, Dr.
Kenneth W. Gordon, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD CORDERO, DR.,

Appellant,

vs

03 - CV - 6021 L
USCA#03-5023

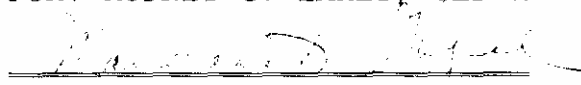
KENNETH GORDON, ESQ.,

Appellee.

I, RODNEY C. EARLY, Clerk of the United States District Court for the Western District of New York, do hereby certify that the copy of docket entries A through C together with the index numbered 1 through 11 constitute the Index to the Record on Appeal.

IN WITNESS WHEREOF, I have
hereunto subscribed my name and
affixed the seal of the afore-
said Court at Rochester, New
York, this 19th day of May, 2003.

FOR: RODNEY C. EARLY, CLERK



INDEX TO RECORD ON APPEAL
CIVIL DOCKET FOR CASE #: 03-CV-6021
Cordero v. Gordon
(USCA# 03-5023)

A -  DOCKET ENTRIES.

- 1/15/03 1 BANKRUPTCY RECORD on appeal received (to)
- 1/16/03 3 ORDER, that appellant shall file and serve its brief within 20 days after entry of this order; appellee shall serve its brief within 20 days after service of appellants brief (signed by Chief USDJ David G. Larimer) Notice and copy of order sent to Kenneth W. Gordon, Richard (to)
- 1/17/03 2 MOTION by Kenneth Gordon to Dismiss appeal court to set return date (to) [Entry date 01/17/03]
- 1/22/03 4 ORDER, Response to Motion set to 2/14/03 for [2-1] motion to Dismiss appeal (signed by Chief USDJ David G. Larimer) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to) [Entry date 01/22/03]
- 1/24/03 5 ORDER, Vacating [3-1] order that appellant shall file and serve its brief within 20 days after entry of this order; appellee shall serve its brief within 20 days after service of appellants brief all dates in the 1/22/03 order remain in full force and effect (signed by Chief USDJ David G. Larimer) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to) [Entry date 01/27/03]
- 2/14/03 6 REPLY BRIEF by Richard Cordero Re: [2-1] motion to Dismiss appeal by Kenneth Gordon (to) [Entry date 02/14/03]
- 3/12/03 7 ORDER granting [2-1] motion to Dismiss appeal, to Dismiss action (signed by USDJ David G. Larimer) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (to) [Entry date 03/12/03]
- 3/12/03 8 JUDGMENT for Kenneth Gordon against Richard Cordero (signed by Clerk). Notice and copy of judgment sent to Kenneth W. Gordon, Richard Cordero (to)

- 3/21/03 9 MOTION by Richard Cordero for Reconsideration of [8-1]
judgment order, [7-1] order to Dismiss action (to)
- 3/27/03 10 ORDER denying [9-1] motion for Reconsideration of [8-1]
judgment order, [7-1] order to Dismiss action (signed by
USDJ David G. Larimer) Notice and copy of order sent to
Kenneth W. Gordon, Richard Cordero (to)
- 4/25/03 11 NOTICE OF APPEAL by Richard Cordero . Fee Status: 105.00
(Also appealing 03-mbk-6001) (mg) [Entry date 04/28/03]

Office Of The Clerk
United States District Court

Western District Of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614-1387
(585) 263-6263 / Fax (585) 263-3178

Rodney C. Early
Clerk

May 19, 2003

Roseann MacKechnie, Clerk
United States Court of Appeals
for the Second Circuit
U.S. Courthouse
Foley Square
New York, NY 10007

RE: 03-mbk-6001 (USCA# 03-5023) - CORDERO VS PALMER

Dear Ms MacKechnie,

We are transmitting herewith the Record on Appeal in regards to the above mentioned action along with a Clerk's Certificate and a certified copy of a current docket sheet for your information as requested by your Court..

If I can be of any further assistance, please do not hesitate to call.

Very truly yours,


MARGARET GHYSEL
Deputy Clerk

Enclosures

CC Richard Cordero, Dr.
David Palmer
Raymond Stilwell, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD CORDERO, DR.,

Appellant,

VS

03 - MBK - 6001L
USCA#03-5023

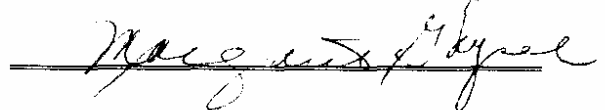
DAVID PALMER,

Appellee.

I, RODNEY C. EARLY, Clerk of the United States District Court for the Western District of New York, do hereby certify that the copy of docket entries A through B together with the index numbered 1 through 6 w/exhs. constitute the Index to the Record on Appeal.

IN WITNESS WHEREOF, I have
hereunto subscribed my name and
affixed the seal of the afore-
said Court at Rochester, New
York, this 19th day of May, 2003.

FOR: RODNEY C. EARLY, CLERK



**MISCELLANEOUS DOCKET
UNITED STATES DISTRICT COURT**

**Docket
No. 03-mbk-6001**

Title of Case	Attorneys			
IN RE: Premier Van Lines, Inc. RICHARD CORDERO DAVID PALMER <div style="text-align: center; margin-top: 20px;"> <i>Sucepto Ro A</i> <i>USCA# 03-5023</i> </div>	For Plaintiff: Richard Cordero, Dr. 59 Cresent St. Brooklyn, NY 11208 For Defendant: 1829 Middle Rd. Rush, NY 14534 Raymond Stilwell, Esq. 300 Linden Oaks, Roch., ny 14625			
Memoranda	Date	Name or Receipt No.	Received	Disbursed

Date		Proceedings	Date Order or Judgement Noted
2/4/03	1-	#54 Non-core proceeding of Bankruptcy Court re: plaintiff's request for default judgment	
3/5/03	1-	#55 Motion for motion to enter default judgment against David Palmer and withdraw proceeding by Richard Cordero	
3/11/03	3-	#56 Decision and Order denying request for default judgment; that judgment is not appropriated in this case; 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 (DGL) Case Closed-file sent back to bankruptcy court	
3/21/03	4-	#57 Motion for rehearing re: implied denial of motion to enter default judgment and withdraw proceeding	
3/27/03	5-	#58 Order denying request for a rehearing and reconsideration (#57)	

Date	Proceedings	Date Order or Judgement Noted
4/25/03	6 - #59 Filed certified copy of Notice of Appeal - IN RE -3/11/03 order. (Also filed NOA in 03-cv-6021 case - CORDERO VS GORDON)	
4/28/03	Transmitted NOA along with 03-cv-6021 w/ certified copy of both docket sheets	
5/19/03	Certified and transmitted ROA to USCA, Second Circuit: (also sending ROA of 03-cv-6021) along with certified copies of both cases - (USCA# 03-5023)	
EXHIBITS		
A.	Cordero's Designation of Items and Statement Issues on Appeal filed 1/27/03 in Bankruptcy Court	

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 03-5023
Nsuit: 3422 STATUTES-Bkrup Appeals 801
In Re: Premier Van, et al v.
Appeal from: U.S. District Court WDNY

Filed: 5/2/03

Case type information:

- 1) Bankruptcy
- 2) dc
- 3) none

Lower court information:

District: 0209-06: 03-cv-6021
Trial Judge: David G. Larimer
Date Filed: 1/15/03
Date order/judgment: 3/27/03
Date NOA filed: 4/25/03

and 03-MBK-6001L, see attached copy
of letter to Clerk Rodney C. Early

Fee status: paid

Prior cases:

None

Current cases:

None

Panel Assignment:

Proceedings include all events.
03-5023 In Re: Premier Van, et al v.

Re: PREMIER VAN LINES
Debtor

RICHARD CORDERO
Third-Party-Plaintiff -
Appellant

Richard Cordero
718-827-9521
[COR LD NTC]
59 Crescent St.
Brooklyn, NY 11208-1515

KENNETH W. GORDON, Esq.
Trustee - Appellee

Kenneth W. Gordon, Esq.
585-244-1070
Suite 120
[COR LD NTC]
Gordon & Schaal, LLP
100 Meridian Centre Blvd.
Rochester, NY 14618

v.

DAVID PALMER
Third-Party-Defendant -
Appellee

David Palmer
[COR LD NTC]
1829 Middle Rd.
Rush, NY 14543

Proceedings include all events.
03-5023 In Re: Premier Van, et al v.

Official Caption 1/

Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,
Debtor.

RICHARD CORDERO,
Third-Party-Plaintiff - Appellant

v.
KENNETH W. GORDON, Esq.,
Trustee - Appellee,

DAVID PALMER
Third-Party-Defendant - Appellee.

Authorized Abbreviated Caption 2/

Docket No. [s] : 03-5023

In Re: Premier Van Lines, Inc.,

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only.

Docket as of May 16, 2003 4:09 pm

Page 3

Proceedings include all events.
03-5023 In Re: Premier Van, et al v.

/03 Copy of notice of appeal and district court docket entries
on behalf of Appellant Richard Cordero filed. [03-5023] "Fee
Paid #64514". (ra)

5/2/03 Note: This appeal was PRO SE when filed. (ra)

5/2/03 Copy of decision and order dated March 11, 2003
(03-MBK-6001L), endorsed by Hon. David G. Larimer, United
States District Judge, RECEIVED. [03-5023] (ra)

5/2/03 Copy of decision and order dated March 12, 2003, endorsed
by Hon. David G. Larimer, United States District Judge,
RECEIVED. (03-cv-6021L). [03-5023] (ra)

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy
Clerk, RECEIVED. [03-5023] (ra)

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
2120 U.S. COURTHOUSE
100 STATE STREET

ROCHESTER, NEW YORK 14614-1387
RODNEY C. EARLY (585) 263-6263 - FAX (585) 263-3178
CLERK

April 28, 2003

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY

RE: 03-cv-6021L - CORDERO VS PALMER
03-MBK-6001 - CORDERO VS PALMER

Dear Dr. Cordero,

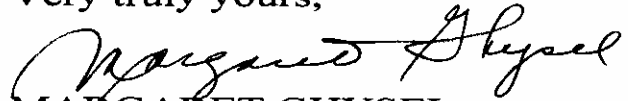
Reference is made to your Notice of Appeal which was filed on April 25, 2003.

This office will prepare the Index to the record on Appeal and assemble all original documents that have been filed in this action for forwarding to the Clerk, U.S. Court of appeals for the Second Circuit.

You are to notify this office upon receipt of the Scheduling Order from the Clerk, U.S. Court of Appeals. This Order will state not only your Court of Appeals docket, but also the date that the record on appeal must be filed along with other dates that you must comply with. This office will forward the Record to the Clerk, U.S. Court of Appeals.

Pursuant to the U. S. Court of Appeals, Second Circuit, a standard form must be used for any motions brought before that Court. The form is T-1080 and is available from legal stationery.

Very truly yours,


MARGARET GHYSEL
Deputy Clerk

Encl.

CC Kenneth W. Gordon, Esq.
Raymond Stilwell, Esq.
(W/copy of NOA)

Blank

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

May 24, 2003

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Redesignation of Items in the Record and Statement of Issues on Appeal
for USCA 03-5023

Dear Ms. MacKechnie,

Thank you for your Docketing Letter of May 16, 2003. Please find herewith my acknowledgment letter with corrections and other forms that I have filled out as requested.

I would like to bring to your attention the fact that in the copy of neither the docket that I requested from the bankruptcy court or received unrequested from the district court is there any entry for the Redesignation of Items in the Record and Statement of Issues on Appeal that I submitted not only to the bankruptcy court, but also to the district court on May 5, 2003. That may explain why in docket 03-5023 there is no such entry either. I would appreciate it if you would explain the significance of that omission and how it could have occurred. Since some very odd events –to put it mildly- have occurred in those courts in Rochester, I wonder whether this is another one of them.

In any event, to be on the safe side I have enclosed a copy of that Redesignation and Statement. They concern the two cases involved in my appeal, namely:

Cordero v. **Gordon**, case no. 03-CV-6021L
Cordero v. **Palmer**, case no.03-MBK-6001L

Please also note what I already brought to the attention of the clerk of the District Court, Mr. Rodney C. Early, to wit, that I have collected each of the items listed in that Redesignation, including those initially submitted to the bankruptcy court back on January 23; sequentially numbered their pages, printed and bound them. I stand ready to submit that record to the Court of Appeals upon receiving leave from you to do so. This Redesignation is certainly more comprehensive than the record on appeal in the dockets that I have received from the bankruptcy and district courts.

I look forward to hearing from you and remain,

sincerely,
Dr. Richard Cordero

Dr. Richard Cordero

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

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

May 5, 2003

Mr. Rodney C. Early, Clerk
United States District Court
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387

Dear Mr. Early,

I am a party in adversary proceeding 02-2230 in bankruptcy court. Matters therein were referred to the district court, and you assigned to it the following case numbers:

Cordero v. **Gordon**, case no. **03-CV-6021L**
Cordero v. Palmer, case no. 03-MBK-6001L

I have appealed from those orders to the Court of Appeals for the Second Circuit and in my notice of appeal, filed last April 25, I used those names and case numbers. However, the statement that thereupon your deputy, Ms. Margaret Ghysel, sent me on April 28, bears the following subject line:

Re: 03-cv-6021L – Cordero vs Palmer
03-MBK-6001 –Cordero vs Palmer

Obviously, there is a mistake since the defendant in 03-cv-6021L is Gordon, that is, Trustee Kenneth Gordon, not Palmer, or David Palmer, the defaulted defendant in the miscellaneous bankruptcy case. I kindly request that you correct this mistake promptly so that it does not lead to problems later on and that you let me know the course of action that you take to do so.

I spoke with yours Appeals Clerk Peggy, who indicated that I could submit to the district court my Redesignation of Items and Statement of Issues on Appeal, which I must prepare pursuant to FRAP Rule 6(b)(2)(B)(i). Hence, please find herewith a copy of it for good measure.

In this context, please note that I have collected each of the items listed in that Redesignation, including those initially submitted to the bankruptcy court back on January 23; sequentially numbered their pages, printed and bound them. I stand ready to submit that record either to you, if you request it in writing, or what is more inexpensive and practical, submit it upon your written instruction to the Court of Appeals directly. I believe that in this way I comply with FRAP 6(b)(2)(C)(ii), which provides that “all parties must do whatever else is necessary to enable the clerk to assemble and forward the record.”

I look forward to hearing from you and remain,

sincerely,

Dr. Richard Cordero

US Court of Appeals for the Second Circuit
Case Summary

Court of Appeals Docket #: 03-5023
Nsuit: 3422 STATUTES-Bkrup Appeals 801
In Re: Premier Van, et al v.
Appeal from: U.S. District Court WDNY

Filed: 5/2/03

Lower court information:

District: 0209-06: 03-cv-6021
Trial Judge: David G. Larimer

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. [03-5023] (ra)

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023] (ra)

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023] (ra)

5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume. (ra)

5/28/03 Scheduling order #1 filed. Record on appeal due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03. Argument as early as week of 9/22/03. (ra)

5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03. (ra)

5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received. (ps30)

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received (ps30)

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar) (ps30)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received. (ps30)

6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received. (ps30)

6/5/03 Record on appeal received in records room from team. (reg)

6/5/03 1st supplemental index on appeal filed. (ps37)

6/13/03

Record on appeal received in records room from team. (reg)

PACER Service Center			
Transaction Receipt			
07/07/2003 12:52:11			
PACER Login:		Client Code:	
Description:	dkt summary	Case Number:	03-5023
Billable Pages:	1	Cost:	0.07

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

In re PREMIER VAN LINES, INC.,

Debtor

Chapter 7 bankruptcy
case no. 01-20692

JAMES PFUNTNER,

Plaintiff

-VS-

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

Defendants

Adversary proceeding
no. 02-2230

RICHARD CORDERO,

Third party plaintiff

-VS-

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

Third party defendants

NOTICE OF MOTION
FOR DEFAULT JUDGMENT
AGAINST DAVID PALMER

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on June 25, 2003, or as soon thereafter as he can be heard, pursuant to Rule 7055 of the Federal Rules of Bankruptcy Procedure and Rule 55 of the Federal Rules of Civil Procedure, for entry of default judgment against David Palmer.

Dated: June 16, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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

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Chapter 7 Trustee
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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: June 16, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

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

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTNER,

Plaintiff

-VS-

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

Adversary proceeding
no. 02-2230

Defendants

RICHARD CORDERO,

Third party plaintiff

-VS-

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

Third party defendants

BRIEF IN SUPPORT OF
MOTION
FOR DEFAULT JUDGMENT
AGAINST DAVID PALMER

Dr. Richard Cordero affirms under penalty of perjury as follows:

1. At the hearing on May 21, 2003, of a motion raised by Plaintiff James Pfuntner, Dr. Cordero reported to the Court the findings of the inspection of his property in the Plaintiff's warehouse at 2140 Sackett Road, Avon, NY, (hereinafter 'the warehouse') on May 19, 2003.
2. Thereupon, the Court denied Mr. Pfuntner's motion and asked that Dr. Cordero both submit a separate motion for sanctions against Mr. Pfuntner and resubmit his application for default judgment against Defendant David Palmer that he had timely submitted on December 26, 2002.

3. Dr. Cordero maintains his position that default judgment under Rule 55 FR CivP, made applicable in adversary proceedings by Rule 7055 FR BkrP, is predicated on a party's "fail[ure] to plead or otherwise defend as provided by these rules and [when] that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default," (emphasis added). As to the entry of default judgment, "[w]hen the plaintiff's claim is for a sum 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," (emphasis added).
4. Mr. Palmer failed to answer Dr. Cordero's summons and complaint and did not appear to defend. This fact was stated in Dr. Cordero's application for entry of default of December 26, 2002. It has been certified by Clerk of Bankruptcy Court Paul Warren, who entered Mr. Palmer's default on February 4, 2003.
5. Together with his application December 26, 2002,, Dr. Cordero also submitted an Affidavit of Amount Due which set out an amount of \$24,032.08, and requested that default judgment be entered against Mr. Palmer for that amount plus per diem.
6. Having satisfied all the legal requirements for obtaining default judgment against Mr. Palmer, but mindful that the Court requested that Dr. Cordero inspect his property at the Plaintiff's warehouse, Dr. Cordero submits hereunder the findings of the inspection without prejudice to his position stated above.

A. Findings of the inspection

7. In the warehouse were several storage containers, but only two had labels bearing Dr. Cordero's name. One of those two containers was stacked on top of the other, as were others.
8. The panel at one end of the bottom container was removed by snapping out the wire clasps that fastened it to the four sides of the container. How shocking was the sight of the inside! Against one wall of the container was a bed-sofa and against the opposite one a dresser and boxes were piled pell-mell on top of them and all the way to the top, not even flat on them but also at an angle –and thus, on their edges-. Such weight left for years to rest on those pieces of furniture are likely to have busted the springs of the bed, compressed the cushions of the sofa, and indented and warped the wood of the dresser.
9. Likewise, a roll of carpet some 12' long had been folded in the middle so that its two ends touched each other...incredible! The folding causes the tissue on the outside of the fold to

stretch and that on the inside to wrinkle. When that roll is unfolded again and the carpet rolled out there will be unseemly marks along the middle section of the carpet where it was folded and it will hardly lie flat on the floor. Who on earth had so little common sense and foresight, not to mention basic knowledge of professional packaging, to do something like that?!

10. Then the panel at the opposite end of the container was removed...and another instance of the shockingly perfunctory packaging could be seen, namely, a wooden stool placed at an angle over the top of the dresser and the seat of the bed-sofa, and pressed down against them by all sorts of boxes and other objects stacked on top of the legs of the stool, which had no more padding than one layer of brown paper! Was it so difficult for the “packagers” to realize how the stool could scratch the surface of the dresser counter and puncture the cloth of the sofa or was it that they just could not care less?
11. One can only shudder at the thought of how the mirror of the dresser was packaged, and the framed original engraving with glass front, and the center table with chiseled glass top, and two Tiffany lamps, and the lamp shades of standing and table lamps, and the leather recliner with footrest, oh! the leather recliner, so posh that just to look at it had a soothing effect! And where are the Queen size mattress and the spring box, and the corner table with a drawer, and the TV table with swiveling top and underneath cabinet with bed linen, and three more counter stools, and the microwave oven large enough to cook a whole turkey, and the two approximately 4’x2’x2’ red metal trunks, and the boxes with kitchenware, and those with ceramic vases and plates, not to mention the tens of boxes of books, including expensive professional books, and the other items in Premier’s official inventory submitted to the Court, Mr. MacKnight, and the other parties as an attachment to Dr. Cordero’s letter to them of January 29, 2003?
12. One cannot imagine that all those pieces of property were professionally stored in only those two containers. What irreparable degradation that valuable property may have suffered after having been stuffed in the containers for 10 years by the method of ‘throw ‘em in and slam the door!’ Since Dr. Cordero paid for all those years the costliest and most comprehensive form of insurance, that is, replacement value, he is entitled to expect that his property be in as good condition as he handed it over for storage or that he be given the money to replace them.
13. Since the warehouse was used commercially to store household goods, its temperature and humidity as well as pests had to be controlled to prevent them from damaging the goods. But

it is difficult to imagine how mere garage doors to the warehouse could allow the control of anything. Moreover, right on top of Dr. Cordero's containers was a tear in the ceiling. What did it allow to drop from the roof onto the containers, for how long, and with what effect?

14. The 'labels' on the containers were nothing more than 8.5"x11" sheets of papers stapled or taped to the wood of the containers. Removing and affixing them would leave no marks. If some of Dr. Cordero's property was in any unlabeled or mislabeled containers in the warehouse, there was certainly nobody there with authority to open any container other than the two labeled with Dr. Cordero's name. In addition and as mentioned above, they too were double stacked.

B. Relief sought

15. Dr. Cordero respectfully requests that the Court:

- 1) enter default judgment against Mr. Palmer in the amount of \$24,032.08, incremented by a per diem of \$3.40 since the date of filing of Dr. Cordero's request for default, that is, December 26, 2002, until the date of payment of the whole amount or of its last installment;
- 2) order Mr. Palmer to bear the cost that Dr. Cordero may incur in collecting on the judgment;
- 3) order Mr. Palmer to compensate Dr. Cordero in the amount of \$1,500 for raising and presenting this motion;
- 4) order that it be taken as established for the purpose of this adversary proceeding that there has been damage to, and loss of Dr. Cordero's property held in Mr. Pfuntner's warehouse at Avon;
- 5) order that Mr. Palmer is prohibited from introducing into evidence any of Dr. Cordero's property held in Mr. Pfuntner's warehouse or its condition to support any claims or defenses that Mr. Palmer may raise to oppose the default judgment;
- 6) order that none of the containers in the Avon warehouse be removed therefrom until the issue of the liability to Dr. Cordero of other parties to this adversary proceeding has been determined and the Court provides for the containers' disposition;
- 7) after discovery and at the appropriate time for the removal of Dr. Cordero's property in Mr. Pfuntner's warehouse, charge Mr. Palmer jointly and severally with Mr. Pfuntner and Mr. MacKnight with the removal charges, for if he had moved Dr. Cordero's property to

the warehouse of Defendant Jefferson-Henrietta Associates, as he told Dr. Cordero that he had, or Mr. Pfuntner and Mr. MacKnight had allowed Dr. Cordero to remove his property when he requested permission to do so, at Dr. Cordero's instigation Mr. Christopher Carter of Champion Moving & Storage, as he stated in his letter of July 30, 2002, would have removed that property to Champion's warehouse at no charge to Mr. Palmer, Mr. Pfuntner, or Dr. Cordero –just as Mr. Carter removed the property of Premier's clients found in the Jefferson-Henrietta warehouse- whereby now Mr. Palmer, Mr. Pfuntner, and Mr. MacKnight must bear the consequences of their wrongful acts which caused that opportunity for free removal to be missed;

- 8) allow Dr. Cordero to present his arguments by phone given the hardship in terms of cost and time that requiring his appearance in person would cause; and
- 9) award Dr. Cordero any other relief as may seem just and proper.

CERTIFICATE OF SERVICE

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

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Chapter 7 Trustee
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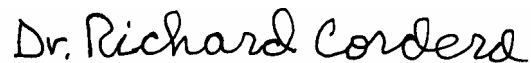
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Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706; fax (585) 263-5862

Dated: June 16, 2003
59 Crescent Street
Brooklyn, NY 11208



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

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, 2003Paul R. Warren
PAUL R. WARREN, Clerk of Court

Page 1 of 6

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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 in 2002, 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: submitted on December 26, 2002
resubmitted on June 16, 2003

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 resubmitted on June 16, 2003, and that the Clerk certified and entered the Fact of Default on February 4, 2003.

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 requested per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Affidavit of Amount Due.

Date: _____

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

UNITED STATES BANKRUPTCY COURT

Western District of New York

AFFIDAVIT OF AMOUNT DUE

In re:

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
filing of plaintiff's request for default

Date: submitted on December 26, 2002;
resubmitted on June 16, 2003

Dr. Richard Cordero

Plaintiff pro se

UNITED STATES BANKRUPTCY COURT
Western District of New York

ORDER

In re: _____

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 increased by a per diem of \$3.40 until payment of the whole judgment or of its last installment.

Date: _____

U.S. D. J.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTNER,

Plaintiff,

AP02-2230

-VS-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-VS-

DAVID PALMER, et al.,

Third-Party Defendants.

PRECAUTIONARY RESPONSE TO THE MOTION MADE BY
RICHARD CORDERO TO ENTER A DEFAULT JUDGMENT

To: Hon. John C. Ninfo, II, Chief United States Bankruptcy Judge:

The precautionary response of James Pfuntner to the motion made by Richard Cordero
for a default judgment against David Palmer respectfully shows:

1. On June 17, 2003 the undersigned attorney for James Pfuntner received a telecopy of a notice and motion by Richard Cordero seeking relief against David Palmer in the nature of an order to enter a default judgment.

2. The motion papers reflected Cordero's demand for relief in paragraph 15 against Plaintiff Pfuntner. Cordero's demand asserted a claim not previously put in issue in the adversary proceeding and asking for the right to store property that Dr. Cordero identified as belonging to him for an indefinite period of time.

3. It may be that Dr. Cordero's motion seeks other relief against Pfuntner that is not readily apparent from Paragraph 15.

LACK OF PROPER SERVICE

4. Pfuntner objects to the service of the motion essentially seeking summary judgment and a preliminary injunction without a) providing notice of the motion, b) not serving the motion in a manner and sufficiently in advance of the return date of the motion to comply with the rules applicable for service of motions, c) seeks to assert claims for relief not previously sought in the adversary proceeding or otherwise, d) fails to include the affidavit of any person with personal knowledge, and e) refers to documents that are not attached to the motion papers so that neither Pfuntner nor the court the exact document to which Defendant Cordero refers.

OBJECTION TO SUMMARY JUDGMENT

5. Pfuntner further objects to the use of hearsay, the letter referenced in the motion papers but not included therein, in support of any claim against them.

6. Pfuntner objects to the assertion of a new claim for moving expense by means of a motion for summary for partial summary judgment without first asking the court for leave to

amend the complaint to assert such claim and so that discovery on that issue, if appropriate, can be undertaken.

7. Cordero's assertion that Champion Moving & Storage would have removed his goods without cost at some time before July 30, 2003 but for Pfuntner and the undersigned has no merit and must be dismissed as a matter of law. Paragraphs 21 to 31 of Cordero's cross-claims and third-party complaints tells a contradictory story.

8. Specifically, Cordero alleged at paragraph 28 and paragraph 29:

28. Dr. Cordero called Champion's owner, Mr. Christopher Carter, who indicated that he had not received either his (Cordero's) property nor that of some other Premier customers.

29. Mr. Carter then examined the business files included among the Premier assets and equipment that he had removed from the Jefferson-Henrietta warehouse to Champion's warehouse. Thereby he discovered that Premier had assets including storage containers at Plaintiff's warehouse located on 2140 Sacket Road, in Avon, New York.....

9. There is no issue of fact that Champion had picked up the property it purchased before anyone realized that Premier had stored some customer property at the Sacket Road property. The facts alleged in the cross and counter claims conclusively rule out any argument that anything Pfuntner or anyone else did anything to prevent Champion from removing Cordero's property. Cordero's assertion of a claim has been advanced without a basis in fact.

10. Nor has Cordero made any showing or any pretense of a showing that if he called Champion or other reputable storage companies that he would not get his goods picked up at no cost as part of the customary services provided by household goods storage companies.

OBJECTION TO A PRELIMINARY INUNCTION

11. The motion does not state facts that show a right to the preliminary injunction to store his property at the Avon property sought by Cordero pending the resolution of the adversary proceeding. Nor has Cordero stated any principle of law that would authorize the court to require Pfuntner to retain possession of Cordero's property. Upon information and belief based upon papers recently received, Cordero believes that he has no obligation to take possession of his property although heretofore it has apparently been his position that he should have had unfettered access to his property so it could be removed.

DAMAGE CLAIMS

12. In the event that Cordero seeks to impose liability on Pfuntner for any damage to Cordero's property, Pfuntner notes that there is no proof that Pfuntner had any role in packing Cordero's property, had any contractual relationship with Cordero, or omitted to do anything in violation of any duty owed to Pfuntner that had any effect on the value or condition of the goods Cordero stored with Premier Van Lines, Inc.

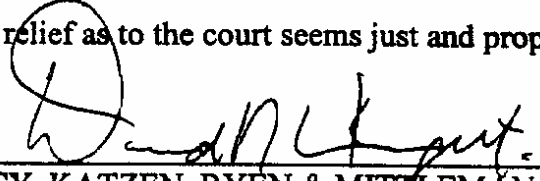
13. In the event that Cordero seeks to impose liability on Pfuntner for any damage to Cordero's property Pfuntner notes that there is no proof of any nature whatsoever of the value, age or condition of the goods when stored in 1993, whether the goods were used or new, the cost of the goods when purchased or acquired by Cordero, or the effect of the passage of 10 years in storage on the value of the goods even if packed in a manner complying with the standards of the storage business.

OBJECTION TO TELEPHONIC APPEARANCE

14. Pfuntner objects to Cordero appearing by telephone. The undersigned has been unable to fully understand all Cordero's presentations when he appears by telephone means, though the undersigned believes though is by no means certain that he has understood the substance of Cordero's arguments. The undersigned is advised that on a prior occasion, Cordero claimed the court reporter did not accurately or timely transcribe the words Cordero used during a previous court appearance. Cordero's arguments are likely to be more understandable if he were present in the courtroom. Pfuntner should not be prejudiced by his counsel being unable to understand an adverse party and have no assurance that the court hears and understands the same things as counsel.

Wherefore Plaintiff requests this court to deny so much of the motion that seeks relief against Pfuntner and grant such other and further relief as to the court seems just and proper.

Dated: June 20, 2003
Rochester, New York



LACY, KATZEN, RYEN & MITTLEMAN, LLP
David D. MacKnight, Esq., of counsel
Attorneys for James Pfuntner, Creditor
Office and Post Office Address
The Granite Building
130 East Main Street
Rochester, New York 14604-1686
Telephone: (585) 454-5650

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

May 5, 2003

Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House, 100 State Street
Rochester, NY 14614

Dear Judge Ninfo,

By now you will have received the copy of the letter that I faxed to Mr. Pfuntner and Mr. MacKnight last Wednesday, April 30, concerning my conversation with Mr. Pfuntner about my proposal to fly to Rochester on Monday, May 19, for the inspection of my property and my request that he confirm his agreement in writing. However, neither Mr. Pfuntner has called me nor I have received any letter. I called both on Friday morning and recorded a message for each. Mr. Pfuntner has not returned my call.

Mr. MacKnight just called me. I told him that I had not received Mr. Pfuntner's letter confirming that he agreed to my proposal that the inspection take place on Monday, 19, and that, as he offered, he would pick me up at the airport to take me to and from the warehouse, for as I told him, I do not drive and cannot lease a car at the airport to drive to and from the warehouse. Mr. MacKnight said that he would try to call Mr. Pfuntner and ask that he send me whatever he wanted. I told him that I needed his confirmation letter right away so that I could book the flight and that it was unreasonable to expect me to fly to Rochester on the off chance that Mr. Pfuntner might be there for the inspection. Mr. MacKnight said that people have different ideas of what is reasonable and that I should go there on the 19th and if Mr. Pfuntner blows me off, then I have something to complaint about. I asked him whether he would charge me with not having complied with the order that the inspection take place by May 21 if I do not receive the letter and do not go there. He said that he would contact Mr. Pfuntner and ask that he write to me. I told him that Mr. Pfuntner should call me so that we could make arrangements for him to fax me his letter...there was no response: Mr. MacKnight had hung up on me while I was speaking. How unprofessional and disrespectful!

I trust that you will agree that if Mr. Pfuntner, who was already in Florida when we spoke with me on Wednesday, does not send me a letter confirming my proposal and his, he would be giving the best indication of not wanting to commit himself to the inspection as discussed on the phone. As I have pointed out in my motions, in my letter of January 29, I submitted six dates to Mr. Pfuntner and Mr. MacKnight when I could fly to Rochester for the inspection. They neither accepted any nor rejected all. That sets a precedent of their unwillingness to conduct the inspection. Under those circumstances, it would be unreasonable to expect that I nevertheless fly to Rochester on May 19 just to see whether Mr. Pfuntner is there ready for the inspection. It would also be unreasonable for Mr. Pfuntner to send me that letter of confirmation at the very last minute and expect that I drop everything on my schedule and manage to find a seat on the flight to Rochester.

At the January 10 pre-trial conference you stated that within two days of receiving my slate of dates for the proposed trip you would have found the date most convenient to the parties in Rochester and inform me thereof. Hence, I respectfully request that you contact Mr. Pfuntner and find out what he intends to do and ask that he state so in writing and call me to make arrangements to send his letter to me by fax. Meanwhile, I look forward to hearing from you.

Sincerely, *Dr. Richard Cordero*

May 8, 2003

BY EMAIL
CorderoRic@yahoo.com

Dr. Richard Cordero

Re: 5/19/03 inspection

Dear Dr. Cordero:

You faxed a letter stating you have made arrangements with Mr. Pfuntner for an inspection on May 19, 2003. If you made the arrangements with Mr. Pfuntner, you have made arrangements. If you did not make arrangements, but just are putting your spin on things, then you should not expect Mr. Pfuntner to be present.

By a copy of this fax, I will ask one of office staff at Mr. Pfuntner's place of employment to fax you a confirmation at the above email address that the meeting is in Mr. Pfuntner's schedule for May 19th.

Very truly yours,

David D. MacKnight

Cc: Mr. James Pfuntner

05-08-03

To: Dr Cordero

From: James R Pfuntner

This letter is to confirm our conversation that you are coming to Avon NY on 5-19-03.

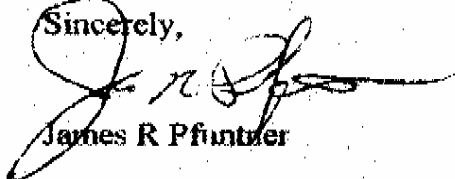
You are arriving in Rochester NY on Jetblue Airlines at 10:40 AM. As I previously told you I will attempt to have myself or my representative there at the airport to meet you but if we can't you will have to take a taxi or other form of transportation to the warehouse on Sackett Rd.

Either way there will be someone to meet you at the warehouse at 2140 Sackett Rd from 11:30 AM that day and will wait for you until 1:00 PM.

There are 2 storage boxes in the warehouse with the name "Cordero" on them and you are welcome to inspect the contents of those boxes. I or my representative will assist you in any way we can to open the boxes for inspection.

They appear to be not hard to open, but since I've never opened one I have no way to know how hard that will be.

Sincerely,



James R Pfuntner

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

May 12, 2003

Dear Madam or Sir,

Please be advised that Mr. James Pfuntner and Dr. Richard Cordero have agreed to conduct the inspection of Dr. Cordero's property in Mr. Pfuntner's warehouse on 2140 Sackett Road, Avon, NY, on Monday, May 19.

Dr. Cordero will fly from JFK Airport in New York City to Rochester International Airport on flight 20 of JetBlue and is scheduled to arrive at 10:40a.m.

Since Dr. Cordero does not drive, any offer to take him between the airport and the warehouse will be greatly appreciated.

Sincerely,

Dr. Richard Cordero

Certificate of Service

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

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

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

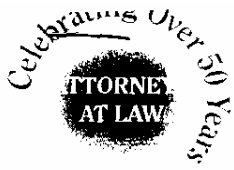
Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5706

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

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

Dated: May 11, 2003
59 Crescent Street
Brooklyn, NY 11208-1515

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



Lacy, Katzen, Ryen & Mittleman, LLP

DAVID D. MacKNIGHT, ESQ.
dmacknight@lacykatzen.com

June 5, 2003

Honorable John C. Ninfo, II
Chief United States Bankruptcy Judge
United States Bankruptcy Court
100 State Street
Rochester, New York 14604

Re: Premier Van Lines, Inc.
Case No.: 01-20692

Dear Judge Ninfo:

To date, Dr. Cordero has made no effort to take possession of or remove his property from the Sackett Road warehouse.

I have been advised by prospective purchaser of the premises that Dr. Cordero did not secure the box that he had opened for inspection but left the part of the box removed leaning against the opened box.

Further, I have been advised by the prospective purchaser that each of the boxes has been placed on floor level. Although I have been lead to understand that there were four Premier related containers left on the premises, the prospective purchaser advises that these nine appear to be containers that may have a relationship to Premier's use of the premises.

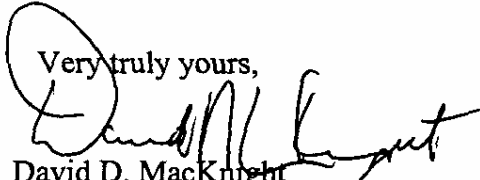
Finally, the prospective purchaser advised me that it is his belief that the warehouse roof does not leak.

The Granite Building – 130 East Main Street – Rochester, NY 14604-1686 – Tel. 585-454-5650 – Fax 585-454-6525
www.lacykatzen.com

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Divorce and Family Law • Employment Law • Estates, Trusts and Elder Law Services • Municipal Law

Hon. John C. Ninfo, II
June 5, 2003
Page 2

This letter is intended to keep the court and the parties current with the progress of this case.

Very truly yours,

David D. MacKnight

DDM/cc

Cc: Client
Michael Beyma, Esq.
Dr. Richard Cordero
Kenneth Gordon, Esq.
Ray Stilwell, Esq.
David Dworkin
Jefferson Henrietta Associates
United States Trustee

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

June 14, 2003

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

Dear Mr. MacKnight,

I have received a copy of your letter of June 5 to Judge Ninfo. Please note the following:

There is no court order requiring me to make any efforts to take possession of or remove my property from the Sackett Road warehouse. By contract, I have a counterclaim against your client that has not yet been resolved. Its resolution requires that his liability for the loss of and the damage to my property be determined. There is also a default judgment applied for and pending against Mr. David Palmer. Both matters would be rendered much more complex if the property were to be removed now. If your client removes that property now or causes it to be removed, he will further aggravate his liability.

I request that you submit affidavits by the prospective purchaser or purchasers of the premises that, as stated in your letter, allege "that Dr. Cordero did not secure the box that he had opened for inspection but left the part of the box removed leaning against the opened box." In this context, I refer you to my affidavit to the contrary attached hereto.

I also request that you state what "inquiry reasonable under the circumstances," as required by Rule 9011 FRBkrP, you conducted that allowed you to make such representations to the Court.

If you fail to either prove that statement or withdraw it within 21 days of the service to you of the accompanying motion based on Rule 9011, I will file it with the Court to ask, for the reasons stated therein, for sanctions against you and your law firm, including an award to me of the reasonable expenses and attorney's fees incurred in presenting the motion.

You also stated that the boxes have been removed to the floor level. That removal is as tardy and irrelevant for the purpose of the two discovery orders that you and Mr. Pfuntner violated as they are for the inspection that took place on May 19. Moreover, whoever removed them engages his or her liability. Hence, I request that you state the name and addresses of the person or persons who removed them, when, and for what purpose.

Yours sincerely,

Dr. Richard Cordero

cc: Hon. John C. Ninfo, II
parties in the Certificate of Service

**UNITED STATES BANKRUPTCY 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

**NOTICE OF MOTION
FOR SANCTIONS
AND COMPENSATION
FOR MAKING
FALSE REPRESENTATIONS
TO THE COURT**

RICHARD CORDERO,
Third party plaintiff

-VS-

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on August 6, 2003, or as soon thereafter as he can be heard, for sanctions under Rule 9011 of the Federal Rules of Bankruptcy Procedure to be imposed on David MacKnight, Esq., attorney for Plaintiff James Pfuntner, for making the false representations to the Court and the parties contained in his letter dated June 5, 2003, and filed with the Court on June 9, 2003. Mr. MacKnight failed to either withdraw or prove those false representations within the allowed time. Consequently, the motion is now being filed with the court. Copies of the supporting brief and affidavit as well as of Dr. Cordero's letter to Mr. MacKnight of June 14, 2003, were served on the parties on June 14.

Dated: July 21, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

David D. MacKnight, Esq.
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130 East Main Street
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tel. (585) 454-5650
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Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Dated: July 21, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

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

In re PREMIER VAN LINES, INC.,

Debtor

Chapter 7 bankruptcy
case no. 01-20692

JAMES PFUNNTER,

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

**BRIEF SUPPORTING MOTION
FOR SANCTIONS
AND COMPENSATION
FOR MAKING
FALSE REPRESENTATIONS
TO THE COURT**

RICHARD CORDERO,

Third party plaintiff

-VS-

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

Third party defendants

Dr. Richard Cordero affirms under penalty of perjury as follows:

1. Dr. Cordero received a copy of the letter dated June 5, 2003, of David MacKnight, Esq., attorney for Plaintiff James Pfuntner, addressed to the Hon. John C. Ninfo, II. Therein Mr. MacKnight alleges the following:

“I have been advised by prospective purchaser [sic] of the premises that Dr. Cordero did not secure the box that he had opened for inspection but left the part of the box removed leaning against the opened box.

2. That allegation is contrary to the facts and thus, false, as stated in Dr. Cordero’s affidavit of June 14, 2003. Therein he affirms that after the inspection and in the presence of Ms. Sandy Mattle, Chris Ormand, and himself, the only container that had been opened for the inspection was closed by Chris putting back its two panels and securing them to the container with the same metal clasps that they had before being opened.
3. Mr. MacKnight also states in his letter that” “This letter is intended to keep the court and the parties current with the progress of this case.” Thereby Mr. MacKnight states that he intends his

allegation to be taken by the Court and the parties into account when they make decisions concerning this adversary proceeding. Hence, he intends his letter to affect the course of this case. As a matter of fact, the letter has been entered in the docket as docket entry 90.

4. Mr. MacKnight could have found out that the allegation “by prospective purchaser,” was false if had only made “an inquiry reasonable under the circumstances,” as required of him by Rule 9011 F.R.Bkr.P., before making a representation to the Court intended to influence its decision making process. If he had proceeded with stop-and-think caution upon being so “advised by prospective purchaser,” he would have realized how odd, to put mildly, for an owner to open a container of his property in somebody else’s warehouse and then walk away leaving it open. That realization, if nothing else, should have induced Mr. MacKnight into making reasonable inquiries before dashing with odd representations to the Court and the parties.
5. Far from it, his degree of carelessness in making such an allegation is suggested by the fact that he does not even name the person or persons who “advised” him. Indeed, it cannot be determined from his letter whether it was one or more persons because Mr. MacKnight was careless in not checking his own letter either, which would have allowed him to catch the grammatical error in his phrase “I had been advised by prospective purchaser of the premises” and correct it by choosing any of three options, namely:

I have been advised by **a** prospective purchaser; or
the prospective purchaser; or
prospective purchasers.

6. Were Mr. MacKnight in the habit of checking before making statements, he only had to inquire of the people that attended the inspection, including Dr. Cordero. Mr. MacKnight certainly did not ask Dr. Cordero. He does not even claim to have asked Chris or Ms. Mattle. He only claims to have heard it from that or those unnamed ‘prospective purchaser[s].’ If neither Chris nor Ms. Mattle is such “prospective purchaser,” then the latter was not at the inspection and cannot possibly have any first-hand knowledge of what occurred on that occasion, let alone what Dr. Cordero did or did not do. The allegation is mere hearsay, a baseless supposition, or a self-serving and knowingly untrue statement.
7. Given that it is a false allegation intended to lay the foundation for claims and defenses and the ensuing decisions by the Court, Dr. Cordero must object and does object to it. In addition, this false allegation must be brought to the attention of the Court to make it aware of another element of Mr. MacKnight’s conduct, which should be put in the context of his conduct described in Dr. Cordero’s motion of last June 6 for sanctions against Mr. MacKnight. By now these elements form a pattern that reveals the type of lawyering that Mr. MacKnight practices.
8. In harmony with Rule 9011, Dr. Cordero asked Mr. MacKnight by letter of June 14, to prove or

withdraw his allegation. At least 21 days have gone by since, but Mr. MacKnight has failed to do so.

9. Consequently, Dr. Cordero has had to file this motion since Mr. MacKnight's factual contention is utterly lacking in evidentiary support because contrary to fact and intended to influence the Court and the parties, thereby violating Rule 9011, particularly its subdivisions (b)(1) and (3).

Relief sought

10. Therefore Dr. Cordero respectfully requests that the Court:

- 1) impose sanctions jointly on Mr. MacKnight and Lacy Katzen Ryen & Mittleman, LLP;
- 2) order Mr. MacKnight and his law firm jointly to compensate Dr. Cordero in the amount of \$1,500 for the reasonable attorney's fees and other expenses, such as of time, effort, and work, incurred by Dr. Cordero as a direct result of Mr. MacKnight's violation;
- 3) allow Dr. Cordero to present his arguments by phone given the hardship in terms of cost and time that requiring his appearance in person would cause; and
- 4) award Dr. Cordero any other relief as may seem just and proper.

Dated: June 14, 2003, filed on July 21, 2003
Brooklyn, NY 11208
59 Crescent Street

Dr. Richard Cordero

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

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

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

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

**AFFIDAVIT
CONCERNING
FALSE REPRESENTATIONS
TO THE COURT**

RICHARD CORDERO,

Third party plaintiff

-VS-

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

Third party defendants

I, Dr. Richard Cordero, affirm under penalty of perjury as follows:

1. Pursuant to court order, I made a trip from New York City to Rochester and to the warehouse at 2140 Sackett Road, Avon, NY, on May 19, 2003, to inspect the storage containers kept there that according to Plaintiff James Pfuntner had a label bearing my name affixed to them. Together with me were Chris Ormand and Ms. Sandy Mattle, who represented Michael Beyma, Esq., attorney at Underberg & Kessler for Defendants M&T Bank and Mr. David Delano. Nobody else entered the warehouse or participated in the inspection.
2. Inside the warehouse were two storage containers bearing my name and stacked one on top of the other. The top one could not be inspected. The bottom one was inspected by Chris removing with a screwdriver and a rubber hammer the metal clasps that held closed each of its two end panels. No item of its content was removed.
3. After the inspection and in the presence of Ms. Mattle and me, Chris closed that container by

putting back those two panels and securing them with their metal clasps.

4. Then Ms. Mattle and I left the warehouse, leaving the container in the condition in which we found it.
5. Consequently, any allegation by any person 'that I did not secure the box that I had opened for inspection but left the part of the box removed leaning against the opened box' is contrary to the facts and thus, false.

Dated: June 14, 2003
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Dated: June 14, 2003
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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

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

NOTICE OF WITHDRAWAL
AND
RENOTICE OF MOTION
FOR SANCTIONS
AND COMPENSATION
FOR MAKING
FALSE REPRESENTATIONS
TO THE COURT

RICHARD CORDERO,

-vs-

Third party plaintiff

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE that today the court has informed Dr. Cordero that it has denied his request to be allowed to appear by phone to argue his motion, noticed on July 20 for next August 6, for sanctions under Rule 9011 of the Federal Rules of Bankruptcy Procedure to be imposed on David MacKnight, Esq., attorney for Plaintiff James Pfuntner, for making the false representations to the Court and the parties contained in his letter dated June 5, 2003, and filed with the Court on June 9, 2003. Furthermore, the court has let Dr. Cordero know that it will either deny the motion if he fails to appear in person or does not obtain the parties' consent to postpone it to October 16. Dr. Cordero objects.

Indeed, he has appeared by phone on eight occasions. Moreover, this late notice of denial makes it very expensive to book a flight and a hotel for next Tuesday, only five days in advance, so as to be in the courtroom at 9:30 a.m. on Wednesday. Nor is it reasonable to expect that Dr.

Cordero should on such short notice drop everything he has to do in order to clear two days so that he can travel from New York City to Rochester to appear in court for a 15 to 20 minutes motion. Precisely at a time when the court makes greater use of high technology to render the prosecution of cases less burdensome and time-consuming, for example, by adopting the electronic filing system, the court denies Dr. Cordero the use of a speakerphone to appear in the courtroom although it allows other parties to do so. Hence, Dr. Cordero considers this denial to be late, unjustified, and a violation of the requirement under Rules 1001 and 1 of the F.R.Bkr.P. and F.R.Civ.P., respectively, that the rules of procedure be construed and administered to secure an inexpensive and speedy determination of every proceeding and action.

Therefore, Dr. Richard Cordero has given notice to the court that he withdraws his motion and will renote and is hereby renoting it for October 16, 2003, at 9:30 a.m., or as soon thereafter as he can be heard by the court at the United States Courthouse on 100 State Street, Rochester, New York, 14614.

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Dated: July 31, 2003
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Dr. Richard Cordero

Ph.D., University of Cambridge, England
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July 17, 2003

Mr. Robert Rodriguez
Deputy Clerk of Court
United States Court of Appeals
for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Copies of orders missing from record of USCA dkt. no. 03-5023

Dear Mr. Rodriguez,

As discussed last Tuesday on the phone, I am submitting copies of the two orders of March 27, 2003, issued by the District Court for the Western District of New York that are missing from the red folder of the Court of Appeals record of my case. They pertain to the following cases, respectively, within the case in chief
In re Premier Van Lines:

*Cordero v. **Gordon***, case no. 03-CV-6021L
and
*Cordero v. **Palmer***, case no.03-MBK-6001L

Those are the final orders from which I am appealing, as set forth in my notice of appeal to the Court of Appeals of April 25, 2003. For the purpose of computing the timeliness of my appeal, it is important that there be no doubt that I am appealing from them even if I am also appealing from previous orders that led to those two.

sincerely,

Dr. Richard Cordero

**UNITED STATES BANKRUPTCY 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

NOTICE OF MOTION
FOR SANCTIONS
AND COMPENSATION
FOR FAILURE TO COMPLY
WITH DISCOVERY ORDERS

RICHARD CORDERO,

Third party plaintiff

-vs-

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on June 25, 2003, or as soon thereafter as he can be heard, for sanctions under Rules 37 and 34 FRCivP, made applicable in adversary proceedings by Rules 7037 and 7034 FRBkrP, respectively, to be imposed on Plaintiff James Pfuntner and his attorney, David MacKnight, Esq., for failure to comply with two discovery orders on setting up the date for, and conducting, a trip and inspection of property in Mr. Pfuntner's warehouse on 2140 Sackett Road, Avon, NY.

Dated: June 6, 2003

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Dated: June 6, 2003
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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

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

**BRIEF IN SUPPORT
OF MOTION FOR
SANCTIONS AND
COMPENSATION FOR
FAILURE TO COMPLY
WITH DISCOVERY ORDERS**

RICHARD CORDERO,

Third party plaintiff

-vs-

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

Third party defendants

Dr. Richard Cordero affirms under penalty of perjury as follows:

1. The inspection of property ordered by the Court at the pre-trial conference on January 10, 2003, and again at the hearing on April 23, 2003, was conducted on Monday, May 19, 2003, at Plaintiff James Pfuntner's warehouse on 2140 Sackett Road, in Avon, NY. (hereinafter 'the warehouse').
2. Plaintiff Pfuntner and his attorney, David MacKnight, Esq., showed flagrant contempt for the two discovery orders by failing to comply with their instructions on setting up the date for a trip and inspection of property in Mr. Pfuntner's warehouse and failing to take the precisely identified preparatory measures necessary for the inspection.
3. Mr. Pfuntner and Mr. MacKnight failed to choose any of the six dates for the trip and inspection proposed by Dr. Cordero pursuant to the first order or to reject all, whereby they caused Dr. Cordero's preparatory work go to waste and forced him to keep those dates open in his calendar for no good purpose and to his detriment.

4. Mr. Pfuntner and Mr. MacKnight failed to work in good faith and unnecessarily increased the cost in time, effort, and money, not to mention aggravation, for Dr. Cordero in setting up a seventh date for the trip and inspection.
5. On the day of the inspection, not only did Mr. Pfuntner not attend the inspection, but he also failed to have there the warehouse manager, who was to have been his representative in the event of his absence; nor did he send Mr. MacKnight either.
6. Mr. Pfuntner also failed to provide, as required by the Court orders and agreed with Dr. Cordero, to take the necessary preparatory measures to provide access to all the containers, making only one container accessible and even that container's content could not be fully inspected.
7. What little property Dr. Cordero could surmise that belonged to him was so improperly stored, that it is reasonable to conclude that it sustained damage. The rest of his property, which Mr. Pfuntner did not want to have inspected, must be deemed lost.
8. In application of Rule 37 FRCivP, on failure to make, or cooperate in, discovery and concomitant sanctions, and Rule 34 FRCivP, on entry upon land for inspection, made applicable in adversary proceedings by Rules 7037 and 7034 FRBkrP, respectively, Mr. Pfuntner and Mr. MacKnight must now face court sanctions for having contemptuously disregarded two court orders requiring such discovery and must likewise compensate Dr. Cordero for having intentionally made him waste his time, effort, and money and caused him so much aggravation.

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I. Statement of facts

A. Overview of Mr. Pfuntner's and Mr. MacKnight's intentional and contemptuous disregard for court orders

9. Mr. Pfuntner has provided Premier Van Line with warehouse services under a lease for years, since well before March 5, 2001, when Premier's bankruptcy case 01-20692 was filed. He has the means to conduct a warehouse business. Premier's records show that Premier used the warehouse for years to store its clients' property, including Dr. Cordero's. He paid rent under a storage contract with Premier, which then moved to a different warehouse, namely that of Defendants Jefferson-Henrietta Associates and Mr. David Dworkin. The latter as well as Premier assured Dr. Cordero that his property was there.
10. Then Premier went bankrupt and Mr. Pfuntner, his landlord, knew it, as shown by the bankruptcy case docket. But with the same irresponsibility that Premier did not tell Dr. Cordero, Mr. Pfuntner did nothing to contact Premier's clients, including Dr. Cordero, to ask them either to remove their property from his warehouse or enter into a storage contract with him...birds of the same feather. When Dr. Cordero found out that the assurances that his property was at the Jefferson-Henrietta warehouse were lies, he searched for his property. He found out that Premier had left it behind in Mr. Pfuntner's warehouse. Yet, rather than Mr. Pfuntner release his property to him, he sued everybody around, including Dr. Cordero, to make up for what Premier had failed to pay him under the warehouse lease.
11. Because of the irresponsible way in which irresponsible Premier and Mr. Pfuntner stored and warehoused property, Dr. Cordero's property was not to be inspected. Thus, for months before and after suing Dr. Cordero, Mr. MacKnight disregarded requests for permission to inspect it and on his advice, as Mr. Pfuntner stated in his conversation with Dr. Cordero on September

16, 2002, Mr. Pfuntner refused permission to inspect it.

12. Then Mr. Pfuntner and Mr. MacKnight concocted their disingenuous motion of April 10, where they pretended that this was just a case in interpleader and requested the Court to ship Dr. Cordero's property, at his expense, to another warehouse. Had the Court done that, the chain of custody would have been broken and then, how could anybody be sure that any damage to, or loss of, Dr. Cordero's property had not been caused by the moving company or the receiving warehouse? In that underhanded way, Mr. Pfuntner would have misled the Court into giving him a worry-free ticket to balmy Florida, where he has already set up shop, while the Court and Dr. Cordero would have gotten stuck with the addition of one or two more parties to an already entangled case.
13. Unfortunately for them, their April 10 motion was not granted at its hearing on April 23, 2003. Instead, the Court ordered discovery. Once more, Mr. Pfuntner and Mr. MacKnight did what they had already done with the first discovery order that the Court had adopted at the pre-trial conference on January 10, 2003: They intentionally disobeyed the second order, this time by working in bad faith to avoid setting up the trip and inspection date and failing to take precisely identified measures necessary for them and discussed at the pre-trial conference, in Dr. Cordero's letter of January 29, 2003, at the hearing, and with Mr. Pfuntner in April and May. As a result, only some of the property listed on Premier's inventory requested by Mr. MacKnight in his letter of December 30, 2002, and provided by Dr. Cordero to him and the Court with his January 29 letter was found in only one container made available for inspection.
14. All this shows a pattern of conduct intended to prevent and avoid the trip and inspection, even when ordered twice by the Court. For their contemptuous disregard of court orders and for all the waste of time, effort, and money and the tremendous aggravation that they have caused to Dr. Cordero, Mr. Pfuntner and Mr. MacKnight should now be sanctioned and ordered to compensate Dr. Cordero.

B. They disregarded the 1st discovery order of January 10, 2003

15. Although Mr. Pfuntner filed this adversary proceeding at the end of September 27, 2002, the first meeting of any kind among the parties was the pre-trial conference that the Hon. John C. Ninfo, II, held on January 10, 2003. On that occasion, Judge Ninfo asked Mr. MacKnight whether his client, Mr. Pfuntner, was agreeable to the inspection of the two containers in his warehouse in Avon, NY, said to hold Dr. Cordero's property. Mr. MacKnight replied that Mr.

Pfuntner was agreeable to it.

16. Then the Court directed Dr. Cordero to submit to it three dates when he could make the trip from New York City, where he lives, to Avon to inspect those containers. It stated that within two days of receiving them it would determine the most convenient date for all the parties and inform Dr. Cordero so that he would have the necessary time that he had indicated he needed to book his flight.
17. It is important to note that the presence of any of Dr. Cordero's property in those containers was revealed by Mr. MacKnight in his letter of December 30, 2002, to be a mere assumption, for he wrote that:

"As I understand matters, the most that anyone has said is that there is a storage container at the Sackett Road, Avon warehouse with your name on the outside."

18. This means that Mr. MacKnight had advised and agreed with Mr. Pfuntner to sue Dr. Cordero for storage fees on the claim that Plaintiff Pfuntner had stored Dr. Cordero's property in the Plaintiff's warehouse although Mr. MacKnight had failed to conduct first "an inquiry reasonable under the circumstances [to determine] that the allegations and other factual contentions have evidentiary support," as required under Rule 9011(b) FRBkrP, for they did not even know whether they had stored anything more than a label with Dr. Cordero's name on it.
19. As a matter of fact, that is precisely the only thing that they stored of another party that they nevertheless sued, namely, Rochester Americans Hockey Club, Inc. This is unwittingly revealed by Mr. MacKnight in his December 30 letter:

"There is another storage container with the Rochester Amerks' name on the outside. The Amerks don't believe that they have any property in storage."

20. How irresponsible of Mr. MacKnight and Mr. Pfuntner! They just sued everybody around to see if something would stick. Yet, they had other options that would have allowed them to proceed responsibly: They could have replied to Dr. Cordero's letter of August 26, 2002, to Mr. MacKnight and the conversation with Mr. Pfuntner on September 16, 2002, both dated before their suit was filed and in both of which Dr. Cordero requested permission to inspect and remove his property. Far from agreeing, Mr. MacKnight never replied to that letter, nor did he take or return Dr. Cordero's phone calls, or send to Dr. Cordero the letter that Mr. Pfuntner said he would ask Mr. MacKnight to send to Dr. Cordero. Mr. Pfuntner, in addition, told Dr. Cordero that on Mr. MacKnight's advice, he did not agree to the inspection and removal.

Likewise, they did not provide any information on his property that Dr. Cordero requested in his letters to them of October 7 and 17, 2002.

21. By so irresponsibly submitting pleadings and conducting a case claiming storage fees with no more evidentiary support than a label with a name, Mr. Pfuntner and Mr. MacKnight violated Rule 9011(b). By behaving with equal irresponsibility with regard to the Court's discovery orders, both must now face sanctions and compensate Dr. Cordero.
22. Indeed, on January 29, Dr. Cordero sent to the Court a letter proposing, not three but rather six dates for the trip and inspection that spanned February and March. What is more, when serving it on the parties, he sent a personalized letter to Mr. MacKnight, as well as the others, to encourage him to take the initiative and notify to the Court his preferred date so as to expedite the process.
23. But he failed to do so. What he did was show contempt for the Court. So at a hearing on February 12, Dr. Cordero brought up the issue of the date for the trip and inspection given that the Court was supposed to get back to Dr. Cordero within two days of receiving his proposed dates. Judge Ninfo stated that he was still waiting on Mr. MacKnight to let him know his preferred date.
24. However, neither Mr. MacKnight nor Mr. Pfuntner ever communicated to Dr. Cordero in any way whatsoever that they had chosen any of his six proposed dates or rejected all. As a result, all of Dr. Cordero's work of researching common carriers and hotels for their schedules, location, and fares as well as his rearrangement of his calendar to clear those dates went to waste. What is more, they forced Dr. Cordero to keep those six dates open in his calendar for no good purpose and to his detriment.
25. For such contemptuous and irresponsible conduct, Mr. Pfuntner and Mr. MacKnight must now face sanctions and compensate Dr. Cordero.

C. Out of the blue Mr. Pfuntner summons Dr. Cordero to Avon on March 25

26. So long was the wait that the six dates elapsed.
27. Then when it suited him, Mr. Pfuntner called 'out of the blue' to ask Dr. Cordero that he come from New York City to Avon for the inspection on April 23, 24, or 25. When Dr. Cordero asked whether the preparatory measures discussed in his letter of January 29 had been taken, Plaintiff Pfuntner claimed that he did not know anything about any such letter. Dr. Cordero told him that such measures had to be taken to insure the success of the trip and inspection. Consequently, he told the Plaintiff that since the Court had ordered the inspection, it had to be involved in setting up the date and insuring that the preparatory measures had been taken.

28. That did not sit well with Mr. Pfuntner because by then he did not want to have anything else to do with his own adversary proceeding, the one that he had had Mr. MacKnight file in September 2002. What he wanted, and Mr. MacKnight confirmed in his letter of March 26, was to be free to leave for sunny Florida, where he has another business.
29. It is appropriate to note here the accepted legal principle that the knowledge of the attorney is imputed to his client. Thus, at the instigation of Dr. Cordero at the January 10 pre-trial conference, the Court discussed the need for preparatory measures for the trip and inspection. Mr. MacKnight was present there and had the obligation to report thereon to his client, Mr. Pfuntner. Moreover, Dr. Cordero sent to Mr. MacKnight that letter of January 29 discussing specific necessary preparatory measures. Mr. MacKnight's knowledge of those measures is imputed to his client. Mr. Pfuntner's claim that he did not know about them is inadmissible.

D. Mr. MacKnight's unreasonable letter of March 26, 2003

30. As a matter of fact, Mr. Pfuntner did report to his attorney on his conversation with Dr. Cordero. The following day, March 26, Mr. MacKnight wrote to Dr. Cordero to accuse him of having:

"...refused to set a date when he [Mr. Pfuntner] called. Whatever caused you to make such a claim [that the Court had to be involved] and delay a resolution of this matter..."

31. After having ignored for months the Court's order and Dr. Cordero's six dates, they demanded that when Mr. Pfuntner called to summon Dr. Cordero to Avon for the inspection, Dr. Cordero had to drop everything in his calendar, stand up, and right then and there, while on the phone, say "Yes, Sir!, whenever you want." How outrageously unreasonable of both of them!

E. Their disingenuous motion of April 10, 2003

32. In light of Mr. Pfuntner's claim that he did not know anything about the preparatory measures for the trip and inspection that Dr. Cordero had discussed in his letter of January 29, Dr. Cordero wrote to Mr. MacKnight on April 2, commenting on that claim and requesting assurances on Mr. Pfuntner's willingness to take those measures. Mr. MacKnight never replied to that letter.
33. Then Dr. Cordero raised his April 3 Motion for Measures Relating to Trip to Rochester and Inspection of Property. This motion was not heard because by letter of April 7 the Court required that Dr. Cordero make a trip to Rochester to argue in person, not by telephonic appearance, the measures to make a trip to Rochester.

34. In his April 3 motion Dr. Cordero discussed in detail how unreasonable were Mr. Pfuntner's phone call of March 25 and Mr. Pfuntner's letter of March 26. Once more he made Mr. Pfuntner and Mr. MacKnight aware of specific preparatory measures for the trip and inspection, and of the need for Mr. Pfuntner to make sure:

“...that he has access to the containers, has the keys or tools to open them, and can provide for their content to be seen.”

35. Before Dr. Cordero renoticed his April 3 motion for a motion day and instead of replying to it, Mr. MacKnight and Mr. Pfuntner raised one of their own on April 10. In paragraph 10, they qualified Dr. Cordero's measures for “regulating the inspection...entirely unwarranted.” How disingenuous, for Mr. Pfuntner, as a warehouse owner, and Mr. MacKnight, who claims to have known him for 15 years and must be quite familiar with his business, knew that without taking those measures Dr. Cordero's property in the containers could not be inspected.

36. The disingenuousness of their motion of April 10 was equally blatant in so many other respects. Thus, they concealed the fact that they had sued Dr. Cordero for storage fees and pretended that their action was in interpleader, even though before they filed it both Defendants Trustee Kenneth Gordon and M&T Bank had stated in writing that they had no claim to Dr. Cordero's property and requested that it be released to him. There were no “conflicting rights of various persons and entities” at all!, as Mr. Pfuntner and Mr. MacKnight alleged in paragraph 1 of their motion. All they wanted was storage fees from whomever to recoup the loss that Mr. Pfuntner sustained at the hands of his only client among all the parties to this adversary proceeding, namely, Premier Van Lines, which failed make payments under the warehouse lease until it went bankrupt.

37. Likewise, they concealed the fact that back in January the Court had ordered the trip and inspection and Dr. Cordero had complied by proposing six dates therefor. Far from admitting their disregard of those dates, Mr. Pfuntner and Mr. MacKnight pretended that they had taken the initiative to set up the date when:

“5. ...Plaintiff's counsel requested that Plaintiff contact Dr. Cordero to set a time for an inspection.

“6. Thereafter, Plaintiff's attorney again contacted Plaintiff to determine whether a date and time had been set. Plaintiff advised that, despite his efforts, he had been unable to fix a date for Dr. Cordero to inspect the contents of the containers.”

38. But there had been no “efforts.” All there had been was Mr. Pfuntner's call out of the blue on March 25.

39. Not only disingenuous, but also incredibly ridiculous was their claim that their own adversary proceeding was merely an action in interpleader filed as an “accommodation” to the parties. How much capacity for candor can a lawyer have who tries to pass off a lawsuit as an “accommodation” to the defendants? Had they wanted to ‘accommodate’ Dr. Cordero, they would have granted his request to inspect and remove his property made in his letter to them on August 26 and October 7 and 17, and in his conversation with Mr. Pfuntner on September 16, 2002.
40. To top it off, Mr. MacKnight pretended that he also made another effort to set an inspection date because at a hearing on March 26, 2003, concerning a totally unrelated matter,
- “7....During the course of those proceedings, Plaintiff’s counsel briefly brought up the status of the inspection by Dr. Cordero and some of the misapprehensions on Dr. Cordero’s part that might have interfered with the process of setting a date for an inspection.”
41. However, Mr. MacKnight concealed that he had not noticed any motion to discuss an unrelated matter at that hearing, so that in the middle of the Court’s discussion of the matter at hand, and thus without even showing the patience or the courtesy of waiting for it to be disposed of, Mr. MacKnight just stood up and began talking about his own subject. Dr. Cordero asked the Court whether they were going to discuss the noticed motion to its disposition or take up that other subject. The Court replied that they were going to discuss the motion and moved on. Does barging into a hearing and attempting to highjack it to another subject count as an ‘effort,’ let alone an effective one, to deal with the Court’s January order for the trip and inspection that Mr. Pfuntner and Mr. MacKnight had disregarded for months?
42. Other instances of concealment of facts and the intentional conveying of misrepresentations and misimpressions in Mr. MacKnight’s April 10 motion are identified and discussed in Dr. Cordero’s brief in opposition of April 17, section IV. Disingenuous motion detracts from Pfuntner’s and MacKnight’s credibility. They should only provide the Court with the measure of Mr. Pfuntner’s and Mr. MacKnight’s disingenuousness and contempt for court proceedings... and the Court should react with sanctioning outrage!

F. Mr. MacKnight’s assurances at the hearing on April 23, 2003

43. At the hearing of their motion on April 23, Dr. Cordero insisted again on how necessary it was to adopt those preparatory measures with a view to insuring the success of the trip and inspection. Among those measures were how to go from Rochester to Avon, how to open the warehouse, which had been closed for about a year, so that it was important to insure that there

would be light to see the containers and their content, as well as the means of getting access to the containers, which could be one on top of the other, etc. The Court then asked Mr. MacKnight what he had to say about that. He replied to the effect that they were aware of those issues and had taken or would take care of them for the inspection.

44. Thereupon the Court ordered Dr. Cordero to conduct the inspection by May 21 or the containers would be removed from the Plaintiff's warehouse and taken to another warehouse, whether in Ontario or elsewhere, at Dr. Cordero's expense. In so doing, the Court took no account of the fact that since the January 10 pre-trial conference, Mr. Pfuntner and Mr. MacKnight had disregarded the Court's first discovery order by not communicating to it their preferred date for the trip and inspection among the six proposed by Dr. Cordero in his January 29 letter. Instead, it put the onus on Dr. Cordero to conduct the inspection within a month or he would have to look for his property in another county or another country's province...his problem.
45. Nor did the Court take issue, despite Dr. Cordero's request, on the disingenuous nature of Mr. Pfuntner's and Mr. MacKnight's written motion being argued.
46. Dr. Cordero also discussed the measure concerning his transportation from the airport to the warehouse and back. Similarly, the Court held that it was for Dr. Cordero to find his way and that when the Court traveled to New York it leased a car and used a map and that was what Dr. Cordero could do too. The Court cut off the telephone connection before Dr. Cordero could point out that he does not drive. Nevertheless, Dr. Cordero brought this point to its attention as well as Mr. MacKnight's and the other parties' in his letters of April 30 and May 5 and 12, and to Mr. Pfuntner's attention in his phone conversations with him.

G. Their defiance of the 2nd order by avoiding setting up inspection date

47. It is worth relating in detail the facts of what the parties did or did not do in connection with the second order of April 23 about the trip and inspection because their conduct should lay down the basis this time for the Court to draw certain conclusions and determine what parties to sanction or reward.
48. To comply with the second order, Dr. Cordero, who does not drive, made numerous phone calls to Rochester and Avon to ascertain the feasibility and expense of relying on public transportation to travel between the airport in Rochester and the warehouse in the countryside of Avon. It was not possible to get there by any such means except taxi, and that would be very expensive.

49. Early on the morning of Wednesday, April 30, Dr. Cordero phoned Plaintiff Pfuntner at his business in New York, but the call was automatically rerouted to where he was in Florida. They discussed the court-ordered inspection and measures necessary to gain access to the containers and their contents, including specifically whether any of the containers were stacked on top of others and the need to bring them down, and Dr. Cordero's transportation. They agreed that the inspection would take place on Monday, May 19, and that either Mr. Pfuntner or his warehouse manager, Mr. John Ormand, would be present at the inspection. Mr. Pfuntner offered to pick up Dr. Cordero at the airport to take him to the warehouse and back or to have his manager do so. Dr. Cordero accepted the offer. He asked Mr. Pfuntner to fax him a letter stating the terms of their agreement and to do it that day so that in reliance thereon Dr. Cordero could book the plane ticket. Mr. Pfuntner agreed to do so.
50. Later that morning Dr. Cordero faxed to Mr. Pfuntner a letter recording the contents of their conversation and their agreement to the trip and inspection and requesting that he too confirm it in writing. He also faxed a letter to Mr. MacKnight to make him aware of the need for Mr. Pfuntner to send him a written confirmation; the fax to him included a copy of the letter to Mr. Pfuntner and of Dr. Cordero's letter of April 2, to which Mr. MacKnight had not yet responded. Despite the request that he do so, Mr. MacKnight never responded to it.
51. Similarly, Mr. Pfuntner failed to fax any letter to Dr. Cordero, just as Mr. Pfuntner had failed to get back to Dr. Cordero and have Mr. MacKnight write to him after their conversation on September 16, 2002, about Dr. Cordero's request to inspect and remove his property. The facts show that they are as disingenuous as they are unreliable.
52. On Friday, May 2, Dr. Cordero called Mr. Pfuntner, but only his answering machine came on. He recorded a message reminding Mr. Pfuntner of his agreement to fax a letter confirming the trip and inspection for May 19.
53. Mr. Pfuntner did not return the call.
54. Dr. Cordero then called Mr. MacKnight at his office. The receptionist transferred Dr. Cordero to him, but only his answering machine came on. Dr. Cordero recorded a message to let him know the need for Mr. Pfuntner to send his confirmation letter.
55. On Monday, May 5, Mr. MacKnight returned a call of Dr. Cordero for the first time ever! Dr. Cordero told him that Mr. Pfuntner had not yet sent his letter confirming the agreement to conduct the trip and inspection on May 19, and that Dr. Cordero needed his written

confirmation right away so that he could book the flight. Mr. MacKnight said that Dr. Cordero should go there on the 19th and if Mr. Pfuntner 'blew him off,' then Dr. Cordero would have something to complain about. Dr. Cordero asked Mr. MacKnight whether he would charge Dr. Cordero with not having complied with the order that the inspection take place by May 21 if he did not receive Mr. Pfuntner's confirmation letter and did not go there. Mr. MacKnight said that he had known Mr. Pfuntner for 15 years, considered him a responsible person, and would contact him to ask that he write to Dr. Cordero. The latter told him that Mr. Pfuntner should call Dr. Cordero so that they could make arrangements for Mr. Pfuntner to fax his letter...there was no response: Mr. MacKnight had hung up on Dr. Cordero while the latter was speaking. How disrespectful as well as unprofessional!

56. On Thursday, May 8, Dr. Cordero called Mr. Pfuntner at both his Florida and New York phone numbers. At both places he was told that Mr. Pfuntner was in Florida but not in the office. Dr. Cordero left messages that the letter had not arrived and that he requested that Mr. Pfuntner return his call. Then he called Mr. MacKnight, but could only record a message for him to let him know that he had not received any letter from Mr. Pfuntner.
57. If you, the reader, are getting bored reading all these details, how do you think Dr. Cordero felt when he not just wrote them, but rather had to take the initiative to perform each of these acts at the expense of his time, effort, and money and his ever mounting aggravation by Mr. Pfuntner's unresponsiveness and irresponsibility in handling this matter?
58. That afternoon, May 8, Dr. Cordero again called Mr. Pfuntner in Florida. This time he came to the phone and Dr. Cordero told him that he had not received the confirmation letter for the May 19 trip and inspection. Mr. Pfuntner asked when May 19 was, then he checked his calendar and said that he thought it was the following Monday, when he definitely could not travel, since he was running a business there in Florida, but that if May 19 was the second Monday from the current day, he might be able to fly north and attend the inspection; otherwise, he would have John Ormand either pick Dr. Cordero up at the airport or meet him at the warehouse. Dr. Cordero asked whether Mr. MacKnight would be there. Mr. Pfuntner said that his attorney charged him \$250 an hour and that he was not going to pay him \$750 to go out there, and that if Dr. Cordero wanted to have him there, then Dr. Cordero would have to pay Mr. MacKnight's fees. Mr. Pfuntner asked why Dr. Cordero needed a confirmation letter –a rather curious question, given that Mr. Pfuntner had already agreed to send one, whereby he only revealed how little his word

can be trusted-. Dr. Cordero told him that he needed to have something in writing as evidence. Mr. Pfuntner said that he would put something in writing and fax it to Dr. Cordero.

59. The letter of confirmation was faxed later in the afternoon. It stated that:

“As I previously told you I will attempt to have myself or my representative there at the airport to meet you but if we can’t you will have to take a taxi or other form of transportation to the warehouse on Sackett Road.”

60. Later on Dr. Cordero received an e-mail from Ms. Cindy Castillo, Mr. MacKnight’s assistant, with an attached letter from the attorney in which he stated that:

“You faxed a letter stating you have made arrangements with Mr. Pfuntner for an inspection on May 19, 2003. If you made the arrangements with Mr. Pfuntner, you have made arrangements. If you did not make arrangements, but just are putting your spin on things, then you should not expect Mr. Pfuntner to be present.”

61. It was precisely for that purpose that Dr. Cordero requested a letter, so that later on neither Mr. MacKnight nor Mr. Pfuntner could claim that the inspection for May 19 had been merely discussed but not agreed on. Subsequent events would prove how necessary that letter was. But Mr. MacKnight should have known better than to cast doubt on Dr. Cordero’s honesty and accuracy in reporting on his conversation with Mr. Pfuntner. He should also have known that under Rule 37(d) FRCivP, Dr. Cordero was entitled to obtain “a written response to a request for inspection.”

62. On Friday, May 9, Dr. Cordero called Mr. Ormand, the manager of Mr. Pfuntner’s Avon warehouse. Dr. Cordero explained the situation and the need to take measures to insure the success of the inspection. Mr. Ormand, however, said he did not know anything about such an inspection, but that since he spoke with Mr. Pfuntner in Florida almost daily, he would ask Mr. Pfuntner and get back to Dr. Cordero. The latter said that he did not drive and explained how difficult it would be to travel between the airport and that Mr. Pfuntner had offered to pick him up or to have Mr. Ormand do so. The latter said he could pick him up and take him back. In response to Dr. Cordero’s question, Mr. Ormand said that the containers were stacked on top of each other but that there was a forklift to bring them down.

63. But Mr. Ormand did not call back Dr. Cordero.

64. On Monday, May 12, Dr. Cordero faxed to all the parties Mr. Pfuntner’s confirmation letter accompanied by a cover letter stating that “Since Dr. Cordero does not drive, any offer to take him between the airport and the warehouse will be greatly appreciated.”

65. By Wednesday, May 14, Dr. Cordero called Mr. Ormand, but he was not in and Dr. Cordero could only leave a message reminding him of the inspection for the following Monday and

requesting that Mr. Ormand call him.

66. But Mr. Ormand did not call.
67. The following day, Thursday, May 15, Dr. Cordero called Mr. Ormand again, but once more Dr. Cordero could only leave the same message although with greater emphasis on the urgent need for Mr. Ormand to return the call before the inspection only four days away, on Monday, May 19.
68. But Mr. Ormand never called.
69. So Dr. Cordero called Mr. Pfuntner in Florida. He managed to get him on the phone and asked him whether he would be at the inspection on Monday. He said that he would not, but that Mr. Ormand would meet Dr. Cordero. The latter noted that Mr. Ormand had not called him or returned any of his calls. Mr. Pfuntner said that he would have Mr. Ormand call Dr. Cordero. He then assured Dr. Cordero that he would bring down the containers that were stacked on top of others and that he wanted to bring all those containers down so that he could do other things with the warehouse.
70. Neither Mr. Pfuntner nor Mr. Ormand called back, let alone Mr. MacKnight...birds of the same feather!
71. By contrast, later in the afternoon of that Thursday, May 15, Ms. Sandy Mattle, at the office of Underberg & Kessler of Michael Beyma, Esq., who represents M&T Bank and Mr. David Delano, called Dr. Cordero to let him know that she would attend the inspection and to offer transportation. Dr. Cordero accepted the offer.
72. Hopefully, all these details have not bored you, the reader, so much as to numb you to the fact that the date for the inspection was set only because of Dr. Cordero' persistent good faith efforts to agree with Plaintiff Pfuntner on the date and necessary measures to obtain discovery in compliance with the Court's orders. At every step, Dr. Cordero had to overcome the unresponsiveness, informality, and sheer irresponsibility of Mr. Pfuntner and Mr. MacKnight... both of whom would still show much more.

H. Their flagrant disobedience to provide ordered discovery on May 19, 2003

73. On Monday, May 19, Dr. Cordero flew to Rochester. Ms. Sandy Mattle picked him up at the airport and both drove to the warehouse. Nobody was there. Through a glass door they could see that an office inside had no furniture. After a while a white man around 60 years old and about 6' tall showed up. He said that he was Richard Stein and that he held a mortgage to the

warehouse. Ms. Mattle and Dr. Cordero explained to him that they had come for the inspection of some containers, but that nobody was there. He said that he did not have the keys to the warehouse and suggested that they call Margie, who works at Mr. Pfuntner's Western Empire Truck Sale in neighboring Caledonia. Ms. Mattle called her from her cellular and explained the situation. Mr. Stein left.

74. After a while a kid showed up. He said that he was Chris, the son of John Ormand, who was at work, and that he was there to open the warehouse and help however he could. Aside from the key to the warehouse, all he had was a screwdriver and a rubber hammer. Quite soon that proved to be mighty insufficient to carry out the inspection, for the two containers bearing a label with Dr. Cordero's name were one on top of the other and there was no forklift to bring down the one on top! Nor could the lights be turned on, so that the only light in the warehouse was the natural light that entered through the opened doors.
75. As a result, the inspection of the top container was impossible and that of the bottom container was drastically curtailed. Mr. Pfuntner is a warehouse owner! He knew what had to be done for the inspection to be conducted successfully and what would happen if he did not do it: The contents of those containers would not be inspected at all or only poorly. And that is precisely what happened.
76. What a flagrant violation of the court orders! Mr. Pfuntner's and Mr. MacKnight's glaring contempt for them becomes evident in light of the letter of January 29 that Dr. Cordero sent them and the Court to recapitulate an issue already discussed at the January 10 pre-trial conference:

"Since it is at your [Judge Ninfo's] request that this site inspection is been organized, I respectfully suggest that you might wish to make sure with Mr. Pfuntner that the storage containers in question will be accessible. This may sound obvious, but **if the containers are stacked on top of others, as storage containers are in a warehouse, there must be an appropriate means, such as a forklift, to quickly bring them down to the floor where they can be opened.** Likewise, the forklift must have gasoline and somebody must have the key to it and know how to operate it. It goes without saying that Mr. Pfuntner must insure that he has the keys or other tools necessary to open the warehouse and the storage containers. (emphasis added)

...

"In the same vein, one must insure that there will be **electricity to turn the lights on so that we can see the condition of the property.** Flashlights won't do. This is a very important point, for 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." (emphasis added)

77. Mr. Pfuntner had had more than four months to take those specifically identified and critically important preparatory measures! But he failed to do so. Yet, Mr. MacKnight assured the Court that the measures had been or would be taken so that the containers could be inspected. The conclusion is inescapable: Mr. Pfuntner never intended for the containers to be inspected.
78. Chris removed the panel at one end of the bottom container, which was fastened with wire clasps. How shocking was the sight of the inside! Against one wall of the container was a bed-sofa and against the opposite one a dresser and boxes were piled pell-mell on top of them and all the way to the top, not even flat on them but also at an angle. As Dr. Cordero has pointed out, such weight left for years to rest on those pieces of furniture are likely to have busted the springs of the bed, compressed the cushions of the sofa, and indented and warped the wood of the dresser.
79. Likewise, a roll of carpet some 12' long had been folded in the middle so that its two ends touched each other...incredible! The folding causes the tissue on the outside of the fold to stretch and that on the inside to wrinkle. When that roll is unfolded again and the carpet rolled out there will be unseemly marks along the middle section of the carpet where it was folded and it will hardly lie flat on the floor. Who on earth had so little common sense and foresight, not to mention basic knowledge of professional packaging?!
80. Then they went to the opposite end of the container and the kid removed the other panel...and the roof of the bottom container sagged in the middle under the weight of the top container! The reason was obvious: The top container had been mounted on what appeared to be a pallet, which of course has openings for the prongs of the forklift to go in and out. This means that the 4"x4" on either side of the pallet rested front to back along the top edges of either of the lateral walls of the bottom container. The middle 4"x4" of the pallet also extended front to back above the roof of the bottom container, rather than crosswise as a transom rests on the support provided by the jambs of the door. Since that middle 4"x4" did not rest on the edges of the container's lateral walls acting as jambs, it had no support under it. Consequently, the roof of the bottom container sagged under the weight of the top container.
81. Thus, it was out of the question to remove any of the pieces of property in the bottom container, which would have shaken the containers and could deprive the roof of the bottom one of whatever support those pieces provided, thereby risking further dangerous sagging of the roof under the weight of the top container. This inspection was not supposed to end up in a tragedy, neither for an innocent kid who had nothing to do with this legal controversy nor for a

professional who prides himself on having foresight and being able to plan ahead.

82. On that open end of the bottom container another instance of the shockingly perfunctory packaging could be seen, namely, a wooden stool placed at an angle over the top of the dresser and the seat of the bed-sofa, and pressed down against them by all sorts of boxes and other objects stacked on top of the legs of the stool, which had no more padding than one layer of brown paper! Was it so difficult for the “packagers” to realize how the stool could scratch the surface of the dresser counter and puncture the cloth of the sofa or was it that they just could not care less?
83. One can only shudder at the thought of how the mirror of the dresser was packaged, and the framed original engraving with glass front, and the center table with chiseled glass top, and two Tiffany lamps, and the lamp shades of standing and table lamps, and the leather recliner with footrest, oh! the leather recliner, so posh that just to look at it had a soothing effect! And where are the Queen size mattress and the spring box, and the corner table with a drawer, and the TV table with swiveling top and underneath cabinet with bed linen, and three more counter stools, and the microwave oven large enough to cook a whole turkey, and the two approximately 4’x2’x2’ red metal trunks, and the boxes with kitchenware, and those with ceramic vases and plates, not to mention the tens of boxes of books, including expensive professional books, and the other items in Premier’s official inventory submitted to the Court, Mr. MacKnight, and the other parties as an attachment to the January 29 letter?
84. One cannot imagine that all those pieces of property were professionally stored in only those two containers. What irreparable degradation that valuable property may have suffered after having been stuffed in the containers for 10 years by the method of ‘throw ‘em in and slam the door!’ Since Dr. Cordero paid for all those years the costliest and most comprehensive form of insurance, that is, replacement value, he is entitled to expect that his property be in as good condition as he handed it over for storage or that he be given the money to replace them.
85. Since the warehouse was used to store household goods, its temperature and humidity had to be controlled to prevent them from damaging the goods. But it is difficult to imagine how mere garage doors to the warehouse could allow the control of anything. Moreover, right on top of Dr. Cordero’s containers there was a tear in the ceiling. What did it allow to drop from the roof onto the containers, for how long, and with what effect?
86. The ‘labels’ on the containers were nothing more than 8.5”x11” sheets of papers stapled or

taped to the wood of the containers. Removing and affixing them would leave no marks. If some of Dr. Cordero's property was in any unlabeled or mislabeled containers in the warehouse, there was certainly nobody there with authority to open any container other than the two labeled with Dr. Cordero's name. In addition, they too were double stacked.

87. Neither Mr. Pfuntner nor Mr. Ormand showed up. Chris closed the container with its panels, which proved to be very difficult because of the sagging of its roof. Then Ms. Mattle and Dr. Cordero left.

II. Standards for imposing sanctions

88. It is a well established legal principle that a man is deemed to intend the reasonable consequences of his conduct; its corollary is that intent can be inferred from conduct. Mr. Pfuntner's and Mr. MacKnight's conduct reveal a pattern of disregarding and refusing requests and orders to inspect Dr. Cordero's property and justify the inference that Mr. Pfuntner never intended for the property to be inspected.
89. Rule 37 in general and its subdivision (b)(2) in particular, provide in part that "the court **shall** require **the party** failing to obey the order or **the attorney** advising that party **or both** to pay the reasonable expenses, including attorney's fees, caused by the failure," (emphasis added).
90. The District Court decided in *Buffalo Carpenters Pension Fund v. CKG Ceiling and Partition Co., Inc.*, 192 F.R.D. 95 (W.D.N.Y. 2000), that sanctions may be imposed for failure to comply with any discovery order, not just an order under Rule 37(a).
91. All the more reason for applying sanctions here, since the orders that the Court adopted at the pre-trial conference on January 10, 2003, and at the hearing on April 23, 2003, were discovery orders. The fact that those orders were issued orally is immaterial since oral orders are sufficient to support sanctions; *Nike Inc. v. Wolverine World Wide, Inc.*, 43 F.3d 644 (Fed.Cir. 1994). What is more, a prior order is not even required where extreme discovery abuses have occurred, *Dotson v. Bravo*, 202 F.R.D. 559, 570 (N.D.Ill. 2001), That is the case here, where Plaintiff Pfuntner could only recover if an inspection established the presence in his warehouse of property for whose storage he could claim a storage fee. For that inspection he had over eight months to take reasonably necessary preparatory measures and over four months to take precisely identified such measures. Nevertheless, he failed to do so, thus showing that he never intended to allow inspection and that his and Mr. MacKnight's claims to the contrary were a

sham. They further compounded this abuse by misleading the Court and Dr. Cordero into believing that Plaintiff Pfuntner had taken or would take such measures, thereby inducing Dr. Cordero to make an inspection trip from New York City to Rochester and Avon that the Plaintiff knew could not achieve its intended purpose but would cause Dr. Cordero further waste of time, effort, and money as well as a lot of aggravation.

93. Sanctions may include dismissal of Plaintiff Pfuntner's claims against Dr. Cordero under Rule 37(b)(2). That type of sanction is appropriate here since contempt was shown by disobeying not one, but rather two discovery orders, which were willfully violated by Mr. Pfuntner to the detriment of Dr. Cordero; *Keefer v. Provident Life and Acc. Ins. Co.*, 238 F.3d 937, 940 (8th Cir. 2000); see also *Rio Properties, Inc., v. Rio International Interlink*, 284 F.3d 1007, at 1022 (9th Cir. 2002).
94. Sanctions may also encompass the exclusion of evidence; *In re TMI Litigation*, 193 F.3d 613, 721 (3d Cir. 1999).
95. Moreover, "violations of an order are punishable as criminal contempt," *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990).

III. Relief sought

96. Having regard to the Court's instruction at the May 21 hearing after Dr. Cordero orally requested on that occasion an order for sanctions against and compensation from Mr. Pfuntner and MacKnight, that he submit a motion therefor separate from his April 3 motion, Dr. Cordero hereby complies with it and respectfully requests that the Court:
 - 1) order that it be taken as established for the purpose of this adversary proceeding that there has been damage to, and loss of Dr. Cordero's property held in Mr. Pfuntner's warehouse at Avon;
 - 2) order that Mr. Pfuntner and Mr. MacKnight are prohibited from introducing into evidence the presence or condition of any of Dr. Cordero's property held in that warehouse to support any of their claims or defenses;
 - 3) dismiss Mr. Pfuntner's claims against Dr. Cordero since they could only be established through an inspection of the property claimed to be in storage at Mr. Pfuntner's warehouse, and preserve Dr. Cordero's counterclaim against Mr. Pfuntner for appropriate adjudication by this Court;
 - 4) treat Mr. Pfuntner's and Mr. MacKnight's disobedience of the Court's discovery orders as criminal contempt of court;

- 5) order that Mr. Pfuntner and Mr. MacKnight jointly and severally compensate Dr. Cordero based on the hourly rate of \$250 that Mr. MacKnight finds reasonable enough to charge Mr. Pfuntner and the latter to pay him and that under the lodestar method to calculate attorney's fees is applicable in the Rochester market; and that the compensation for work and expenses, including attorney's fees, be arrived at as follows: :

	Kind of work	# of page s	# of hours	\$250/ hr
1.	a. for rendering useless the preparatory work that Dr. Cordero had to do to comply with the first discovery order by, among other things, gathering travel and accommodation information, reorganizing his calendar to clear six dates, and researching alternative warehouses			1,250
2.	b. for their failure to choose any or reject all of the six dates that Dr. Cordero, pursuant to the first Court order, proposed in his letter of January 29, 2003, for the trip and inspection, whereby they contravened their obligations under Rule 34(b) FRCivP, made applicable in adversary proceedings by Rule 7034 FRBkrP, and forced Dr. Cordero to keep those dates open in his calendar for no good purpose and to his detriment			1,200
3.	c. for causing Dr. Cordero to travel on May 19, 2003, to and from New York City, Rochester, and Avon to conduct the inspection ordered by the Court and agreed with Dr. Cordero, although they knew that they had given false assurances and made false statements to that end and had intentionally failed to take precisely identified preparatory measures pursuant to the second court order, and knew that thereby they would cause and did cause Dr. Cordero to waste his time, effort, and money, and cause even more aggravation			2,500
4.	d. the reasonable expenses, including attorney's fees, incurred by Dr. Cordero in performing the following work:			0
5.	(1) writing and answering the following motions, which entailed an enormous amount of legal research and file review, calculated at the average rate of two hours per page		# of hrs @ 2hrs/pg	0
6.	Dr. Cordero's motion for sanctions of June 6, 2003	23	46	11,500
7.	Dr. Cordero's motion for discovery measures of April 3, 2003	7	14	3,500
8.	Dr. Cordero's reply of April 17 to the Pfuntner/MacKnight's motion of April 10, 2003	17	34	8,500

9.	Dr. Cordero's preparation for and defense at the hearing on April 23, 2003		2	500
10.	Dr. Cordero's preparation for and defense at the hearing on May 21, 2003		1	250
11.	(2) writing letters			0
12.	to Mr. MacKnight, of January 29, 2003	1	.5	125
13.	to Judge Ninfo, of January 29, 2003	3	6	1,250
14.	to Mr. MacKnight, of April 2, 2003	2	4	1,000
15.	to Mr. Pfuntner of April 30, 2003	2	4	1,000
16.	to Mr. MacKnight, of April 30, 2003	1	.5	125
17.	to Judge Ninfo, of May 5, 2003	1	2	500
18.	to Mr. MacKnight, of May 12, 2003	1	.5	125
19.	(3) making numerous long distance phone and fax calls from NY City to Rochester, Avon, Caledonia, and Florida, including, but not limited to:			0
20.	Mr. MacKnight at (585) 454-5650 and (585) 454-6525; Plaintiff Pfuntner at (585) 538-2200, (585) 538-9858, and (954) 321-6449; Manager John Ormand at (585) 226-8303; RTS at (585) 654-0200; Avon Cars at (585) 232-3232 and (315) 986-9569; Greyhound at (585) 232-5121, (800) 231-2222, and (800)295-5555; Amtrak at (585)454-2894 and (212) 630-6400; JetBlue at (800) 538-2583; Champion Moving & Storage, at (585) 235-3500, (585) 820-4645, and 800-724-6265;		5	1,250
21.	(4) researching in computer programs and on the Internet the price of tickets, schedules, location and distance of common carriers, their stations, hotels, and warehouses, such as:			0
22.	(1) Continental Airlines (2) US Airways (3) United Airlines (4) Travelocity (5) JetBlue (6) Greyhound (7) Amtrak (8) Radison Inn Rochester Airport (9) Holiday Inn Airport	(12) Hyatt Regency (13) Extendedstay Henrietta (14) Ramada Inn Rochester (15) Econo Lodge Rochester (16) Extendedstay Rochester Greece (17) Yahoo maps (18) Microsoft Streets and Trips (19) Champion Moving and Storage		

	(10) Wellesley Inn of Rochester North (11) Wellesley Inn of Rochester South	(20) Allied Van Lines (21) North American Van Lines (22) NYS Movers & Warehouse's Association (23) Etc, etc, etc		6	1,500
23.	Sub total				36,075
24.	e. exemplary damages for the flagrant and abusive character of the contempt shown to both the Court and Dr. Cordero				
25.	TOTAL				

- 6) order that, since Mr. Pfuntner already left the jurisdiction and is in Florida, where according to Mr. MacKnight's letter of March 26, he intends to remain, so much so that he did not even care to attend the court-ordered inspection or take the necessary preparatory measures for it, which supports the reasonable assumption that Plaintiff Pfuntner may treat an order to pay compensation with the same contempt as he has already shown for the Court's orders and for Dr. Cordero, the order be satisfied jointly and severally by Mr. Pfuntner and Mr. MacKnight within 10 days, after which it should be attached as a lien against their assets in the State of New York, such as, but not limited to, Mr. Pfuntner's warehouse in Avon and his other businesses, such as Western Empire Truck Sales, 2926 West Main Street, Caledonia, NY 14423, tel. (585) 538-2200, believed to belong wholly or in part to him; and in the event that either or both appeal the order, order that the appellant(s) pay the unpaid amount into an escrow account with the Court;
- 7) order that none of the containers in the Avon warehouse be removed until the issue of Mr. Pfuntner's liability to Dr. Cordero has been determined and the Court provides for their disposition;
- 8) place in an escrow account the proceeds of the sale of Mr. Pfuntner's assets, such as vehicles in the warehouse or on its premises, so that such proceeds may be used to satisfy any award or judgment that Dr. Cordero may obtain against Mr. Pfuntner;
- 9) order Mr. MacKnight to identify Dave M. DeLaus, Esq., at 28 East Main Street, suite 600, in Rochester, on whom he served a copy of his letter to Dr. Cordero of March 26, 2003, and state what his role is in this adversary proceeding;
- 10) after discovery and at the appropriate time for the removal of Dr. Cordero's property in

the warehouse, charge Mr. Pfuntner and Mr. MacKnight with the removal charges, for if they had allowed Dr. Cordero to remove it, at the latter's instigation Mr. Christopher Carter of Champion Moving & Storage, as he stated in his letter of July 30, 2002, would have removed that property to Champion's warehouse at no charge to Mr. Pfuntner or Dr. Cordero –just as Mr. Carter removed the property of Premier's clients found in the warehouse of Defendant Jefferson-Henrietta Associates- whereby now they must bear the consequences of wrongfully ignoring and refusing Dr. Cordero's request and missing that opportunity for free removal;

- 11) allow Dr. Cordero to present his arguments by phone given the hardship in terms of cost and time that requiring his appearance in person would cause; and
- 12) award Dr. Cordero any other relief as may seem just and proper.

IV. List of Exhibits Evidencing Compensable Work

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2) Dr. Cordero's motion for discovery measures of April 3, 2003	26
a) Att. MacKnight's letter of March 26, 2003, to Dr. Richard Cordero	33
3) Dr. Cordero's reply of April 17 to the Pfuntner/MacKnight's motion of April 10, 2003	35
a) Dr. Cordero's Affidavit of Genuine Issues of Material Facts Requiring Discovery and the Denial of the Motion for Summary Judgment	48
1) Christopher Carter's letter of July 30, 2002 to Dr. Cordero	54
2) Mr. Carter's letter of July 30, 2002 to M&T Bank Vince Pusateri	55
3) Att. Michael Beyma's letter of August 15, 2002, to Dr. Cordero	56
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6) Trustee Kenneth Gordon's letter of September 23, 2002, to Dr. Cordero	60
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8) Dr. Cordero's letter of October 17, 2002, to Mr. Pfuntner	62
9) Att. MacKnight's letter of December 5, 2002, to Dr. Cordero.....	63
10) Att. MacKnight's letter of December 30, 2002, to Dr. Cordero	65
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k) Extendedstay Rochester Greece	150
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Dated: June 6, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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n.b.: motion provided without exhibits to the
following parties, but available upon request::

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Dated: June 6, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTNER,

Plaintiff,

AP02-2230

-vs-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-vs-

DAVID PALMER, et al.,

Third-Party Defendants.

NOTICE TO ADMIT

Plaintiff, James Pfuntner ("Pfuntner") requests that pursuant to Federal Rule Bankruptcy Pro. 7036 and Fed. R. Civ. Pro. 36 that Defendant, Richard Cordero ("Cordero") admit in writing served on or within 30 of receipt of this demand the following facts and the following application of law to facts:

1. Cordero never entered into a contractual relationship with Pfuntner.
2. Pfuntner leased a portion of the warehouse at 2407 Sackett Road, Avon, New York (the "Property") to Premier Van Lines, Inc. ("Premier").
3. Cordero entered into a storage contract with Premier in 1993.
4. Premier stored Cordero's property at a location other than the Property before storing Cordero's property at the Property.
5. Cordero has no knowledge of the condition of his property when his property was moved into the Property.
6. Premier or its agents packed Cordero's goods in 1993.
7. Pfuntner had no role in packing Cordero's good in 1993.
8. Cordero has no evidence or proof of any nature that Pfuntner or those acting on his behalf opened any containers Premier stored on the Property.
9. Cordero has no evidence or proof of any nature as to the condition of his goods when relocated to the Property.
10. Cordero has no evidence or proof of any nature that the while his goods were located on the Property that the goods or any of them suffered damages due to the breach of any duty by act or omission of any duty Pfuntner owed to Cordero or Premier.
11. Cordero's goods were used when Premier or its agents packed such goods.
12. Cordero's goods were received by Premier. Those goods had the defects or damage reflected in Premier's packing list.
13. Pfuntner had no duty to insure Cordero's stored goods for Cordero's or Premier's benefit.

14. Cordero has no proof or evidence that the roof, walls, floors, or doors leaked or that Cordero's goods suffered water damage or any other damage flowing from or due to the condition of those portions of the property which Pfuntner had a duty to maintain while at the Property.

15. Cordero has no proof or evidence that Pfuntner caused, contributed to, or had any role in the packing of Cordero's goods in a manner that Cordero deems objectionable or in any respect rearranged or in any respect changed the original packing arrangements or methods in respect to Cordero's stored goods.

16. Cordero has no proof or evidence that Pfuntner or any person acting on his behalf moved or handled the containers in which Cordero's goods were stored.

17. Pfuntner did not owe Cordero any duty as the operator of a warehouse or warehouseman.

18. Pfuntner and those acting on his behalf did not issue a warehouse receipt, bill of lading, receipt or any other document reflecting that Pfuntner owed duties to Cordero as a warehouseman.

19. Pfuntner did nothing to cause Cordero to believe that he had insured Cordero's goods for Cordero's benefit.

20. Cordero obtained property damage insurance for his stored goods in 1993 and maintained or thought he had maintained property damage insurance in effect because he understood and believed that there were sufficient circumstances that could arise while his goods were in storage for which the warehouseman would not be liable that it was prudent to obtain insurance for his benefit and protection.

21. Cordero has not provided a listing of stored goods, if any, which were not in the container which he inspected on May 19, 2003.
22. Cordero spoke to Pfuntner before May 19, 2003 to make arrangements for inspection at a date before May 19, 2003.
23. Cordero later told Pfuntner that he could not be present on the earlier agreed date.
24. During the telephone call to set up the initial inspection, Pfuntner told Cordero that one box was on top of another.
25. During the same telephone call, Pfuntner told Cordero that he did not have a forklift at the warehouse, but would attempt to put the box marked Cordero which was on top of other boxes using a tow motor, but not guarantee that he would be successful.
26. Pfuntner attempted to lower the box to the floor with the tow motor but could not do so without risk of the box falling that Pfuntner thought was in prudent.
27. Cordero did not inquire before coming to Avon whether the box had been placed on floor level.
28. Before May 19, 2003, Cordero claimed in writing that he had made arrangements with Pfuntner to inspect the Property and that Pfuntner would pick up Cordero at the Rochester airport, drive Cordero to and from the Property and be present during Cordero's inspection.
29. The writing attached as Exhibit "A" is a true copy of the writing described in Request 28.
30. Before May 19, 2003, Cordero made arrangements with Michael Beyma, attorney for M&T Bank, to provide transportation from the Rochester airport to the Property and back to the airport on May 19, 2003.

31. On May 19, 2003, Cordero flew to Rochester knowing that he had not made arrangements with Pfuntner as asserted in Exhibit "B" and that Pfuntner had specifically told Cordero the Exhibit "B" terms were not agreed.

32. Cordero came to Rochester on May 19, 2003 knowing that Pfuntner would have someone available between 11:30 a.m. and 1:00 p.m. on May 19, 2003, but Pfuntner could not be present on that date.

33. Cordero arrived before 11:30 a.m.

34. In response to a telephone call made by Mr. Beyma's assistance to Pfuntner's office, the person assigned to meet Cordero came from another part of the building at which Cordero was located.

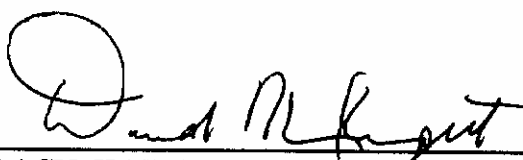
35. Pfuntner's representative showed Cordero to the location of the boxes with Cordero's name written on a sheet of paper attached to each of them.

36. The tow motor was available for Dr. Cordero to stand on so that he could inspect the contents of the second box with a sheet attached bearing Cordero's name.

37. The lighting was adequate for Cordero to identify his property and identify conditions that caused Cordero complaint about the way his goods had been packed.

38. The Property is occupied by tenants in addition to Premier.

DATED: Rochester, New York
June 16, 2003



LACY, KATZEN, RYEN & MITTLEMAN, LLP
David D. MacKnight, Esq., of counsel
Attorneys for James Pfuntner, Creditor
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Table of Att. David MacKnight's Exhibits
with his "Notice to Admit" of June 10, 2003
in *Pfuntner* in Bankruptcy Court

1. Dr. **Cordero's** letter of **April 30**, 2003 **to** Att. **MacKnight**..... [A: 426]
2. Dr. **Cordero's** letter of **April 30**, 2003 **to** Plaintiff **Pfuntner** [A: 427]
3. Dr. **Cordero's** letter of **April 2**, 2003, **to** Att. **MacKnight**..... [A: 374]

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UNITED STATES BANKRUPTCY 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

CORDERO'S REPLY
TO PFUNTNER'S
REQUEST FOR ADMISSIONS

RICHARD CORDERO

Third party plaintiff

-vs-

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

Third party defendants

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

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A. Legal objections to the "Notice" to Admit

1. Mr. Pfuntner's "Notice (sic) to Admit" was submitted to Dr. Cordero under Rule 7036 FRBkrP, which makes Rule 36 FRCivP applicable in adversary proceedings.

2. Rule 36 provides that a request for admission may not be served before the time specified in Rule 26(d). In turn, Rule 26(d) provides that a party may not seek discovery before the parties have conferred as required by Rule 26(f). The latter provision, titled “Conference of Parties; Planning for Discovery” provides that:

“the parties **must**, as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by Rule 26(a)(1), and to develop a proposed discovery plan that indicates the parties’ views and proposals...” (emphasis added)

3. Therefore, Mr. Pfuntner was not entitled to submit his request for admission because there has been no Rule 26(f) Conference of the Parties and he could not proceed extrajudicially.
4. That he was not entitled to discovery is made clear by the Advisory Committee Notes to Rule 36, the very one that he invoked to submit his request. The Committee furnished this note to its 1993 Amendments to the Rule:

“1993 Amendments

“The rule is revised to reflect the change made by Rule 26(d), **preventing** a party from seeking formal discovery until after the meeting of the parties **required** by Rule 26(f).” (emphasis added)

5. Likewise, the Committee provided the following comment to the 1993 Amendment of Rule 26(d):

“1993 Amendments

“ ...

“**Subdivision (d)**. This subdivision is revised to provide that formal discovery-as distinguished from interviews of potential witnesses and other informal discovery-not commence until the parties have met and conferred as required by subdivision (f)...

“The meeting of counsel is to take place as soon as practicable and in any event at least 14 days before the date of the scheduling conference under Rule 16(b) or the date a scheduling order is due under Rule 16(b).”

6. Thus, at the July 2, 2003, Dr. Cordero objected on the above-mentioned grounds to Mr. Pfuntner’s “Notice” to Admit. The court failed to make a decision then and instead indicated that it would decide the matter at trial in October. Dr. Cordero objected to the court’s failure to make a timely decision and to the risk that it forced Dr. Cordero to assume if he did not reply to the “Notice” only for the court to determine months after the statutory time to reply had elapsed that despite the circumstances, Mr. Pfuntner could start discovery and Dr. Cordero had to reply and then impose sanctions on Dr. Cordero for not having done so. For no good reason, the court

created a situation of legal uncertainty and burdened Dr. Cordero with the concomitant risk.

7. In order to avoid that risk, Dr. Cordero is hereunder replying to the "Notice." However, he preserves his objection there to and reserves the right to challenge the "Notice," to request the withdrawal of his replies as if never submitted, and to demand compensation from Mr. Pfuntner and his attorney, David MacKnight, Esq., for having caused him to prepare and submit them.
8. Dr. Cordero stands ready to comply with discovery requests when the applicable rules of procedure have been complied with. If Mr. Pfuntner invokes the rules to request formal discovery, then he too must insure that the other rules whose application precede the one that he invokes have been complied with. Mr. Pfuntner cannot as a matter of law or fairness invoke the rules when it suits him but deny Dr. Cordero the right to demand that all rules, even those that Mr. Pfuntner would rather dispense with, be applied.

B. Procedural objections to the "Notice" to Admit

9. Mr. Pfuntner's and Mr. MacKnight's failure to comply with two discovery orders provides the basis for the court to take it as established for the purpose of this adversary proceeding that there has been damage to, and loss of, Dr. Cordero's property held in Mr. Pfuntner's warehouse at Avon; and to hold that Mr. Pfuntner and Mr. MacKnight are prohibited from introducing into evidence the presence or condition of any of Dr. Cordero's property held in that warehouse to support any of their claims or defenses. Dr. Cordero requested in his motion for sanctions and compensation against Mr. Pfuntner and Mr. MacKnight of June 6, 2003, that the court make these determinations, but likewise the court failed to do so and put off adjudicating that motion until trial in October.
10. Therefore, Dr. Cordero objects and replies without prejudice to his objection to both all requests for admissions concerning either Dr. Cordero's property in that warehouse or warehouse conditions and to the replies thereto being used by Mr. Pfuntner and Mr. MacKnight to support their claims and defenses.

C. Requests numbered as in the original, each followed by a reply

1. Cordero never entered into a contractual relationship with Pfuntner.

It is Mr. Pfuntner who entered into a third-party beneficiary contract with Premier for the benefit of Dr. Cordero, who can claim under it.

2. Pfuntner leased a portion of the warehouse at 2407 Sackett Road, Avon, New York (the 'Property') to Premier Van Lines, Inc. (Premier”).

Dr. Cordero admits this upon information and belief.

3. Cordero entered into a storage contract with Premier in 1993.

At the time, the contractual party to this contract was known as Wilson Moving and Storage.

4. Premier stored Cordero's property at a location other than the Property before storing Cordero's property at the Property.

Dr. Cordero lacks information to admit or deny this statement.

5. Cordero has no knowledge of the condition of his property when his property was moved into the Property.

Dr. Cordero does not know.

6. Premier or its agents packed Cordero's goods in 1993.

Dr. Cordero packed the cardboard boxes on the list and the mover was supposed to pack other items especially for storage.

7. Pfuntner had no role in packing Cordero's good in 1993.

Dr. Cordero does not know what role Mr. Pfuntner played in packing his goods in 1993.

8. Cordero has no evidence or proof of any nature that Pfuntner or those acting on his behalf opened any containers Premier stored on the Property.

Since discovery did not take place on this subject, Dr. Cordero is in no position to affirm or deny that statement now.

9. Cordero has no evidence or proof of any nature as to the condition of his goods when relocated to the Property.

Since Premier kept billing Dr. Cordero for storage and Mr. Pfuntner claimed storage fees, it is to be presumed that they based their actions on the good condition of the goods.

10. Cordero has no evidence or proof of any nature that the while his goods were located on the Property that the goods or any of them suffered damages due to the breach of any duty by act or omission of any duty Pfuntner owed to Cordero or Premier.

Since discovery did not take place on this subject, Dr. Cordero is in no position to affirm or deny that statement now.

11. Cordero's goods were used when Premier or its agents packed such goods.

Dr. Cordero started to buy the furniture and household goods after moving into an apartment in Rochester in August 1991 and thus, he had them for 2 years or much less before entrusting them for storage in August 1993. He lived alone, had no pets, and spent most of the time at work. The goods were in excellent condition.

12. Cordero's goods were received by Premier. Those goods had the defects or damage reflected in Premier's packing list.

The description of the boxes in the list of items was made unilaterally by the mover.

13. Pfuntner had no duty to insure Cordero's stored goods for Cordero's or Premier's benefit.

Mr. Pfuntner ran a business of warehousing and had the duty to provide warehousing conditions adequate for the intended purpose.

14. Cordero has no proof or evidence that the roof, walls, floors, or doors leaked or that Cordero's goods suffered water damage or any other damage flowing from or due to the condition of those portions of the property which Pfuntner had a duty to maintain while at the Property.

At the time of the inspection, Dr. Cordero noticed that there was a tear in the ceiling right on top of the container holding some of his property and the other container bearing a label with his name. Discovery would have rendered possible to determine what it allowed to drop from the roof onto the containers, for how long, and with what effect and to establish whether Mr. Pfuntner maintained other warehousing conditions for the intended purpose.

15. Cordero has no proof or evidence that Pfuntner caused, contributed to, or had any role in the packing of Cordero's goods in a manner that Cordero deems objectionable or in any respect rearranged or in any respect changed the original packing arrangements or methods in respect to Cordero's stored goods.

Since discovery did not take place on this subject, Dr. Cordero is in no position to affirm or deny that statement now.

16. Cordero has no proof or evidence that Pfuntner or any person acting on his behalf moved or handled the containers in which Cordero's goods were stored.

Since discovery did not take place on this subject, Dr. Cordero is in no position to affirm or deny that statement now.

17. Pfuntner did not owe Cordero any duty as the operator of a warehouse or warehouseman.

Mr. Pfuntner owed Dr. Cordero a third-party beneficiary duty as a warehouseman carrying on a warehousing business. Mr. Pfuntner's claim to storage fees constitutes an admission on his part that he owed a duty of care for the storage of the property for which he claimed those fees. Mr. Pfuntner cannot have it both ways.

18. Pfuntner and those acting on his behalf did not issue a warehouse receipt, bill of lading, receipt or any other document reflecting that Pfuntner owed duties to Cordero as a warehouseman.

Mr. Pfuntner and those others did not have to issue anything to owe a duty of care to the whole world as they carried on a warehousing business.

19. Pfuntner did nothing to cause Cordero to believe that he had insured Cordero's goods for Cordero's benefit.

Mr. Pfuntner did: He carried on a warehousing business and agreed against payment of money to warehouse property that he knew belonged to third parties.

20. Cordero obtained property damage insurance for his stored goods in 1993 and maintained or thought he had maintained property damage insurance in effect because he understood and believed that there were sufficient circumstances that could arise while his good were m storage for which the warehouseman would not be liable that it was prudent to obtain insurance for his benefit and protection.

Mr. Pfuntner had a duty to maintain warehouse conditions adequate for the intended purpose and he is not relieved of that duty because Dr. Cordero obtained insurance.

21. Cordero has not provided a listing of stored goods, if any, which were not in the container which he inspected on May 19, 2003.

Mr. Pfuntner's and Mr. MacKnight's failure to comply with two discovery orders prevented Dr. Cordero from determining what was and was not in the containers.

22. Cordero spoke to Pfuntner before May 19, 2003 to make arrangements for inspection at a date before May 19, 2003.

The date that Dr. Cordero proposed to Mr. Pfuntner for the inspection was May 19, 2003 and he agreed to it. Dr. Cordero had also proposed six dates for the trip and inspection in his letter of January 29, 2003, to the court and each of the parties. Mr. Pfuntner and Mr. MacKnight allowed those six dates to elapse without either discussing any with Dr. Cordero or rejecting all or otherwise discussing that letter with Dr. Cordero in any way whatsoever.

23. Cordero later told Pfuntner that he could not be present on the earlier agreed date.

There was no such “earlier agreed date” and Dr. Cordero did not tell Mr. Pfuntner any such thing.

24. During the telephone call to set up the initial inspection, Pfuntner told Cordero that one box was on top of another.

Mr. Pfuntner admitted that one container was on top of the other. Indeed, it was Dr. Cordero who at the January 10, 2003, pre-trial conference brought up several problems attending an inspection of containers in a warehouse, including the possibility that they might be double stacked, and called the attention to the consequent need to adopt measures beforehand to cope with such problems. He restated this in his January 29 letter.

25. During the same telephone call, Pfuntner told Cordero that he did not have a forklift at the warehouse, but would attempt to put the box marked Cordero which was on top of other boxes using a tow motor, but not guarantee that he would be successful.

Mr. Pfuntner was under court order to take the measures necessary for the inspection, including those already discussed since January 10. Whatever Mr. Pfuntner might have wished to tell Dr. Cordero four months later could not relieve him at the last minute from his duty of compliance.

26. Pfuntner attempted to lower the box to the floor with the tow motor but could not do so without risk of the box falling that Pfuntner thought was in prudent.

Dr. Cordero has no knowledge of what Mr. Pfuntner might have attempted to do or thought to be “in prudent.”

27. Cordero did not inquire before coming to Avon whether the box had been placed on floor level.

Dr. Cordero had no duty to inquire of Mr. Pfuntner or of anybody else whether Mr. Pfuntner had lowered the top container. By contrast, Mr. Pfuntner had a duty to comply with two court orders directing him to take the necessary measures for the inspection.

28. Before May 19, 2003, Cordero claimed in writing that he had made arrangements with Pfuntner to inspect the Property and that Pfuntner would pick up Cordero at the Rochester airport, drive Cordero to and from the Property and be present during Cordero's inspection.

What Dr. Cordero stated in writing, in his letter of last April 30, after talking to Mr. Pfunter on the phone earlier that day is in pertinent part this: “I also wanted to let you know that I do not drive so I could not just lease a car at the airport and drive to the warehouse, but would depend on public transportation. Thus, your offer to pick me up at the airport to take me to and from the warehouse can facilitate this exercise considerably. Hence, I accept it and will rely on it.”

29. The writing attached as Exhibit “A” is a true copy of the writing described in Request 28.

Dr. Cordero recognizes his letters of April 2 and 30 to Mr. MacKnight and the one of April 30 to Mr. Pfuntner, and his certificate of service.

30. Before May 19, 2003, Cordero made arrangements with Michael Beyma, attorney for M&T Bank, to provide transportation from the Rochester airport to the Property and back to the airport on May 19, 2003.

On Thursday, May 15, Ms. Sandy Mattle, at the office of Michael Beyma, Esq., called Dr. Cordero to let him know that she would attend the inspection and to offer transportation. Dr. Cordero accepted the offer.

31. On May 19, 2003, Cordero flew to Rochester knowing that he had not made arrangements with Pfuntner as asserted in Exhibit "B" and that Pfuntner had specifically told Cordero the Exhibit "B" terms were not agreed.

Dr. Cordero flew to Rochester:

- 1) under court order, issued at the April 23 hearing, for him to travel to Rochester and inspect his property at Mr. Pfuntner's warehouse by May 21 lest the court order his property removed at his expense to any other warehouse anywhere in Ontario;
 - 2) on Mr. MacKnight's assurances at that hearing that Mr. Pfuntner had or would take care of the necessary measures for the inspection before the inspection;
 - 3) in reliance on Mr. Pfuntner's letter of May 8 confirming the inspection for May 19; and
 - 4) on the expectation that Mr. MacKnight had been honest, rather than disingenuous, when in response to Dr. Cordero's complaint that Mr. Pfuntner had failed to send the promised confirmation letter, Mr. MacKnight told Dr. Cordero on May 5 that 'Dr. Cordero should go to Rochester on the 19th and if Mr. Pfuntner blows him off, then he would have something to complain about.'
32. Cordero came to Rochester on May 19, 2003 knowing that Pfuntner would have someone available between 11:30 a.m. and 1:00 p.m. on May 19, 2003, but Pfuntner could not be present on that date.

Dr. Cordero flew to Rochester on the basis stated in the reply above and in reliance on the conversation with Mr. Pfuntner on May 8, where after checking his calendar he told Dr. Cordero that if the inspection was on May 19, the second Monday from the current day, he might be able to fly north from Florida to attend the inspection; otherwise, he would have his warehouse manager, John Ormand, either pick up Dr. Cordero, who would come from New York City, at the airport or meet him at the warehouse.

Since by May 15, Mr. Ormand had not confirmed whether he would pick up Dr. Cordero at the airport, Dr. Cordero accepted the offer of transportation extended by Ms. Sandy Mattle on behalf of Mr. Beyma.

33. Cordero arrived before 11:30a.m.

On May 19, Dr. Cordero arrived at the Rochester International Airport on time at or

around 10:45 a.m.

34. In response to a telephone call made by Mr. Beyma's assistance to Pfuntner's office, the person assigned to meet Cordero came from another part of the building at which Cordero was located.

Upon arriving at the airport, Dr. Cordero called Mr. Beyma, who then called Ms. Mattle and told her where to meet Dr. Cordero.

35. Pfuntner's representative showed Cordero to the location of the boxes with Cordero's name written on a sheet of paper attached to each of them.

Mr. Pfuntner's representative, Manager Ormand, failed to show up at the inspection. A kid by the name Chris showed Dr. Cordero where those boxes were.

36. The tow motor was available for Dr. Cordero to stand on so that he could inspect the contents of the second box with a sheet attached bearing Cordero's name.

If there was such a motor, none was made available to Dr. Cordero. Since Dr. Cordero had stated that he does not drive, he could certainly not be expected to drive whatever a tow motor is. Mr. Pfuntner, a warehouseman who earns his living ware-housing, among other things, thought it "in prudent" to use his tow motor to bring down the box due to the risk of the box falling. Hence, it is utterly ludicrous to think that Dr. Cordero had a duty to climb on a tow motor or whatever and run the risk of falling himself as once there he tried to spring open the metal clasps, and then somehow remove and put aside somewhere doors that do not swing on any hinges, inspect his property while climbed there, and then put all that back on. More-over, Dr. Cordero would under no circumstance have asked that kid to do so in his place and put him at risk of breaking his neck, and he would certainly not do so just because Mr. Pfuntner had failed to take the necessary measures for inspection that Mr. Pfuntner and Mr. MacKnight knew about since January 10, 2003!

37. The lighting was adequate for Cordero to identify his property and identify conditions that caused Cordero complaint about the way his goods had been packed.

There was light sufficient to allow Dr. Cordero to make the statements that he has made about the inspection.

38. The Property is occupied by tenants in addition to Premier.

Dr. Cordero saw other containers in Mr. Pfuntner's warehouse, but he does not know whom they belonged to or whether whoever owned them was a tenant.

Dated: July 20, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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Dated: July 20, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

**U.S. Bankruptcy Court
Western District of New York (Rochester)
Adversary Proceeding #: 2-02-02230-JCN**

Assigned to: Hon. John C. Ninfo II
Related BK Case: 01-20692
Related BK Title: Premier Van Lines, Inc., a Corporation *Date Filed:* 09/27/02
Demand: \$20000
Nature of Suit: 456

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James Pfuntner

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LEAD ATTORNEY

V.

Defendant

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()

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3rd Party Plaintiff

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V.

3rd Pty Defendant

David J. Palmer
SSN: 065-62-2753

David Dworkin

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Jefferson Henrietta Associates

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LEAD ATTORNEY

David Delano

represented by **Michael J. Beyma**
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LEAD ATTORNEY

U.S. Trustee

U.S. Trustee's Office,
100 State St.
Room 6090
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(585) 263-5812

Filing Date	#	Docket Text
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09/27/2002	1	Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (KST) (Entered: 09/27/2002)
10/01/2002	2	Filing fee paid; Receipt No.: 22052838 [2-1] re: adversary proceeding. (KST) (Entered: 10/03/2002)
10/03/2002	3	Summons issued. [3-1] Answer due: 11/4/02 for M & T Bank, for Rochester Americans Hockey Club, Inc., for Richard Cordero, for Kenneth W. Gordon (KST) (Entered: 10/03/2002)
10/08/2002	4	Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [4-1] Clerk's Note: Defendant, M&T Bank was not served, per D. MacKnight's office, will serve and send in an Affidavit of Service. (KST) (Entered: 10/09/2002)
10/09/2002	5	Answer filed on behalf of Kenneth W. Gordon [5-1] by Kenneth W. Gordon, Esq. (KST) (Entered: 10/09/2002)
10/15/2002	6	Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [6-1]served on: M & T Bank, attn: David DeLano, Assistant Vice President. (PCF) (Entered: 10/16/2002)
10/17/2002	7	Letter [7-1]from Dr. Richard Cordero, advising that he has not yet been served in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/23/2002)
10/25/2002	8	Waiver of Service of Summons and Petition for Clarification of Richard Cordero, Pro Se [8-1] (KST) (Entered: 11/05/2002)
11/01/2002	9	Clerk's Note: Richard Cordero called to inquire when his answer was due; he was advised that the date certain is 11/4/02; he said that he will mail out his answer. Further on 10/31/02, Mr. Cordero was advised that an extension of time for the answer would need to be stipulated to, or a motion may be brought, but an extension of time to answer cannot be done ex-parte. 9-1] (KST) (Entered: 11/05/2002)
11/06/2002	10	Answer filed on behalf of Richard Cordero, Defendant. Filed by R.

		Cordero, pro se defendant. [10-1] by , Esq. (KST) (Entered: 11/06/2002)
11/06/2002	11	Answer filed on behalf of M & T Bank [11-1] by Michael J. Beyma, Esq. (KST) (Entered: 11/06/2002)
11/12/2002	12	Plaintiff's Reply to Richard Cordero's Counterclaim, filed by David MacKnight, Atty. [12-1] (KST) (Entered: 11/12/2002)
11/12/2002	13	Affidavit of Mailing re: Reply filed by D. MacKnight, Atty. [12-1] [13-1] (KST) (Entered: 11/12/2002)
11/18/2002		Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfuntner, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (KST) (Entered: 11/21/2002)
11/19/2002	14	Third Party Summons issued. [14-1] Answer due: 12/19/02 for David Delano, for Jefferson Henrietta Associates, for David Dworking, for David J. Palmer (KST) (Entered: 11/21/2002)
11/25/2002	17	Affidavit of Mailing re: [17-1]third party complaint and summons. Served on essential parties. (KST) (Entered: 12/09/2002)
11/25/2002	18	Amended Answerwith cross-claims filed by Richard Cordero, Pro Se Defendant. [18-1] (KST) (Entered: 12/09/2002)
12/02/2002	19	Copy of Appeal filed with the U.S. Trustee's office by Richard Cordero, Pro Se Defendant. [19-1] (KST) (Entered: 12/09/2002)
12/05/2002	15	Notice of Motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] Hearing date and time: 9:30 12/18/02 at Rochester Courtroom Filed by: Kenneth Gordon, Esq. Affidavit of service: filed (PCF) (Entered: 12/06/2002)
12/06/2002	16	Letter [16-1]dated 12/5/02 from David MacKnight, Esq. to the Court that it might be helpful that the Trustee provide a listing from the debtors records of whose property debtor placed in the Henrietta location and whose property debtor placed in the Avon property. SEE LETTER FOR MORE DETAILS. (PCF) (Entered: 12/06/2002)
12/09/2002	20	Letter [20-1] to Plaintiff's attorney to expedite prosecution of AP; matter

		will be set on trial calendar for 9:00 1/22/03 Deadline to file documents: 12/19/02 ; (KST) (Entered: 12/09/2002)
12/10/2002	21	Letter [21-1]from K. Gordon, Tr., re:records of stored property by debtor. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 12/11/2002)
12/12/2002	22	Memorandum of Law in opposition, filed by Dr. Richard Cordero, Defendant, and Third Party Plaintiff(Pro Se) [22-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] . (KST) (Entered: 12/12/2002)
12/13/2002	23	Letter [23-1]from Amber Barney, Atty.,advising that Underberg & Kessler will not be representing David Dworkin a party in this action, but are requesting an extension of time to answer from Dr. Cordero. (KST) (Entered: 12/16/2002)
12/17/2002	24	Answer filed on behalf of M&T Bank David Delano, Third Party Defendant [24-1] by Michael J. Beyma, Esq. (KST) (Entered: 12/18/2002)
12/17/2002	26	Letter [26-1]from K. Gordon to Dr. Cordero, advising that he does not consent to an adj. in this matter. (KST) (Entered: 12/18/2002)
12/18/2002	25	Notice of Pre-trial Conference: [25-1] 10:00 1/10/03 at Rochester - Judge's Chambers; sent to David MacKnight, Atty; Kenneth Gordon, Tr.; Michael Beyma, Atty; Richard Cordero, Pro Se; Raymond Stilwell, Atty., and U.S. Trustee. (KST) (Entered: 12/18/2002)
12/18/2002	27	Minutes [27-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding - granted. The Court finds that Mr. Gordon's letters were not defamatory and that he was not negligent. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Kenneth Gordon, Trustee/Defendant; and in opposition: Dr. Richard Cordero, Pro Se Third Party Plaintiff (by telephone). (KST) (Entered: 12/19/2002)
12/19/2002	28	Copy of Letter from Dr. Cordero to Underberg and Kessler, conditionally granting extension of time to file answer to 12/31/02, on behalf of David Dworkin and Jefferson Henrietta Associates, third party defendants, subject to certain conditions required by Dr. Cordero. [28-1] (KST) (Entered: 12/20/2002)

12/23/2002	29	Letter [29-1]from Raymond Stilwell, Atty., advising that he is unable to attend the 1/10/03 pretrial as he has a conflict. Mr. Stilwell further advises that his appearance may not be necessary. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 12/24/2002)
12/23/2002	30	Order [30-1] granting motion for dismissal of cross-claim against trustee in an adversary proceeding, and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed. [15-1]Notice of Entry Issued To: Kenneth Gordon, Atty; Dr. Richard Cordero, Defendant/Third Party Plaintiff; and U.S. Trustee. (KST) (Entered: 12/30/2002)
12/26/2002	51	Affidavit of Mailing re: [51-1]Default Judgment in a Non-Core Matter. Filed by Dr. Richard Cordero. (KST) (Entered: 02/04/2003)
12/30/2002	31	Answer filed on behalf of David Dworkin, Jefferson Henrietta Associates [31-1] by Karl S. Essler, Esq. (KST) (Entered: 12/30/2002)
12/30/2002	32	Letter [32-1]from Dr. Cordero, requesting that he appear by telephone for the 1/10/03 pretrial(submitted the pre-trial option form). (KST) (Entered: 12/30/2002)
12/30/2002	33	Letter [33-1] from Michael Beyma, Atty., advising that he does not have an objection to Dr. Cordero appearing by telephone for the 1/10/03 pretrial. (KST) (Entered: 12/30/2002)
01/02/2003	34	Clerk's Note: Advised R. Stilwell, Atty., that his appearance will not be necessary at the 1/10/03 Pretrial. [34-1] (KST) (Entered: 01/02/2003)
01/02/2003	35	Affidavit of Mailing re: [35-1]filed by Dr. Richard Cordero, Defendant/Third Party Plaintiff, re: pt option form and application to enter a default judgment against David Palmer. (KST) (Entered: 01/03/2003)
01/03/2003	36	Order [36-1], that Dr. Richard Cordero, Defendant and Third Party Plaintiff may appear by telephone for the 1/10/03 pretrial (KST) (Entered: 01/06/2003)
01/06/2003	37	Pre-Trial option form Order of 1/3/03 was mailed to Dr. Richard Cordero, Defendant; Michael Beyma, Esq. Kenneth Gordon, Esq.; David MacKnight, Esq., and delivered to the U.S. Trustee. [37-1] (KST) (Entered: 01/06/2003)
01/06/2003	38	Copy of Letter [38-1]from K. Gordon, Tr., to Dr. Cordero,

		Defendant/Third Party Defendant, advising that he has no objection to Dr. Cordero appearing by telephone re: the pretrial. (KST) (Entered: 01/06/2003)
01/13/2003	39	Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (KST) (Entered: 01/13/2003)
01/13/2003	40	Civil Cover Sheet filed. [40-1] (KST) (Entered: 01/13/2003)
01/14/2003	41	Letter [41-1]to Dr. Richard Cordero, Defendant/Third Party Plaintiff, advising him that his designation of items on appeal are due on or before 1/27/03. Copy of letter served on essential parties. (KST) (Entered: 01/14/2003)
01/15/2003	42	Notice of Appeal and Certified copy transmitted to District Court. Civil Case #03-cv-6021L [42-1] (KST) (Entered: 01/17/2003)
01/27/2003	43	Apellant's designation by Richard Cordero of Contents for Inclusion in Record on Appeal. (KST) (Entered: 01/29/2003)
01/27/2003	54	Letter [54-1]from Dr. Richard Cordero, re: transcript of hearing of 12/18/02. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/05/2003)
01/29/2003	44	Affidavit of Mailing re: appellant designation [43-1] by Richard Cordero [44-1] (KST) (Entered: 01/29/2003)
01/30/2003	47	Notice of Motion to extend time to of time to file Notice of Appeal [47-1] Hearing date and time: 9:30 2/12/03 at Rochester Courtroom Filed by: Richard Cordero, Defendant Affidavit of service: not filed (KST) (Entered: 02/03/2003)
01/31/2003	45	Letter [45-1]from Dr. Cordero re: his available travel dates to come to Rochester to inspect his property in storage. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 01/31/2003)
02/03/2003	46	Letter [46-1]from Dr. Richard Cordero, Defendant, Third Party Plaintiff, re: entry of a default judgment. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/03/2003)
02/03/2003	48	Letter [48-1]from K. Gordon, Tr., advising that he will not be attending the inspection of Dr. Cordero's personal property in storage in Avon, NY. (KST) (Entered: 02/03/2003)

02/04/2003	49	Clerk's Certificate of Default [49-1] (KST) (Entered: 02/04/2003)
02/04/2003	50	Affidavit of Dr. Richard Cordero [50-1] re:Non-Military Service. (KST) (Entered: 02/04/2003)
02/04/2003	52	Order [52-1], to Transmit Record to District Court, re: non-core default judgment, with attachment to Recommendation of the Bankruptcy Court The Default Judgment Not Be Entered By the District Court (KST) (Entered: 02/04/2003)
02/04/2003	53	Letter [53-1]to District Court enclosing the required Documents re: Non Core Default Application for Default. Clerk's Note: Proposed original order submitted to District Court. (KST) (Entered: 02/04/2003)
02/06/2003	55	Memorandum of Law [55-1] re: motion to extend time to of time to file Notice of Appeal [47-1] . (KST) (Entered: 02/06/2003)
02/12/2003	56	Minutes [56-1] re: motion to extend time to of time to file Notice of Appeal - denied; This motion was not filed timely as required by Rule 8002(a). Appearances: Dr. Richard Cordero, Defendant/Third Party Plaintiff(appeared by telephone); in opposition: Kenneth Gordon, Tr., Defendant. Mr. Gordon will submit Order. NOTICE OF ENTRY TO BE ISSUED. (KST) (Entered: 02/14/2003)
02/12/2003	58	Letter [58-1]from Raymond Stilwell, Atty., re: various issues in this matter, and that he does not represent David Palmer in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/19/2003)
02/18/2003	57	Order [57-1] denying motion to extend time to file Notice of Appeal [47-1]that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on 1/13/03; and thereby not timely filed; that the provisions of Bankruptcy Rule 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a); that the last date for Richard Coredero, Defendant and Third Party Plaintiff, to file a motion seeking an extension under Bankruptcy Rule 8002(c) of his time to file his Notice of Appeal was 1/29/03; that the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03; and that a motion to dismiss the appeal is pending in the District Court. NOTICE OF ENTRY ISSUED TO: Dr. Richard Cordero, Third Party Plaintiff; Ken Gordon, Defendant and U.S. Trustee. (KST) (Entered: 02/18/2003)
02/21/2003	59	Letter [59-1]from M. Beyma, Atty., for M&T Bank, advising that M&T Bank has not yet decided whether someone from the bank will attend at

		the warehouse opening. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/24/2003)
02/27/2003	60	Notice of Motion for relief from order denying motion to extend time to file notice of appeal [60-1] Hearing date and time: 9:30 3/12/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Defendant Affidavit of service: filed. Clerk's Note: Advised Dr. Cordero that 3/12/03 is not a motion date, he will re-notice the motion for 3/19/03 or 3/26/03, and submit an amended affidavit of mail. (KST) (Entered: 03/04/2003)
03/04/2003	61	Letter of Opposition filed by K. Gordon, Defendant [61-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1] Clerk's Note: Advised Mr. Gordon that the date of 3/12/03 is not a hearing date, and that an amended notice if forthcoming. (KST) (Entered: 03/04/2003)
03/10/2003	62	Amended Notice of Motion, re: the amended date of hearing to 3/26/03 at 9:30 at Rochester Courtroom filed by Dr. Richard Cordero, Defendant [62-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1] Affidavit of Service filed. (KST) (Entered: 03/11/2003)
03/10/2003	63	Letter [63-1] of Dr. Richard Cordero, Defendant, re: default of David Palmer. (KST) (Entered: 03/11/2003)
03/11/2003	65	Copy of Letter [65-1] from Dr. Richard Cordero to Hon. David Larimer, re: default judgment against D. Palmer. (KST) (Entered: 03/13/2003)
03/11/2003	66	Copy of Decision and Order by U.S. District Judge David G. Larimer; concurring in the Bankruptcy Judge's determination that judgment is not appropriate in this case, and that 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. SEE ORDER FOR FURTHER TERMS AND CONDITIONS. [66-1] (KST) (Entered: 03/13/2003)
03/12/2003	64	Letter [64-1] to Dr. Richard Cordero, sent by Paul Warren, Clerk of the Court, re: the application for the entry of default against David Palmer. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 03/13/2003)
03/13/2003	67	Decision and Order of the Hon. David G. Larimer, U.S. District Judge, re: Notice of Appeal filed on 1/13/03, re: the Decision and Order dated

		12/30/02, of the Hon. John C. Ninfo, II, Chief U.S. Bankruptcy Judge. ORDERED THAT the Trustee's motion to dismiss the appeal is granted, and the appeal is dismissed. [67-1] (KST) (Entered: 03/14/2003)
03/26/2003	70	Minutes [70-1] denying motion for relief from order denying motion to extend time to file notice of appeal [60-1]Ms. Schaal to submit order. The Court reserves the right to supplement the order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Defendant and Third Party Plaintiff(by telephone); in opposition: Deborah Schaal of counsel to K. Gordon, Trustee, and David MacKnight, Atty. for James Pfuntner. (KST) (Entered: 03/28/2003)
03/26/2003	71	Transcript [71-1] of proceedings held 12/18/03. (KST) (Entered: 03/28/2003)
03/27/2003	68	Copy of Letter [68-1]from David MacKnight, Atty., to Dr. Richard Cordero, Defendant, advising of the available inspection dates: 4/23/03, 4/24/03, or 4/25/03, or earlier if Dr. Cordero would like. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 03/27/2003)
03/27/2003	69	Copy of Decision and Order [69-1],executed by David G. Larimer, U.S. District Judge re: Richard Coredero moves for a rehearing or reconsideration of this Court's Decision and Order enter 3/11/03. The motion is in all respects denied. (KST) (Entered: 03/28/2003)
04/02/2003	72	Copy of Letter [72-1]from Dr. Richard Cordero to Court Reporter. (KST) (Entered: 04/02/2003)
04/04/2003	73	Order [73-1] denying Defendant, Third Party Plaintiff, Dr. Richard Cordero's motion for relief from order denying motion to extend time to file notice of appeal [69-2], that based on the findisngs of fact and conclusions of law, that Richard Cordero's motion ofr relief from teh order dated 2/18/03 denying his motion for extension of time for filing a notice to appeal is hereby denied. NOTICE OF ENTRY ISSUED TO Debra Schall, of counsel to Kenneth Gordon, Atty.,Dr. Richard Cordero, Defendant, and David MacKnight, Atty. (KST) (Entered: 04/07/2003)
04/07/2003	74	Notice of entry issued to U.S. Trustee [74-1] re:Order of 4/4/03 . (KST) (Entered: 04/07/2003)
04/07/2003	75	Notice of Motion for Measures relating to trip to Rochester and Inspection of Property [75-1] Hearing date and time: 9:30 4/16/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se, Defendant, and Third Party Plaintiff. Affidavit of service: filed. Clerk's Note: Dr.

		Cordero is advised by letter that 4/16/03 is not a scheduled date, and to please re-notice his motion for 4/23/03, or for one of the Court's motion dates that accommodates his schedule. (KST) (Entered: 04/08/2003)
04/07/2003	76	Letter [76-1]to Dr. Richard Cordero, advising that due to the complexity of the legal issues that he has now raised and re: notice of motion for measures relating to trip to Rochester, the Court denies Dr. Cordero's request to appear by telephone in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/08/2003)
04/11/2003	77	Notice of Motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Hearing date and time: 9:30 4/23/03 at Rochester Courtroom Filed by: David MacKnight, Atty. Affidavit of service: not filed (KST) (Entered: 04/14/2003)
04/21/2003	78	Brief of Dr. Richard Cordero, Pro Se [78-1] re: motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1]Affidavit of Mailing filed. (KST) (Entered: 04/21/2003)
04/21/2003	79	Letter [79-1]from Mary Dianetti, Bankruptcy Court Reporter, in response to Dr. Cordero's letter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/22/2003)
04/23/2003	81	Minutes [81-1] motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Adj. to 9:30 5/21/03 at Rochester Courtroom. The court directed Dr. Cordero to inspect the goods by 5/21/03. Appearances: David MacKnight, Atty. for J. Pfunter, Plaintiff; in opposition: Dr. Richard Cordero, Defendant, and Third Party Plaintiff(by telephone). (KST) (Entered: 04/29/2003)
04/29/2003	80	Clerk's Note: Appeal filed transmitted to District Court, for purposes of filing in the Second Circuit. [80-1] (KST) (Entered: 04/29/2003)
05/05/2003	82	Copy of Letter [82-1]from Dr. Cordero to James Pfunter, confirming that Dr. Cordero will be arriving in Rochester on May 21, 2003 at 10:45,

		to inspect his property in Avon. Affidavit of Service filed. (KST) (Entered: 05/05/2003)
05/07/2003	83	Letter [83-1]from Dr. Richard Cordero, Defendant, re: his travel arrangements for the inspection in Avon, NY., on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/07/2003)
05/13/2003	84	Copy of Letter [84-1]from J. Pfunter to Dr. Cordero, confirming that the inspection of the property at Sackett Road will take place on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/13/2003)
05/15/2003	85	Letter [85-1]from Dr. Richard Cordero, Defendant, advising that he will be in Rochester on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/16/2003)
05/19/2003	86	Letter [86-1]from Underberg & Kessler advising that Ms. Mattle will be picking up Dr. Cordero from the Rochester Airport for the inspection of property at 2140 Sackett Road, Avon, NY, and thereafter Ms. Mattle will take Dr. Cordero back to the Rochester Airport. (KST) (Entered: 05/20/2003)
05/21/2003	87	Copy of Notice of appeal that was received and docketed on 5/2/03 at the United States Court of Appeals. [87-1] (PCF) (Entered: 05/23/2003)
05/21/2003	88	MINUTES [88-1] denying motion without prejudice. for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] NOTICE OF ENTRY TO BE ISSUED. Dr. Cordero can make a motion for sanctions and damages and renew his default motion against David Palmer. Appearances by: David MacKnight, atty for James Pfunter. Appearing in Opposition: Dr. Richard Cordero, defendant and Third Pary Plaintiff (by telephone) (PCF) (Entered: 05/27/2003)
06/03/2003	89	Scheduling Order from the U.S. Court of Appeals, Second Circuit, re: dates certain. SEE ORDER FOR FURTHER DETAILS. [89-1] (KST) (Entered: 06/04/2003)
06/09/2003	90	Letter [90-1]from D. Macknight, re: prospective purchaser of the premises, and Dr. Cordero's items. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 06/09/2003)

06/11/2003	91	Notice of Motion for sanctions and compensation for failure to comply with discovery orders. [91-1] Hearing date and time: 9:30 6/25/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se Affidavit of service: filed (KST) (Entered: 06/11/2003)
06/11/2003	107	Ex-Parte Motion for Default Against David Palmer Filed by 3rd Party Plaintiff Richard Cordero (Attachments: # 1 Appendix) (Tacy, K.) (Entered: 07/31/2003)
06/18/2003	92	Affidavit Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # 1 Exhibit) (Tacy, K.) (Entered: 06/19/2003)
06/19/2003	93	Notice of Amendment of Brief Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # 1 Exhibit # 2 Proposed Order) (Tacy, K.) (Entered: 06/19/2003)
06/19/2003	94	Notice to Admit. Filed by David MacKnight, Atty.(Attachments: # 1 Exhibit)(Tacy, K.) (Entered: 06/23/2003)
06/23/2003	95	Precautioary Response to the Motion Made by Richard Cordero to Enter a Default Judgment. Filed by D. MacKnight, Atty.Plaintiff James Pfuntner . Clerk's Note: The subject Default motion is an ex-parte motion, however it will be addressed at th e Court's 6/25/03 9:30 Motion Calendar. (Tacy, K.) (Entered: 06/23/2003)
06/24/2003	96	Letter Filed by Daniel Delaus, Atty . (Tacy, K.) (Entered: 06/24/2003)
06/25/2003	97	Hearing Continued (RE: related document(s)[91] Motion for sanctions and compensation: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom for [91]. The Court advised the parties of the Court's available trial dates for October and November. On the adjourned date, the parties are to advise the Court which of those date they want as trial dates. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacK night, Atty. for James Pfuntner, Plaintiff; Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants. (Parkhurst, L.) (Entered: 06/26/2003)
06/25/2003	98	Hearing Continued (RE: related document(s) 95 Ex parte motion to enter default judgment against David Palmer: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom. Although an ex parte motion, the

		Court addressed it at this motion calendar. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third part Plaintiff. Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff. (Parkhurst, L.) (Entered: 06/26/2003)
06/25/2003	99	Certificate of Service Filed by Plaintiff James Pfuntner (RE: related document(s) 94 Notice to Creditors). (Tacy, K.) (Entered: 06/27/2003)
07/02/2003	100	Hearing Continued (RE: related document(s)[91] Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for [91], Trial may continue into 10/17/03 and 11/14/03 will be held open if any matters still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Karl Essler, Atty. for Jefferson He nrietta Associates and David Dworkin, Third Party Defendants; Joseph Decoursey, Law Clerk, appeared on behalf of Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant, to provide Mr. Beyma's available Trial dates . (Parkhurst, L.) (Entered: 07/09/2003)
07/02/2003	101	Hearing Continued (RE: related document(s) 95 Ex parte motion to enter default judgment against David Palmer. Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 95 , Trial may continue into 10/17/03 and 11/14/03 will be held open for any matters that still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Third Party Plaintiff (By telephone) Appearing in opposition: David MacKnight, Atty. for James Pfuntner (Parkhurst, L.) (Entered: 07/09/2003)
07/15/2003	102	Order Re:dates certain. Signed on 7/15/2003 (RE: related document(s)[91] Hearing (Bk Motion) Set, [98] Hearing (Bk Other) Continued, Hearing (Bk Other) Continued). (Tacy, K.) (Entered: 07/15/2003)
07/17/2003	103	BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # 102) (Admin.) (Entered: 07/18/2003)
07/17/2003	104	BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # 102) (Admin.) (Entered: 07/18/2003)
07/23/2003	105	Motion For Sanctions Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # 1 Exhibit) (Tacy, K.) (Entered: 07/23/2003)

07/23/2003	106	Reply to Request for Admissions. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 07/23/2003)
07/31/2003		Clerk's Note: Pursuant to telephone conversation with Dr. Cordero this date: Advised Dr. Cordero that his motion to appear by telephone on August 6, 2003 at 9:30 is denied, but he can appear in person or obtain consent to adj. this matter to 10 /16/03 at 9:30 a.m. Dr. Cordero advised that he will withdraw this motion, and make another motion for 10/16/03 at 9:30 a.m. Advised Dr. Cordero to write a letter to the Court and the parties involved confirming his intent. (RE: related document(s) 105 Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) (Tacy, K.) (Entered: 07/31/2003)
08/04/2003	108	ReNotice of Motion and Notice of Withdrawal Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 08/06/2003)
08/04/2003	109	Hearing Set (RE: related document(s) 108 Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 108 , (Tacy, K.) (Entered: 08/06/2003)
08/06/2003	110	Hearing Continued (RE: related document(s) 105 Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero, 108 Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 105 and for 108 , Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff (Parkhurst, L.) (Entered: 08/07/2003)
08/11/2003	111	Motion to Recuse. Filed by Defendant Richard Cordero , 3rd Party Plaintiff (Attachments: # 1 Exhibit # 2 Exhibit) (Tacy, K.) (Entered: 08/11/2003)
08/11/2003	112	Hearing Set (RE: related document(s) 111 Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 8/20/2003 at 09:30 AM Rochester Courtroom for 111 , (Tacy, K.) (Entered: 08/11/2003)
08/14/2003	113	Letter to Dr. Richard Cordero, Defendant and Third Party Plaintiff. Copies sent to Kenneth Gordon, Esq., David Palmer, David MacKnight, Atty., Michael Beyma, Atty., Karl Essler, Atty., U.S. Trustee. (RE: related document(s) 111 Application). (Tacy, K.) (Entered: 08/14/2003)

08/20/2003	114	Hearing Continued (RE: related document(s) 111 Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 111 , Dr. Cordero will renote th e motion for 10/16/03. No appearances. (Parkhurst, L.) (Entered: 08/20/2003)
08/21/2003	115	Renote of Motion for Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Tacy, K.) (Entered: 08/29/2003)
08/21/2003	116	Hearing Set (RE: related document(s) 115 Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 115 , (Tacy, K.) (Entered: 08/29/2003)

PACER Service Center			
Transaction Receipt			
09/05/2003 07:49:28			
PACER Login:		Client Code:	
Description:	Docket Report	Case Number:	2-02-02230-JCN
Billable Pages:	8	Cost:	0.56

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1 CONVERTED

**U.S. Bankruptcy Court
Western District of New York (Rochester)
Bankruptcy Petition #: 2-01-20692-JCN**

Assigned to: Hon. John C. Ninfo II
Chapter 7
Previous chapter 11
Voluntary
No asset

Date Filed: 03/05/2001
Date Converted: 12/20/2001

**Premier Van Lines, Inc., a
Corporation**
c/o 1829 Middle Road
Rush, NY 14543
()
Tax id: 16-1542181
Debtor
dba
North American Van Lines

represented by **Raymond C.
Stilwell**
The Law Center at
Williamsville
17 Beresford
Court
Williamsville, NY
14221
(716) 565-2000

Kenneth W. Gordon
Chapter 7 Trustee
100 Meridian Centre Blvd.
Suite 120
Rochester, NY 14618
(585) 244-1070
Trustee
U.S. Trustee's Office,
100 State St.
Room 6090
Rochester, NY 14614
(585) 263-5812
U.S. Trustee

Filing Date	#	Docket Text
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03/05/2001	1	Voluntary petition; [1-1] missing documents: Schedule A - J Exhibit A List of Equity Security Holders Statement of Affairs: business Statement of Executory Contracts Disclosure statement of counsel Summary of debts & property Documents due: 3/20/01 (GLW) (Entered: 03/07/2001)
03/05/2001	2	Filing fee paid; Receipt No.: 22039647 [2-1] (GLW) (Entered: 03/07/2001)
03/07/2001	3	Deficiency Notice and Designation of David J. Palmer as principal. [3-1] (GLW) (Entered: 03/07/2001)
03/07/2001	4	Clerk's Note: DIP Information Sheet mailed to debtor and attorney and Chapter 11 Monograph mailed to Debtor's Attorney (GLW) (Entered: 03/07/2001)
03/08/2001	5	Notice of Section 341 Meeting [5-1] 2:00 4/3/01 at Rochester Room 6080 (GLW) (Entered: 03/08/2001)
03/08/2001	6	Order authorizing method of compensation or remuneration to debtor or insider of debtor for 30 days from date of Order for Relief and requiring Court approval for any compensation after 30 days; [6-1] Notices Mailed: 3 on 3/9/01 (GLW) (Entered: 03/09/2001)
03/10/2001	7	Court's BNC Certificate of Service re: Ch. 11 341 notice [5-1] . # of Notices: 38 were sent. (DBA) (Entered: 03/12/2001)
03/16/2001	8	Letter to debtor's attorney re returned 341 notices; 1 return [8-1] NYS Workers Compensation Board (GLW) (Entered: 03/16/2001)
03/20/2001	9	Filed [9-1] missing documents: Summary of debts & property Schedule A - I Statement of affairs: non-business Disclosure statement of counsel. Case caption: dba. Supp. mailing matrix. Fee paid: #22040006. (RIJ) (Entered: 03/20/2001)
03/22/2001	10	US Trustee statement [10-1] re: Inability to Appoint Committee of Unsecured Creditors. (GLW) (Entered: 03/22/2001)
04/02/2001	11	Order and Application to Employ Raymond C. Stilwell, Adair Law Firm, as Attorney for the DIP [11-1] (GLW) (Entered: 04/04/2001)
04/03/2001	12	Notice of Motion for approval of salary to David Palmer, President [12-1] Hearing date and time: 9:30 4/11/01 at Rochester Courtroom. Filed by: Raymond Stilwell, Atty for DIP. Affidavit of service: Not Filed

		(GLW) (Entered: 04/04/2001)
04/03/2001	13	MINUTES [13-1] Section 341 Meeting - Adj. to 10:30 7/10/01 at Rochester Room 6080. Debtor, David Palmer, Pres. and atty for debtor appeared. D.L. Rasmussen for Primus Automotive Finance appeared. Debtor sworn & examined. Need to amend for pre-petition taxes IRS; Schedule E. Need to resolve landlord claims & reduce rental costs to turn to profitability. No plan available until tenancy issues are crystalized. (GLW) (Entered: 04/04/2001)
04/05/2001	14	Affidavit of US Trustee's Office in Opposition [14-1] re: motion for approval of salary to David Palmer, President [12-1] (GLW) (Entered: 04/05/2001)
04/11/2001	15	Minutes [15-1] re: motion for approval of salary to David Palmer, President - granted. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; Trudy Nowak, U.S. Trustee, objections withdrawn. (LP) (Entered: 04/11/2001)
04/11/2001	16	Notice of Motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for deb Affidavit of service: filed (PAH) (Entered: 04/12/2001)
04/11/2001	17	Notice of Motion for turnover of property from Jim Pfutner, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for debtor. Affidavit of service: filed (PAH) (Entered: 04/12/2001)
04/12/2001	18	Affidavit of Mailing re: motion for approval of salary to David Palmer, President [12-1] [18-1] (PAH) (Entered: 04/16/2001)
04/16/2001	19	Affidavit filed by David MacKnight for James Pfuntnr in Opposition [19-1] re: motion for turnover of property from Jim Pfutner, for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (GLW) (Entered: 04/17/2001)
04/17/2001	20	Order [20-1] granting motion for approval of salary to David Palmer, President. ORDERED that provided debtor is current on all other post-petition payables at the time of issuance of payroll, said debtor may compensate David Palmer in the sum of \$334 per week pending further Order of this Court. [12-1] (PAH) (Entered: 04/17/2001)

04/18/2001	21	Order [21-1] granting motion for turnover of property from Jim Pftutner no later than 4/18/01 @8:00 pm, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (GLW) (Entered: 04/18/2001)
04/18/2001	22	Minutes [22-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. to 9:30 4/26/01 at Rochester Courtroom. If there is no objection to the motion by the U.S. Trustee, the motion will be granted and will be removed from the calendar. (LP) (Entered: 04/19/2001)
04/18/2001	23	Minutes [23-1]Turnover of property and contempt: Motion granted. Restraints on the property are to be removed by today. Reserve on the request for attorney's fees. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Raymond Stilwell, Atty. for Debtor. Appearing in opposition: David MacKnight, Atty. for James Pfuntnr. (LP) (Entered: 04/19/2001)
04/18/2001	24	Amendment [24-1] re: Schedules D, E and G. Supplemental Matrix filed. FEE PAID #22040750 (GLW) (Entered: 04/19/2001)
04/19/2001	25	Notice of motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] Hearing Date and Time: 9:30 5/2/01 at Rochester Courtroom; Filed by: Ingrid Palermo, Atty for Harry & Gretchen Voss; Receipt No.: 22040773. Affidavit of Service Filed. (GLW) (Entered: 04/19/2001)
04/26/2001	26	Minutes [26-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. prior to calendara call to 9:30 5/2/01 at Rochester Courtroom. No appearances. (LP) (Entered: 04/26/2001)
04/30/2001	27	Letter filed by Raymond Stilwell confirming adjournment to 5/2/01 [27-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (GLW) (Entered: 04/30/2001)
05/02/2001	28	Minutes [28-1] re: motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta - granted effective on the close of business on 5/11/01 provided that the rent, pro-rated taxes and utilities for ten days are paid by the close of business on 5/3/01. If they are not paid the stay will be lifted. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: John Weider of counsel to Ingrid Palermo, Atty. for Harry and Gretchen Voss.; Trudy Nowak, US Trustee. Appearing in opposition: Raymond Stilwell, Atty. for Debtor. (LP) (Entered: 05/03/2001)

05/02/2001	29	Minutes [29-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP - granted. A statement that Harry and Gretchen Voss are not taking a position on the motion is to be in the order. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; John Weider, Atty. for Harry and Gretchen Voss; Trudy Nowak, U.S. Trustee. (LP) (Entered: 05/03/2001)
05/07/2001	30	Order [30-1] granting motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (GLW) (Entered: 05/09/2001)
05/11/2001	31	Order [31-1] granting motion for relief from stay (Sec. 362) re: leasehold property at 10 Thruway Park, West Henrietta [25-1] (see order for details) NOTICE OF ENTRY ISSUED TO: John Weider, Raymond Stilwell and US Trustee on 5/14/01 (GLW) (Entered: 05/14/2001)
07/11/2001	32	MINUTES [32-1] Section 341 Meeting - Adj. to 1:00 10/2/01 at Rochester Room 6080. Debtor appeared and examined - Dave Palmer. Atty for Debtor appeared. Debtor has effectuated move, will save considerable expense (\$9K). O/S Financials and UST fees to be paid by 7/17/01 or UST to move to convert. Dentor expects plan to be filed in late fall. (GLW) (Entered: 07/11/2001)
07/12/2001	33	Address change for Debtor (GLW) (Entered: 07/12/2001)
07/12/2001	37	Application for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 for the period 1/26/01 - 7/10/01 [37-1] Filed by: Raymond Stilwell (GLW) (Entered: 07/19/2001)
07/12/2001	39	Application for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 for the period 5/15/01 - 6/19/01 [39-1] Filed by: Raymond Stilwell, Atty for DIP. (GLW) (Entered: 07/19/2001)
07/16/2001	34	Monthly report of operation for March 2001 [34-1] (GLW) (Entered: 07/16/2001)
07/16/2001	35	Monthly report of operation for April 2001 [35-1] (GLW) (Entered: 07/16/2001)
07/16/2001	36	Monthly report of operation for May 2001 [36-1] (GLW) (Entered: 07/16/2001)

07/19/2001	38	Notice to creditors [38-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] : Last day to file objections: 8/13/01 ; (GLW) (Entered: 07/19/2001)
07/19/2001	40	Notice to creditors [40-1] re: motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] : Last day to file objections: 8/13/01 ; (GLW) (Entered: 07/19/2001)
07/21/2001	41	Court's BNC Certificate of Service re: default notice [38-1] . # of Notices: 50 were sent. (DBA) (Entered: 07/23/2001)
07/21/2001	42	Court's BNC Certificate of Service re: default notice [40-1] . # of Notices: 50 were sent. (DBA) (Entered: 07/23/2001)
07/24/2001	43	Amended Notice to creditors [43-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1]: Last day to file objections: 8/13/01; (Amended to clearly identify name of Attorney) (GLW) (Entered: 07/24/2001)
07/25/2001	44	Affidavit of US Trustee's Office Supporting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] (GLW) (Entered: 07/25/2001)
07/25/2001	45	Affidavit of U.S. Trustee's Office Supporting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] (GLW) (Entered: 07/25/2001)
07/27/2001	46	Certificate of mailing from BNC with original notice re: Amended default notice [43-1] ; [46-1] (GLW) (Entered: 07/30/2001)
09/17/2001	47	Monthly report of operation for June 2001 [47-1] (GLW) (Entered: 09/17/2001)
10/02/2001	56	MINUTES [56-1] Section 341 Meeting - Adjourned to 10/23/01 @1:00 Room 6080. Hearing canceled. (GLW) (Entered: 11/09/2001)
10/11/2001	48	Order [48-1] granting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of \$9,176.44 plus disbursements of \$895.84 [37-1] (GLW) (Entered: 10/12/2001)

10/11/2001	49	Order [49-1] granting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of \$1,923.00 [39-1] (GLW) (Entered: 10/12/2001)
10/22/2001	50	Ex Parte Application & Order [50-1], shortening time for hearing on sale of debtor's base business and to employ its principal Returnable 10/29/01 @11:00 am Rochester Courtroom. (GLW) (Entered: 10/22/2001)
10/23/2001	51	MINUTES [51-1] Section 341 Meeting - Adj. to 1:00 10/30/01 at Rochester Room 6080. No appearances. Counsel for debtor requested adjournment. (GLW) (Entered: 10/24/2001)
10/29/2001	52	Minutes [52-1] Sale of property outside the ordinary course of business for the debtor's base of business: Motion withdrawn. The buyer does not want to go forward. Appearances: Raymond Stilwell, Atty. for Debtor; David MacKnight, Atty. for James Pfuntner, landlord; Trudy Nowak, U.S. Trustee. (LP) (Entered: 11/01/2001)
11/06/2001	55	MINUTES [55-1] Section 341 Meeting - Adj. to 1:00 2/26/02 at Rochester Room 6080. Debtor, David Palmer, appeared and examined. Atty for Debtor appeared. Business ceased trucking operations. F/S not filed. UST fees not current. Debtor to consent to conversion upon UST motion unless buyer can be located in the interim. (GLW) (Entered: 11/08/2001)
11/08/2001	53	Motion re: for conversion to Chapter 7 and in the alternative, for dismissal of case Returnable 12/20/01 @9:30 Rochester Courtroom [53-1] Filed by: US Trustee's Office. No Fee Required. (GLW) (Entered: 11/08/2001)
11/08/2001	54	Letter to debtor and debtor's attorney advising that they must both appear on the return date of the Motion to Dismiss or Convert in the event written opposition is filed. [54-1] (GLW) (Entered: 11/08/2001)
11/13/2001	57	Certificate of mailing from BNC with original notice re: motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] ; [57-1] (GLW) (Entered: 11/14/2001)
12/18/2001	58	Affidavit of Ingrid Palermo, Atty for Harry and Gretchen Voss in Support [58-1] of motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] (GLW) (Entered: 12/18/2001)

12/18/2001	59	Affidavit of Mailing re: affidavit/in support of motion to Dismiss or Convert [58-1] [59-1] (GLW) (Entered: 12/18/2001)
12/20/2001	60	Order [60-1] granting motion for conversion to Chapter 7 [53-1] (GLW) (Entered: 12/20/2001)
12/21/2001		Utility event to update the Estimated Number of Employees, Estimated Number of Equity Security Holders and the Small Business fields after conversion to a Chapter 7 . (GLW) (Entered: 12/21/2001)
12/21/2001	61	Clerk's Note: Copy of petition, schedules and amendments sent to US Trustee's office on 12/21/01 [61-1] (GLW) (Entered: 12/21/2001)
12/27/2001	62	Order [62-1] directing debtor to file final report and account within 15 days; and directing the attorney for debtor to file a fee application within 60 days (See Order for further details.) Copy mailed to Debtor, Debtor's Attorney and U.S. Trustee. (CC) (Entered: 12/27/2001)
12/28/2001	63	Notice of Sec. 341 Meeting : Meeting set for: 11:00 1/24/02 at Rochester Room 6080 Government Claim Deadline: 7/1/02 Last day to file claims: 4/24/02 . Kenneth Gordon appointed trustee (ASA) (Entered: 12/28/2001)
12/30/2001	64	Court's BNC Certificate of Service re: 341 notice [63-1] . # of Notices: 51 were sent. (DBA) (Entered: 12/31/2001)
01/14/2002	65	Letter to debtor's attorney re returned 341 notices; 1 returns [65-1]Premier Van Lines Inc. (PCF) (Entered: 01/14/2002)
01/18/2002	66	Order [66-1], to extend time to file DIP Final Report and account Time extended to:1/22/02 (PCF) (Entered: 01/22/2002)
01/24/2002	67	Final report and account [67-1] with statement as to additional creditors. Amendment cover sheet filed also Amending Schedule E. (PCF) (Entered: 01/25/2002)
01/25/2002	68	Administrative Claims Bar Notice under Rule 1019: [68-1] Administrative Claims Deadline: 3/29/02 (PCF) (Entered: 01/25/2002)
01/26/2002	70	MINUTES [70-1] 341 Mtg. - Adj. to: 2:00 2/8/02 at Rochester Courtroom. Asset Case. Need Completer List of all assets at both locations. Payroll info and W2, Corp. Tax return for 2000., Revenue & Expense reports and disk masters and bank records. Accts Receivable

		details and Closeout Corp. accts. (PCF) (Entered: 01/30/2002)
01/27/2002	69	Court's BNC Certificate of Service re: administrative claims bar notice [68-1] . # of Notices: 39 were sent. (DBA) (Entered: 01/28/2002)
02/06/2002		Debtor's home address:Premier Van Lines c/o 1829 Middle Road, Rush, NY 14543 (PCF) (Entered: 02/06/2002)
02/08/2002	71	MINUTES [71-1] 341 Mtg. - Debtor(s) sworn,examined; MC; Tr, db atty appeared. Debtor to produce 1999 and 2000 Corp. Tax Returns, Receipts for expenses not shown in Quicken, Registration information for vehicles, invoices for A/R and details on jobs still needing invoicing, info on \$4000.00 security deposit held by Ryder, Franchise agreement from Jeff Rd. and Quicken printout, CNB register and M & T Equity Loan by 2/28/02. ASSET CASE. Appearance by debtor and President of Corporation David Palmer. (PCF) (Entered: 02/14/2002)
02/28/2002	73	Application re: for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] Filed by: Raymond C. Stilwell, Esq. Afdt of service filed. Period of Services: 7/16/01-2/26/02. (PCF) (Entered: 03/05/2002)
03/04/2002	72	Order [72-1], To employ Attorney for Trustee William E. Brueckner (PCF) (Entered: 03/04/2002)
03/08/2002	74	Notice to creditors [74-1] re: motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$3957.92 [73-1] : Period of services 7/16/01-2/26/02 Last day to file objections: 4/1/02 ; (PCF) (Entered: 03/08/2002)
03/10/2002	75	Court's BNC Certificate of Service re: default notice [74-1] . # of Notices: 91 were sent. (DBA) (Entered: 03/11/2002)
03/19/2002	76	Objection - No hearing requested. Filed by Kenneth W. Gordon, chapter 7 t opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] (PCF) (Entered: 03/21/2002)
03/20/2002	77	Statement of the United States Trustee regarding Application for Fees filed by Trudy Nowak, UST not opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$3957.92 [73-1] (PCF) (Entered: 03/21/2002)

03/25/2002	78	Application for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1]for the period 7/1/02-12/20/01. Filed by: Raymond C. Stilwell as atty for debtor (PCF) (Entered: 04/03/2002)
03/29/2002	80	Motion re: Request for payment to pay landlords the sum of \$40,001.32 Sec. 503 (b) [80-1] Filed by: John Weider, Esq. (Clerk's note: called atty to send in Notice of Motion to set hearing date). (PCF) (Entered: 04/05/2002)
04/03/2002	79	Notice to creditors [79-1] re: motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] : Last day to file objections: 4/26/02 ; (PCF) (Entered: 04/03/2002)
04/05/2002	81	Court's BNC Certificate of Service re: default notice [79-1] . # of Notices: 91 were sent. (DBA) (Entered: 04/05/2002)
04/08/2002	82	Certificate of mailing from BNC with original notice re: motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] ; [82-1] (PCF) (Entered: 04/10/2002)
04/10/2002	83	Statement of the United States Trustee regarding Application of Fees filed by, Trudy Nowak, Esq, supporting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] No objection. (PCF) (Entered: 04/10/2002)
04/15/2002	84	Notice of Motion Sec. 503 (b) directing payment of an administrative expense for base rent, taxes, and interest related to Premier Van Lines Inc. occupancy of 10 Thruway Park, West Henrietta, NY for landlords Harry F & Gretchen A. Voss. [84-1] Hearing date and time: 9:30 5/8/02 at Rochester Courtroom Filed by: John R. Weider, Esq. Affidavit of service: filed. (Clerk's note: called atty to amend time to 11:00 a.m.). (PCF) (Entered: 04/17/2002)
04/29/2002	85	Amended Notice [85-1]re: Motion for an Order pursuant to Sec. 503(b) directing payment of an administrative expense for base rent, taxes and interest related to Premier Van Lines, Inc.'s occupancy of 10 Thruway Park, West Henrietta, NY [84-1] Hearing Date & Time: 11:00 5/8/02 at Rochester Courtroom. Filed by John R. Weider, Atty for Harry F. and Gretchen A. Voss. Affidavit of service filed. (CC) (Entered:04/29/2002)
05/08/2002	86	Minutes [86-1] re: motion Sec. 503 (b) directing payment of an administrative expense - granted. Order to be submitted. Appearances: John Weider, Atty. for Harry & Gretchen Voss; Kenneth Gordon,

		Trustee. (LP) (Entered: 05/09/2002)
05/08/2002	87	Motion re: by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] Filed by: Timothy P. Johnson, Esq of Underberg & Kessler. Affidavit of service: Filed. FEE PAID #22049708. Returnable 5/15/02 at 11:30, Rochester Courtroom. (ASA) (Entered: 05/09/2002)
05/10/2002	88	Order [88-1] granting motion Sec. 503 (b) directing payment of an administrative expense [84-1] (PCF) (Entered: 05/13/2002)
05/17/2002	89	Order [89-1] granting motion by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] (CC) (Entered: 05/20/2002)
05/29/2002	90	Order [90-1] granting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of \$4699.50 [78-1] (PCF) (Entered: 05/29/2002)
06/13/2002	91	Notice to creditors [91-1] re: Trustee's Intent to abandon Property: All assets of Premier Van Lines, Inc. ; Deadline for objections: 7/2/02 Scheduled date: 7/3/02 at 11:00, Rochester Courtroom. (ASA) (Entered: 06/14/2002)
06/18/2002	92	Certificate of mailing from BNC with original notice re: abandonment notice [91-1] ; [92-1] (ASA) (Entered: 06/18/2002)
06/18/2002	93	Affidavit of Mailing re: order [89-1] [93-1] (PCF) (Entered: 06/24/2002)
07/23/2002	94	Notice to creditors [94-1] re: Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentucky trailer ; Deadline for objections: 8/16/02. Returnable: 8/28/02 11:00 a.m.at Rochester Courtroom. (PCF) (Entered: 07/23/2002)
07/24/2002	95	Letter from trustee stating that this is now an asset case and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set). (PCF) (Entered: 07/24/2002)

07/26/2002	96	Certificate of mailing from BNC with original notice re: sale notice [94-1] ; [96-1] (PCF) (Entered: 08/12/2002)
08/28/2002	97	Order [97-1], To employ Auctioneer Roy Teitsworth (PCF) (Entered: 08/29/2002)
09/26/2002	98	Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately \$139.00 for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankruptcy estate. Deadline for objections: 10/15/02. Returnable: 10/16/02 @11:00 a.m. @ Rochester Courtroom. (PCF) (Entered: 09/26/2002)
09/27/2002		Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (KST) (Entered: 09/27/2002)
09/30/2002	99	Letter [99-1]from Dr. Cordero re: his conerns about his assets in storage, and other matters in this case. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/03/2002)
09/30/2002	101	Certificate of mailing from BNC with original notice re: abandonment notice [98-1] ; [101-1] (PCF) (Entered: 10/07/2002)
10/03/2002	100	Letter [100-1]in response to Dr. Richard Cordero's letter of filed 9/30/02. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/04/2002)
10/08/2002	102	Letter [102-1]to Dr. Richard Cordero, in response to his letter of 9/27/02, requesting that the Court make a determination as to whether the Chapter 7 Trustee, is satisfactorily administering this estate. The Court advised Dr. Cordero that the appointment of a Chapter 7 trustee is a function of the Department of Justice, Office of the U.S. Trustee. Accordingly, any concerns that Dr. Cordero may have regarding the Chapter 7 Trustee in this case should first be addressed to Kathleen

		Dunivin Schmitt, Esq., Assistant U.S. Trustee. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/08/2002)
10/10/2002	103	Letter [103-1] from Kathleen Dunivin Schmitt, U.S. Trustee, advising that the Office of the U.S. Trustee is currently conducting an investigation re: the allegations made by Dr. Cordero of the Trustee. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/10/2002)
10/17/2002	104	Letter [104-1] from Dr. Richard Cordero, Esq., regarding the matter with Kenneth Gordon, Tr. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/23/2002)
10/23/2002	105	Letter [105-1] from Kathleen Dunivin Schmitt, U.S. Trustee, to Dr. Richard Cordero, Esquire, in response to Dr. Cordero's concerns re: regaining possession of items that he paid to store with the debtors and various parties involved in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/24/2002)
11/05/2002	106	Order [106-1] granting motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of \$2,380.92 for services between 7/16/01 and December 21, 2001 as a Chapter 11 administrative expenses; and the sum of \$1577.00 for service between January 1, 2002 and February 26, 2002 as a Chapter 7 administrative expense, for a total of 3957.92 [73-1] (KST) (Entered: 11/06/2002)
11/18/2002		Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230) James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (KST) (Entered: 11/21/2002)
12/16/2002	107	Trustee's report of no assets (KST) (Entered: 12/18/2002)
01/13/2003		Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (KST) (Entered: 01/13/2003)
10/24/2003		Bankruptcy Case Closed (Tacy, K.) (Entered: 10/24/2003)
10/24/2003		It appearing to the Court that the Trustee in the above-entitled case has filed a Report of No Distribution and that the said Trustee has

		performed all other duties required of the Trustee in the administration of said case; now, therefore, IT IS ORDERED that said report be and is hereby approved and the case is closed; and the Trustee is discharged from and relieved of his/her trust. Paul R. Warren Clerk Signed on 10/24/2003. (Tacy, K.) (Entered: 10/24/2003)
11/12/2003		Trustee Fee Paid. P1# 0446500072. (Bibbs, D.) (Entered: 11/14/2003)
01/07/2004	108	Letter Filed by Creditor Richard Cordero . (Attachments: # 1 Letter in response) (Finucane, P.) (Entered: 05/04/2004)
05/04/2004	109	Letter dated 5/4/04 from the Clerk of the Court, Paul R. Warren, Esq. to Dr. Richard Cordero regarding search request. (Finucane, P.) (Entered: 05/05/2004)
05/20/2004	110	Letter from Paul R. Warren, Clerk of the Court to Creditor Richard Cordero, re: search request. (Attachments: # 1 Exhibit relevant portions of the Bankruptcy Fee Compendium) (Tacy, K.) (Entered: 05/20/2004)
05/26/2004	111	Letter Filed by Creditor Richard Cordero in response to (RE: related document(s) 110 Letter of Paul R. Warren, Clerk of the Court). (Tacy, K.) (Entered: 05/26/2004)

PACER Service Center			
Transaction Receipt			
05/14/2006 23:03:32			
PACER Login:		Client Code:	
Description:	Docket Report	Search Criteria:	2-01-20692-JCN Fil or Ent: Fil From: 1/1/2001 To: 5/13/2006 Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
Billable Pages:	7	Cost:	0.56

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTNER,

Plaintiff,

AP02-2230

-vs-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-vs-

DAVID PALMER, et al.,

Third-Party Defendants.

NOTICE OF MOTION TO DETERMINE MATTERS ADMITTED

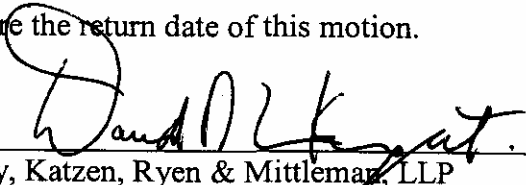
Please take notice that the undersigned will move this court for an order pursuant to Federal Rules of Bankruptcy Procedure 7036 and Federal Rules of Civil Procedure 36(a) determining that Richard Cordero failed to comply with the requirements of such rules and that certain matters in respect to which Plaintiff demanded admission be deemed admitted for the

purpose of this adversary proceeding and for such other and further relief as to the court seems just and proper.

This motion will be heard at the United States Bankruptcy Court, 100 State Street, Rochester, New York on October 16, 2003 at 9:00 A.M. or as soon thereafter as counsel can be heard.

Please take further notice that answering and opposing papers must be served on the court and the undersigned no later than three days before the return date of this motion.

Dated: October 6, 2003
Rochester, New York



Lacy, Katzen, Ryen & Mittleman, LLP
David D. MacKnight, Esq.
Attorneys for James Pfuntner, Creditor
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Rochester, New York 14604-1686
Telephone: (585) 454-5650

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTNER,

Plaintiff,

AP02-2230

-vs-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-vs-

DAVID PALMER, et al.,

Third-Party Defendants.

MOTION TO DETERMINE CERTAIN MATTERS IN NOTICE
TO ADMIT ARE DEEMED ADMITTED IN THIS ADVERSARY
PROCEEDING

To: Hon. John C. Ninfo, II, Chief United States Bankruptcy Judge:

The motion of James Pfuntner ("Pfuntner") respectfully shows:

1. Heretofore Pfuntner commenced an adversary proceeding in this court interpleading all parties known to have or who might claim to have an interest in various items of

personal property left by the above-named Debtor in or around a warehouse building owned by Pfuntner located on Sackett Road, Avon, New York.

2. Richard Cordero ("Cordero") was named as a Defendant in this adversary proceeding because his name appeared on a sheet of paper attached to two packing boxes left in that portion of the Sackett Road property that Pfuntner had leased to Debtor.

3. Pfuntner does not claim an ownership interest in the property that the Debtor left on the Sackett Road property but sought compensation for the use and occupancy of the premises during the case.

4. Cordero brought various claims against Pfuntner and Pfuntner's counsel in the course of the adversary proceeding including a motion for sanctions for a failure to make discovery in respect to an inspection of the containers at the Sackett Road property which had Cordero's name attached and for damage to the stored goods.

5. Pfuntner served a notice to admit. Cordero served a response to the Pfuntner notice to admit setting out each demand. A copy of the response is attached as Exhibit A.

6. The purpose of the Pfuntner notice to admit was to identify issues that were the subject of a genuine dispute of relevant, material fact or the applications of law to facts, thereby limiting trial preparation and trial time.

7. Heretofore, this court make an order directing that all further proceedings in the case be heard at a trial starting on October 16, 2003.

8. Pfuntner believes that certain answers in Cordero's notice to admit fail to comply with Rule 36(a) in so far as the Rule 36 requires that the answering party (a) fairly meet the substance of the requested admission and (b) refrain from giving lack of information as grounds for not fairly meeting the substance of a request for an admission without the answering first

making reasonable inquiry and the information known or readily obtainable is insufficient to allow the answering party to admit or deny a request for an admission.

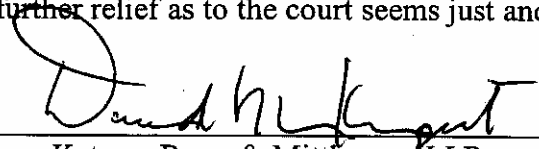
9. Certain of Cordero's responses fail to meet one or both of the requirements of Rule 36. Pfuntner believes that the following responses are deficient

- a) 4. Cordero's property allegedly was stored at Henrietta-Jefferson property and Cordero billed for such storage.
- b) 7. Cordero packed certain of his goods and the mover packed the other goods, see response to Demand 6.
- c) 8. Cordero had proof or he did not have proof.
- d) 9. Cordero had proof or he did not have proof.
- e) 10. Cordero had proof or he did not have proof.
- f) 11. The goods were used. The request should be admitted
- g) 12. The response is neither an admission or denial.
- h) 13. The "response" is not responsive to a request concerning a duty to insure.
- i) 14. Cordero had proof or he did not have proof.
- j) 15. Cordero had proof or he did not have proof.
- k) 16. Cordero had proof or he did not have proof.
- l) 17. The "response" is not responsive and argumentative.
- m) 18. The "response" is not responsive and argumentative.
- n) 19. The "response" is not responsive and argumentative.
- o) 20. The "response" is not responsive and argumentative.
- p) 24. The "response" is not responsive and argumentative.
- q) 25. The "response" is not responsive and argumentative.
- r) 26. Cordero makes no claim of an investigation.
- s) 27. The "response" is not responsive and argumentative.
- t) 28. The response is neither an admission or a denial in whole or in part.

10. Pfuntner understands that Cordero is representing himself. However, Cordero has demonstrated much more knowledge concerning statutes, court rules, and procedures than Pfuntner's counsel would expect to find among non-lawyers. Also, Cordero has demonstrated an ability to engage in legal research to find case law and statutes that support claims has asserted. Still further Cordero has insisted on strict compliance with rules in these proceedings. Deeming facts admitted for failing to comply with Rule 36 will work no unfairness to or hardship on Cordero.

Wherefore, Pfuntner requests that this court determine that the answers to the notices to admit set forth above fail to comply with the intent and purpose of Rule 36(a), deem the matters set forth in the notices to admit set forth above as admitted for the purposes of this adversary proceeding, and grant Pfuntner such other and further relief as to the court seems just and proper.

Dated: October 6, 2003
Rochester, New York



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Oct. 10, 2003

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES,

Debtor.

JAMES PFUNTNER,

Plaintiff,

AP02-2230

-vs-

KENNETH GORDON, as Trustee in
Bankruptcy for Premier Van Lines, Inc.,
RICHARD CORDERO, et al.,

Defendants.

RICHARD CORDERO,

Third-Party Plaintiff,

-vs-

DAVID PALMER, et al.,

Third-Party Defendants.

AMENDED NOTICE OF MOTION TO DETERMINE MATTERS ADMITTED

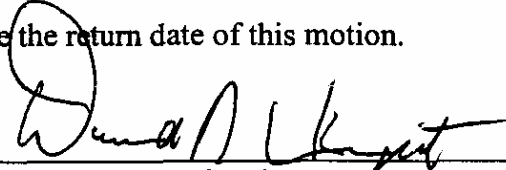
Please take notice that the undersigned will move this court for an order pursuant to Federal Rules of Bankruptcy Procedure 7036 and Federal Rules of Civil Procedure 36(a) determining that Richard Cordero failed to comply with the requirements of such rules and that certain matters in respect to which Plaintiff demanded admission be deemed admitted for the

purpose of this adversary proceeding and for such other and further relief as to the court seems just and proper.

This motion will be heard at the United States Bankruptcy Court, 100 State Street, Rochester, New York on October 16, 2003 at 9:30 A.M. or as soon thereafter as counsel can be heard.

Please take further notice that answering and opposing papers must be served on the court and the undersigned no later than three days before the return date of this motion.

Dated: October 6, 2003
Rochester, New York



Lacy, Katzen, Ryen & Mittleman, LLP
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**UNITED STATES BANKRUPTCY 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

REPLY
TO MOTION
TO DETERMINE
MATTERS ADMITTED

RICHARD CORDERO
Third party plaintiff

-vs-

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

Third party defendants

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

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A. The motion is inadmissible for failure to comply with time requirements

1. Dr. Cordero replied to Mr. Pfuntner's and Att. MacKnight's "Notice" to Admit on July 20,

*Date correction. This page replaces pg. 1 of Dr. Cordero's reply of 10/10/03 to Mr. Pfuntner's motion to determine

2003. Yet, it is only now, three months later, that Att. MacKnight, leisurely reacts with his Motion to Determine Matters Admitted. In addition, Att. MacKnight sends his objection from Rochester obviously calculated to reach Dr. Cordero in New York City at the very last moment, on Thursday, October 9, before the hearings set for October 16. What is more, he has the cheek to demand -and to top it off without any supporting authority- that “answering and opposing papers must be served on the court and the undersigned no later than three days before the return date of this motion”.

2. As a result of their procrastination and disregard for the rules of procedure, Mr. Pfuntner and Att. MacKnight have failed to comply with the time requirements for serving a motion. Thus, under Local Rule 7.1(c):

...notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least ten business days prior to the return date of the motion.

3. For its part, FRBkrP 9006(a) provides that:

Rule 9006. Time

(a) *Computation.*

In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included,

4. The last day of the ten days is October 15 given that Local Rule 7.1(c) requires that they be prior to the return day, which is October 16 by designation of Mr. Pfuntner and Att. MacKnight in their Notice of Motion. Counting back ten days brings them to October 6, when they mailed their notice and motion, but which is not counted under Rule 9006(a) since “the day...from which the designated period of time begins to run shall not be included”.

B. The motion is inadmissible by failure to object timely and by laches

5. Moreover, in his motion Att. MacKnight objects to only part of Dr. Cordero’s reply, his objection being limited to merely a long list of conclusory allegations that Dr. Cordero’s admissions are inadequate. However, conditioning his admissions was Dr. Cordero’s objection, among other things, to Mr. Pfuntner’s submission of a request for admissions with disregard for the requirements of FRBkrP 7036 and FRCivP Rules 36 and 26(d) and (f). They

provide that a party may not seek discovery before the parties have conferred in compliance with the Rule 26(f) "Conference of Parties; Planning for Discovery". Since no such conference or planning has been had, Mr. Pfuntner could not begin discovery despite authority to the contrary.

6. Likewise, Dr. Cordero objected to the "Notice" to Admit because Mr. Pfuntner's and Att. MacKnight failed to comply with two discovery orders. Their failure provides the basis for the court to take it as established for the purpose of this adversary proceeding that there has been damage to, and loss of, Dr. Cordero's property held in Mr. Pfuntner's warehouse at Avon; and to hold that Mr. Pfuntner and Att. MacKnight are prohibited from introducing into evidence the presence or condition of any of Dr. Cordero's property held in that warehouse to support any of their claims or defenses.
7. Mr. Pfuntner and Att. MacKnight failed to respond to either of these objections despite their three months opportunity to do so and despite their having now belatedly objected to the content of Dr. Cordero's admissions. Therefore, by their unreasonable delay constituting laches and by their failure to object to Dr. Cordero's key objections conditioning those admissions, Mr. Pfuntner and Att. MacKnight must be deemed to have granted his objections. Consequently, having granted that they did not have the right to request those admissions in the first place, their objection to their content is superfluous.

C. Mr. Pfuntner's and Att. MacKnight's motion is inadmissible because they failed to comply with the rules on Failure to Make Discovery and for Sanctions

8. Moreover, FRBkrP 7037 makes applicable FRCivP 37, which expressly provides authority for denying Mr. Pfuntner's and Att. MacKnight's current motion to determine matters admitted, for they have failed, once more, to comply with the applicable requirements. Indeed, Rule 37 (a)(2)(A) provides as follows:

(2) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

9. Mr. Pfuntner and Att. MacKnight failed even to attempt, whether in good or bad faith, to confer with Dr. Cordero to have him cure the alleged defects in his admissions. As a result,

they have also failed to include with their current motion a certification that they made any such attempt.

10. However, their failure is not limited thereto, for they have likewise failed to comply with the requirements of the pertinent local rule:

[LOCAL] RULE 37

MANDATORY PROCEDURE FOR ALL DISCOVERY MOTIONS

To promote the efficient administration of justice and unless ordered otherwise, no motion for discovery and/or production of documents under Federal Rules of Civil Procedure 26-37 shall be heard unless moving counsel notifies the Court by written affidavit that sincere attempts to resolve the discovery dispute have been made. Such affidavit shall detail the times and places of the parties' meetings, correspondence or discussions concerning the discovery dispute, and the names of all parties participating therein.

11. Similarly, in the three months since Dr. Cordero submitted his admissions, as conditioned by his objections, Mr. Pfuntner and Att. MacKnight never attempted to bring to Dr. Cordero's attention this last minute 'dispute' fabricated out of conclusory statements. Hence, they have of necessity failed to submit the required detailed affidavit that they made any such attempts, let alone sincere ones.

D. Relief

12. Therefore, Dr. Cordero requests that:

- 1) the Motion to Determine Matters Admitted be dismissed;
- 2) the court grant Dr. Cordero any other relief that is just and fair.

13. Dr. Cordero hereby gives notice that he intends to seek at the appropriate time and place sanctions against and compensation from Mr. Pfuntner and Att. MacKnight for having once more disregarded the rules of procedure and for the having caused Dr. Cordero more waste of his time, effort, and money answering their motion and for the enormous aggravation of having had to drop everything else to answer and having to deal with people that show so little regard for the law and no consideration to another party, never mind a person.

Dated: October 10, 2003
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

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Dated: October 10, 2003
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Brooklyn, NY 11208

Dr. Richard Cordero

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tel. (718) 827-9521

Dr. Richard Cordero

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May 5, 2003

Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House, 100 State Street
Rochester, NY 14614

Dear Judge Ninfo,

By now you will have received the copy of the letter that I faxed to Mr. Pfuntner and Mr. MacKnight last Wednesday, April 30, concerning my conversation with Mr. Pfuntner about my proposal to fly to Rochester on Monday, May 19, for the inspection of my property and my request that he confirm his agreement in writing. However, neither Mr. Pfuntner has called me nor I have received any letter. I called both on Friday morning and recorded a message for each. Mr. Pfuntner has not returned my call.

Mr. MacKnight just called me. I told him that I had not received Mr. Pfuntner's letter confirming that he agreed to my proposal that the inspection take place on Monday, 19, and that, as he offered, he would pick me up at the airport to take me to and from the warehouse, for as I told him, I do not drive and cannot lease a car at the airport to drive to and from the warehouse. Mr. MacKnight said that he would try to call Mr. Pfuntner and ask that he send me whatever he wanted. I told him that I needed his confirmation letter right away so that I could book the flight and that it was unreasonable to expect me to fly to Rochester on the off chance that Mr. Pfuntner might be there for the inspection. Mr. MacKnight said that people have different ideas of what is reasonable and that I should go there on the 19th and if Mr. Pfuntner blows me off, then I have something to complaint about. I asked him whether he would charge me with not having complied with the order that the inspection take place by May 21 if I do not receive the letter and do not go there. He said that he would contact Mr. Pfuntner and ask that he write to me. I told him that Mr. Pfuntner should call me so that we could make arrangements for him to fax me his letter...there was no response: Mr. MacKnight had hung up on me while I was speaking. How unprofessional and disrespectful!

I trust that you will agree that if Mr. Pfuntner, who was already in Florida when we spoke with me on Wednesday, does not send me a letter confirming my proposal and his, he would be giving the best indication of not wanting to commit himself to the inspection as discussed on the phone. As I have pointed out in my motions, in my letter of January 29, I submitted six dates to Mr. Pfuntner and Mr. MacKnight when I could fly to Rochester for the inspection. They neither accepted any nor rejected all. That sets a precedent of their unwillingness to conduct the inspection. Under those circumstances, it would be unreasonable to expect that I nevertheless fly to Rochester on May 19 just to see whether Mr. Pfuntner is there ready for the inspection. It would also be unreasonable for Mr. Pfuntner to send me that letter of confirmation at the very last minute and expect that I drop everything on my schedule and manage to find a seat on the flight to Rochester.

At the January 10 pre-trial conference you stated that within two days of receiving my slate of dates for the proposed trip you would have found the date most convenient to the parties in Rochester and inform me thereof. Hence, I respectfully request that you contact Mr. Pfuntner and find out what he intends to do and ask that he state so in writing and call me to make arrangements to send his letter to me by fax. Meanwhile, I look forward to hearing from you.

Sincerely, *Dr. Richard Cordero*

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF NEW YORK

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTNER,

Plaintiff

Adversary proceeding
no. 02-2230

-VS-

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

Appellant

-VS-

KENNETH W. GORDON and
DAVID PALMER,

Appellees

case no: 03-CV-6021L

case no.03-MBK-6001L

REDESIGNATION OF ITEMS

AND

STATEMENT OF ISSUES ON APPEAL

submitted
pursuant to FRAP Rule 6(b)(2)(B)(i)

I. Redesignation of Items in the Record

Dr. Richard Cordero, appellant, designates the following documents as part of the record on appeal to the United States Court of Appeals for the Second Circuit:

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II. Issues on Appeal

A. Orders dismissing 1) the cross-claims against Trustee Gordon, 2) the notice of appeal, and 3) the motion to extend time to file it

A customer –here Appellant Dr. Cordero- who resides in NY City, contacted the storage company in Rochester, NY, that was storing his property. Unbeknown to him, the company –Debtor Premier Van Lines- was in liquidation, but its Chapter 7 trustee– here Appellee Trustee Gordon- did not give him notice thereof. Eventually the customer found out from third parties that the company was in liquidation; and the one holding his property –here Plaintiff Pfuntner- refused to release his property lest the trustee sue him, and referred the customer to the trustee. The latter gave the customer no information or assistance in retrieving his property, referred him back to the third parties, and even enjoined him not to contact him, the trustee, anymore. The customer applied to the bankruptcy judge for a review of the trustee’s performance and fitness to serve; but the judge referred the application to the trustee’s supervisor, an assistant U.S. Trustee. In an effort to dissuade them from reviewing him, the trustee, a lawyer and as such an officer of the court, submitted to the judge, to his supervisor, and to others false and defamatory statements about the customer in support of his claim that no review was necessary. Subsequently, Pfuntner, the third party holding the customer’s property, instituted an adversary proceeding where he named both the customer and the trustee, among others, defendants. The customer, appearing pro se, cross-claimed against the trustee,

who moved to dismiss. Before discovery had even begun or any initial disclosure had been provided by the parties, with the exception of the customer, who had provided numerous documents with his pleadings, and before any pre-trial conference or any meeting of the parties whatsoever, the judge dismissed the cross-claims. The customer appealed to the district court timely, mailing on a Thursday within the ten day period after the dismissal order his notice of appeal, which arrived at the bankruptcy court the following Monday after the conclusion of such period. The trustee moved to dismiss the notice of appeal as untimely filed and the district court dismissed it.

1. Do the complete on mailing rule and the three additional days rule of FRBkrP 9006(e) and (f), respectively, apply to FRBkrP 8002 so that a notice of appeal timely mailed just as a motion to extend time to appeal timely mailed must be considered also timely filed even after the conclusion of the 10-day period or the 30-day period, respectively?
2. Did the court err by applying its own notion of defamation to dismiss the defamation cross-claim rather than apply the standard whether a reasonable person could have understood the trustee's statements as defamatory?
3. Did the court fail to meet the standard for the summary dismissal of cross-claims against Appellee Trustee Gordon despite the presence of, and without determining, the genuine issues of material fact raised by such cross-claims?, such as:
 - a) Whether Appellant Trustee Gordon had proceeded with malice and a defamatory motivation, thereby forfeiting the privilege asserted by him against a defamation claim;
 - b) Whether Appellant Trustee Gordon submitted false statements to the court in order to dissuade it from undertaking the review of his performance and fitness to serve as trustee that Dr. Cordero had applied the court to undertake; and
 - c) Whether Appellant Trustee Gordon had been reckless and negligent in his liquidation of the Debtor, a question of fact that the Plaintiff's allegations had also raised, whose complaint however was not dismissed.
4. Did the court err in not taking the allegations in the pleadings in the light most favorable to the non-movant party, Dr. Cordero, opposing the summary dismissal, such as that Movant Trustee Gordon had submitted false statements to the court and recklessly or negligently failed to fulfill specifically identified duties of his office as trustee, relying instead on the movant's blanket allegation that he had performed satisfactorily within the scope of his duties?

5. By denying discovery and accepting the possibility that its ruling relied on false statements, did the court lack foundation in fact for its ruling that it saw nothing in the papers indicating that Movant Trustee Gordon had done anything wrong, and thereby detract from the value that it must place on the integrity of the judicial process and also disaffirm its commitment 'to construing these rules of procedure to secure the just determination of this proceeding,' as required under FRBkrP 1001 and FRCivP 1, thus rendering all its rulings suspect and the proceeding a nullity?
6. Does the balancing of the equities of, on the one hand, a party such as Dr. Cordero, appearing pro se, whose only role in this 17-month long life-disrupting controversy is to have paid storage and insurance fees for almost ten years to store his household property only to be lied to and given the round around when inquiring about it, and on the other hand, a party such as Trustee Gordon, an officer of the court and federal appointee, who seeks to take advantage of the technicality of a timely mailed-untimely filed gap to escape responsibility in court for defaming Dr. Cordero and submitting false statements to avoid a review of his negligent and reckless performance as trustee, weigh in favor of not insisting on compliance with filing procedure, particularly where non-compliance has not resulted in prejudice to any part, but rather by the Court of Appeals exercising its discretionary powers to achieve the courts' fundamental purpose of dispensing justice by upholding the substantial right of parties to have their day in court rather than be dismissed summarily?

B. Recommendation and decisions on default judgment against David Palmer

A defendant and third-party plaintiff in the adversary proceeding -here Appellant Dr. Cordero- joined as a third party defendant David Palmer, who is the owner of the Debtor in the bankruptcy case and, as such, under the bankruptcy court's jurisdiction. Yet, Third-party defendant Palmer failed to answer the complaint or otherwise appear and defend. Dr. Cordero timely applied by affidavit for default judgment and set out a sum certain to be entered against him. Unbeknown to Dr. Cordero, neither the bankruptcy clerk entered default nor the court make the required recommendation to the district court whether to enter default judgment. Dr. Cordero had to write to the bankruptcy court to ask that it take action on the application. Only

41 days after the application did the bankruptcy clerk enter default and the court recommend that default judgment not be entered on the grounds that 'Dr. Cordero had failed to demonstrate that he had incurred any loss or damage and that upon inspection it may be determined that the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993.' Dr. Cordero moved the district court to enter default judgment. The district court accepted the recommendation of the bankruptcy court on the grounds that 'Dr. Cordero must still establish his entitlement to damages since the matter does not involve a sum certain, so that an inquest concerning damages is appropriate and the bankruptcy court is the proper forum to conduct it.' Dr. Cordero moved the district court for a rehearing to correct its error of fact because the matter did involve a sum certain and, since no discovery had been conducted, the bankruptcy court not only lacked any foundation in fact to assert that upon inspection it may be determined that Dr. Cordero had incurred no loss or damage, but was also contradicted by statements in the pleadings of Plaintiff Pfuntner, the one holding Dr. Cordero's property. The district court simply denied Dr. Cordero's rehearing motion "in all respects" without making any findings of fact or setting forth any conclusions of law whatsoever.

7. Did the district court render its orders accepting the recommendation not to enter default judgment and summarily denying the motion for rehearing a nullity by disregarding the outcome determinative fact under Rule 55 FRCivP of a default judgment application for a sum certain and instead basing them on the objectively wrong statement that there was no such sum certain; and by missing or intentionally ignoring that fact four times –in Dr. Cordero's affidavit, in the bankruptcy court's attachment to the recommendation, in the motion to enter default judgment, and in the motion for rehearing- did it cast doubt on its thoroughness or competence so as to render suspect its commitment to administering justice on the basis of facts and law?
8. Did the district court as well as the bankruptcy court err by imposing on Dr. Cordero the obligation to demonstrate loss in order to limit to such loss the amount of the default judgment although such obligation contradicts the explicit terms of automaticity of entry of default judgment under Rule 55 FRCivP where the default is for a sum certain; neither court

provided any other legal basis therefor; and under Rules 55(c) and 60(b) it is not for the court to advocate the interests of the defaulted defendant, but rather it must enter default judgment and let the defendant come to court, if he dares or cares about it, to show cause why the default judgment should be set aside?

9. Did the district court err when it decided that the bankruptcy court should conduct an inquest into damages, whereby in an adversarial system of justice like ours and in a proceeding for default and, thus, without an opposing party, the bankruptcy court would have to play simultaneously the roles of investigator, expert witness, and judge; and did the district court fail to conduct ‘a just proceeding’ under Rule 1 FRCivP when it decided that the bankruptcy court was the ‘proper forum’ to conduct such inquest, thereby condoning the bankruptcy court’s bias and prejudgment of a question of fact manifest in its statement that ‘upon inspection it may be determined that the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993,’ although the bankruptcy court had no evidence whatsoever for that statement since no discovery has been conducted to date in the eight months since this adversary proceeding was filed; on the contrary, the Plaintiff’s pleadings make allegations that the premises where the Plaintiff holds Dr. Cordero’s property, which have been out of business for about a year, were broken into and property was removed from them without the Plaintiff’s knowledge or authorization, and the Plaintiff’s attorney wrote to the court that Plaintiff had not documents with which to determine what or whose property was in his warehouse?

C. The withdrawal of the adversary proceeding

10. Did the district court err in not withdrawing the adversary proceeding from the bankruptcy court to itself although Dr. Cordero applied under 28 U.S.C. §157(d) and showed cause therefor by discussing how the bankruptcy court and its clerk disregarded facts, the law, and procedure only for the district court to show the same disregard itself (just as the court reporter took more than two months to file the transcript of a hearing, one substantially shorter than its initial stated length), whereby the two top judicial officers of these courts located in the same building have impaired the confidence that must be had in their commitment to the administration of justice, so that now this adversary proceeding, which has yet to start with discovery and has made no progress since its day of filing, should be

removed to another district court, such as the district court for the northern district of New York, which is equally at a distance from, and unrelated to all the parties?

Certificate of Service

I, Dr. Richard Cordero, Appellant, hereby certify that on May 5, 2003, I served on the following parties the Redesignation of Items and Statement of Issues on Appeal to the Court of Appeals for the Second Circuit:

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October 6, 2003

Mr. Robert Rodriguez, Supervisor
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Re: Premier Van Lines, Inc., Debtor (Cordero v. Palmer, et al.)
AP Case No.: 02-2230

Dear Mr. Rodriguez:

Pursuant to a recent telephone conversation with my secretary, this letter is to inform you that the undersigned is the attorney of counsel for Third-Party Defendants, David Dworkin and Jefferson Henrietta Associates in the above-referenced matter. Please include my name to be listed on the docket, and please send us an updated circuit docket which will include me.

Thank you very much for your cooperation, and please feel free to contact me if you have any questions.

Very truly yours,



Karl S. Essler

KSE/blr

cc: All Interested Parties

US Court of Appeals for the Second Circuit
Case Summary

Court of Appeals Docket #: 03-5023

Filed: 5/2/03

Nsuit: 3422 STATUTES-Bkrup Appeals 801

In Re: Premier Van v. Palmer

Appeal from: U.S. District Court WDNY

Lower court information:

District: 0209-06: 03-cv-6021

Trial Judge: David G. Larimer

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received (ps30)

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar) (ps30)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received. (ps30)

6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received. (ps30)

6/5/03 Record on appeal received in records room from team. (reg)

6/5/03 1st supplemental index on appeal filed. (ps37)

6/13/03 Record on appeal received in records room from team. (reg)

7/14/03 Appellant Richard Cordero brief FILED with proof of service. (ps38)

INDIV PROSE
PROPSD C30511
D03 2

7/14/03 Appellant Richard Cordero appendix filed w/pfs. Number of volumes; 1. (ps38)

8/11/03 Notice of appearance form on behalf of Kenneth W. Gordon, Esq., filed. (Orig in acco, copy to Calendar) (ps38)

8/11/03 Appellee Kenneth W. Gordon MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due. (ps38)

8/19/03 Proposed for argument the week of 10/27/03. (ca93)

8/25/03 Appellant Richard Cordero reply brief filed with proof of service. (ps38)

9/16/03 Argument as early as week of 9/22/03. (ca90)

9/30/03 Proposed for argument the week of 12/8/03. (ca93)

PACER Service Center			
Transaction Receipt			
10/08/2003 09:00:13			
PACER Login:		Client Code:	
Description:	dkt summary	Case Number:	03-5023
Billable Pages:	1	Cost:	0.07

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

PETITION FOR A
WRIT OF MANDAMUS

In re Richard Cordero
Petitioner Pro Se

directing

The United States Bankruptcy and District Courts
for the **Western** District of New York

to remove

Pfuntner v. Trustee Gordon et al., dkt. no 02-2230,
including

In re Premier Van Lines, Inc., dkt. no. 01-20692

Cordero v. Trustee Gordon, dkt. no. 03-CV-6021, and

Cordero v. Palmer, dkt. no. 03-MBK-6001

to

The United States District Court
for the **Northern** District of New York, in Albany

Brief submitted on September 12, 2003, for and by

Dr. Richard Cordero

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

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

In re Richard Cordero, Petitioner pro se

PETITION of September 12, 2003, FOR A
WRIT OF MANDAMUS

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

I. This Court can and should issue this writ

1. This Court has authority to issue this writ of mandamus under Rule 21 FRAP. It also has jurisdiction to issue it in this case just as it does to entertain the appeal to it, docketed as no. 03-5023, that was timely filed last April 25, from the decisions of the same courts that are concerned by this petition, namely, the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York. (A*:429)
2. The Court should issue the writ because the appeal is not scheduled for argument until the week of October 27 at the earliest, so that a decision may not be entered until next year. Meantime, more injury will continue to be inflicted upon Dr. Cordero due to the repeated acts of disregard of law, rules, and facts engaged in by the

*Documents supporting this petition have been collected and submitted in an Appendix. They are referred to by page number thus: (A:#). That Appendix is the same as the one accompanying Dr. Cordero's Opening Brief of July 9, 2003, except that it has been supplemented with additional documents from page 431 on. Parties to whom the earlier version of the Appendix was sent will find the supplementing documents, i.e. A:<430, after this brief, below, in this volume.

bankruptcy court, the Hon. John C. Ninfo, II, presiding –hereinafter referred to as the court- as well as by other court officers in both the bankruptcy and the district court as they mishandle the adversary proceeding where Dr. Cordero is the only pro se defendant and non-local party, to wit, *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, which derives from In re Premier Van Lines, bankruptcy case no. 01-20692.

II. Issues presented

3. Whether the court has engaged, and affirmatively recruited, or created the atmosphere of disrespect for duty and other people's rights that has led, other court officers to participate, in a series of acts of disregard of law, rules, and fact so numerous, precisely targeted on, and detrimental to, Dr. Cordero as to reveal a pattern of non-coincidental, intentional, and coordinated wrongful activity from which their bias and prejudice against him can be reasonably inferred as well as their motive: to prevent discovery that would reveal the court's failure to detect, or knowing tolerance of, the Trustee's negligent and reckless liquidation of Debtor Premier, and the court's reason to allow Mr. David Palmer, under its jurisdiction as Debtor's owner, to ignore further process after being impleaded by Dr. Cordero;
4. Whether the court's and court officers' involvement in such patterned acts of bias and prejudice against Dr. Cordero give rise to the reasonable fear that further judicial proceedings in both courts will be similarly tainted with partiality and unfairness, whereby in the interest of justice the proceeding and the case should be re-

moved to a district court unrelated to the parties, disinterested in the outcome, and likely to conduct fair and impartial judicial process, such as the U.S. District Court for the Northern District at Albany, which is fairly equidistant from all the parties.

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III. Statement of facts

A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

5. On March 5, 2001, Mr. Palmer filed for bankruptcy of Premier Van Lines, a moving and storage company in Rochester, NY; his case landed in the court. In December 2001, Trustee Kenneth Gordon, Esq., was appointed to liquidate Premier. His performance was so negligent and reckless that he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored its clients' property, such as Dr. Cordero's. (A:433:entry 17; 434:19,21,23; 437:52) Nor did he examine its business records, to which he had access. (A:45,46 [earlier A:48,49]; 109, ftns-5-8; 352) As a result, the Trustee failed to discover the income-producing storage contracts that belonged to the estate or to act timely

(A:442:94,95); and then failed to notify Dr. Cordero of his liquidation of Premier.

6. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse in Avon, NY. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office anymore. (A:16, 17, 1, 2)
7. Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A:7, 8) The court, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A:29) The supervisor conducted a 'quick contact' with Supervisee Gordon that was as superficial as it was severely flawed. (A:53, 104) Nor did the court take action when the Trustee submitted to it false statements and statements defamatory of Dr. Cordero to persuade it that:

Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application. (A:20,41:11)

8. Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A:21) Dr. Cordero cross-claimed against the Trustee (A:70, 83, 88), who countered with a FRCivP Rule 12(b)(6) motion to dismiss (A:135, 143). It was argued on December 18, 2002, almost three months after the adversary

proceeding was brought; nevertheless, no required meeting of the parties or disclosure –except by Dr. Cordero, who disclosed numerous documents (A:11,13,15,34,45,63,68,90)- let alone any discovery, had taken place yet. Despite the record’s lack of factual development, the court dismissed the cross-claims summarily, disregarding the genuine issues of material fact raised by Dr. Cordero concerning the Trustee’s negligence and recklessness in liquidating Premier (A:148).

9. The court even excused the Trustee’s defamatory and false statements as merely “part of the Trustee just trying to resolve these issues”, (A:275) thus condoning his use of falsehood, astonishingly acknowledging in open court its acceptance of unethical behavior, and showing gross indifference to its injurious effect on Dr. Cordero.
10. That dismissal constituted the first of a long series of similar events of disregard of law, rules, and fact in which the court as well as other court officers at both the bankruptcy and the district court have participated, all to Dr. Cordero’s detriment and initially aimed at preventing his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how the court failed to realize or knowingly tolerated Trustee Gordon’s negligent and reckless liquidation of Premier. The court’s efforts to avoid discovery continues to date, so much so that a year after the adversary proceeding was filed, no trial, not just a trial date, is anywhere in sight (17,32,61,below); meanwhile, the court has taken advantage of

every opportunity to wear Dr. Cordero down.

B. The court's determination not to make progress in this case

11. Dr. Cordero duly moved the court in August to recuse itself from the adversary proceeding due to the bias and prejudice that it and other court officers have demonstrated against him and to remove the proceeding to the U.S. District Court in Albany. (38 below) But in keeping with its determination to protract action as much as possible, the court caused that motion to be added to the other motions of Dr. Cordero that it has postponed until a series of monthly hearings begin on October 16 (32, 79 below), which according to the court's statement at the June 25 hearing, are meant to last for 9 to 10 months!
12. The court's pattern of protracting action goes hand in hand with its pattern of inaction. Thus, although this adversary proceeding was filed by Mr. Pfuntner a year ago in September 2002, this is what it has to show for it:
 - i) failed to require even initial disclosure under Rule 26(a) FRCivP;
 - ii) failed to order the parties to hold a Rule 26(f) conference;
 - iii) failed to demand a Rule 26(f) report;
 - iv) failed to hold a Rule 16(b) FRCivP scheduling conference;
 - v) failed to issue a Rule 16(b) scheduling order;
 - vi) failed to demand compliance with its first discovery order issued orally on January 10, 2003, from Plaintiff Pfuntner and his attorney David MacKnight,

- Esq., to the detriment of Dr. Cordero, who had complied with it (A:365,368);
- vii) failed to ensure execution by the Plaintiff and his attorney of its second and last discovery order issued orally at an April 23 hearing, again to the detriment of Dr. Cordero, who was required to travel and did travel on May 19 to Avon, NY, for a property inspection at Plaintiff's warehouse (A:426,493,510);
 - viii) failed to decide the December 26 application for default judgment that on May 21 it had sua sponte asked Dr. Cordero to resubmit (paras. 56 et seq. below);
 - ix) failed to decide Dr. Cordero's request for sanctions and compensation against Mr. Pfuntner and his attorney in his reply to the April 10 motion (A:389,396);
 - x) failed to decide the motion that on May 21 it asked Dr. Cordero to submit separately for sanctions and compensation against Plaintiff Pfuntner and his attorney and that Dr. Cordero submitted on June 6 (A:510);
 - xi) failed to decide the motion of July 21 for sanctions and compensation against Att. MacKnight for his June 5 false representations to the court (A:495,498);
 - xii) failed to rule on the request to declare Plaintiff's request for admissions of June 10, 2003, inadmissible under the FRBkrP and the FRCivP (A:533,538);
 - xiii) failed to scheduled discovery and now in its order of July 15 has formally left it up to the parties to seek for themselves (A:378;36 below).

13. So, what will the court have achieved by the time this case is in its 13th month next October? Nothing! It has not even kept an accurate record *by its own admission!*

C. The court now requires that Dr. Cordero appear in person, not by phone

14. Indeed, despite having allowed Dr. Cordero to appear telephonically on:

- 1) December 18, 2002 2) January 10, 2003 3) February 12, 2003 4) March 26, 2003
5) April 23, 2003 6) May 21, 2003 7) June 25, 2003 8) July 2, 2003

the court now requires that he must always appear in person, allegedly because:

in the Court's opinion few of those telephonic appear-ances have resulted in an accurate and comprehensive record; (35 below)

15. It is an admission of gross incompetence for the court to acknowledge that it has allowed 8 phone appearances over 10 months without noticing that they yielded a defective record. If in addition to not making decisions, it has not even made a useful record, what has it been doing? Nothing!, for those appearance and the May 19 trip and inspection that the court did not attend constitute this case in its **entirety!**
16. But why would the court, which has so blatantly disregarded its obligation under Rule 1001 FRBkrP and Rule 1 FRCivP to manage 'speedily' this proceeding brought before it, also disregard its other obligation to determine it 'inexpensively'? To wear down Dr. Cordero, not only emotionally, but also economically.
17. Thus, the court requires that Dr. Cordero, the only non-local party, who lives in NY City, not only appear in person before it in Rochester, but also do so at 9:30 a.m. (79 below) This way it forces him to disrupt two days of his calendar by having to fly in the day before and pay for a hotel night so he can be in court early the next morning for a hearing that lasts on average 20 minutes. For maximum

disruption, the meeting on October 16 **may** last for two days depending on how it goes the first day. (37 below) This means that Dr. Cordero cannot make plans for the following day given that the court may require him to be in court the following day too...after paying for another hotel night. Who can endure such disruption and economic drain for 9 to 10 months? Certainly not any of the other parties, all local.

18. Nor the litigants in all other cases to whom the court continues to allow telephonic appearances. How flagrantly discriminatory! And what a grave risk for the court since a review of those litigants' records will show either that they are also inaccurate and the court incompetent for not realizing it or tolerating their use; or that they are accurate and the court is a pretender biased against Dr. Cordero.
19. Whatever else the court is it does not want its exposure through discovery in this case, which explains what it has achieved here: Nothing! This it unwittingly acknowledges itself when in its July 15 order it states that it will begin its October 16 "discrete hearing" by considering Plaintiff Pfuntner's complaint, thus admitting that it has not moved the case beyond even its very first pleading. (37 below)

D. The court is now building a record to go straight to District Judge David Larimer, who disregarded applicable standards as well as his obligation and Dr. Cordero's right

20. At the June 25 hearing, the court stated that it wants to build a record –what was it building before?- but not just any record, rather one that will go on appeal straight to the Hon. David Larimer. This is the court's colleague who sits upstairs in the

same federal building. Dr. Cordero had submitted to him four motions (A:158,205,314,342). He has complained about the Judge for denying them without any discussion that would have betrayed his having read them. Far from it, the Judge made mistakes so serious as to include disregarding the outcome-determinative fact under Rule 55 (82 below) that Dr. Cordero's application for default judgment was for a sum certain, instead writing that "the matter does not involve a sum certain". (A:339) He could only have made this mistake by failing to read five papers and ignoring Dr. Cordero's statement calling it to his attention. (A:294,295,305,317,344 paras.5et seq.; 54 below) The Judge dispensed with sound judgment by characterizing the court as the "proper forum" to conduct an "inquest", despite the court's having prejudged its outcome. (A:340;para. 51; pg.55; below)

21. Judge Larimer also handled perfunctorily the motion to extend time to file notice of appeal by making mistakes concerning precisely the key issue of time counting:

"Here, the ten-day period of Rule 8002(a) expired on Tuesday, January 10, which was not a holiday." (A:201)

22. But the ten-day period ended on January 9; the period ended on a Thursday; Tuesday was January 7; and holidays were irrelevant since New Year's Day was never claimed to render the notice timely so that the issue was whether the notice was timely 14 days after the entry of the order (A:165,206), not 13 days as Judge Larimer miscounted (A:202). What a sloppy, quick job decision!
23. The Judge also dispatched two motions with the lazy fiat "in all respects denied"

(A:211,350). Yet a judge's paramount duty is not to clean his calendar expediently, but rather to hear all the parties to a controversy and then adjudicate it on the basis of law, rules, and facts. Judge Larimer's decisions show that he failed to do so. Thus, he violated 28 U.S.C. §157(c)(1) by not "reviewing de novo those matters to which any party has timely and specifically objected" (81 below;A:328), in effect basing his orders on ex parte applications by the court, thereby also denying Dr. Cordero his due process right to an opportunity to be heard.

24. The court's message on June 25 was clear enough: Dr. Cordero may survive all its insidious efforts to break or silence him only to end up facing Judge Larimer.

E. The court will require Dr. Cordero to prove his evidence beyond a reasonable doubt

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

26. What an astonishing statement! It was intentionally shocking, for it was meant to impress on Dr. Cordero a warning: It did not matter if he persisted in pursuing his motions, the court would hold the bar so high that the he would be found to have failed to clear it. The statement was also intentionally misleading, for the court knew that Dr. Cordero, a pro se litigant, would not readily realize without further reflection and research that the standard of proof beyond a reasonable doubt is applicable only in criminal cases, whereas this is a civil action in which at least two other lower standards apply. How mean of the court! It intentionally inflicted on Dr. Cordero even more emotional distress by frustrating him with the awareness that no matter how much his life has been disrupted by all his enormous yearlong legal research and writing effort, the court would make him lose all the same.

F. The court's "discrete hearings" as a way to avoid transcripts

27. Undoubtedly, the court reveals its intentions in open court to rattle Dr. Cordero, but does not mean to have its words turned around and used by him as incriminating evidence of its disregard of law, rules, and facts to his detriment. (cf. para. 9 above) So how could the court prevent this unintended and damaging use?

28. By holding hearings as it did the pre-trial conference of January 10, 2003, the only one ever held in this case and held only at the request of the Assistant U.S. Trustee overseeing Premier's liquidation (A:358): The court held it in chambers, where, as Dr. Cordero was told, the court does not use a court reporter. Consequently, no

indiscreet transcript can be made of them that could subsequently be used on appeal as incriminating evidence of the court's bias and prejudice against him.

29. This becomes evident in light of the efforts made to suppress the record of the hearing of December 18, 2002, at which was argued the 12(b)(6) motion to dismiss Dr. Cordero's cross-claims against Trustee Gordon for his negligence and recklessness in liquidating Premier under the court's supervision. At the time, the court could hardly have expected that Dr. Cordero, a pro se defendant who lives hundreds of miles away from the forum and who on several occasions had phoned and written court officers for advice on how to proceed (A:50,99[& after 82 below]), would know what to make of however the court dismissed his cross-claims. So the court disregarded all applicable legal standards and dismissed the cross-claims before any initial disclosure, let alone any discovery, had been or could be carried out that could expose the court's failure to detect, or its knowing tolerance of, the Trustee's negligent and reckless performance as trustee. When contrary to all expectations Dr. Cordero filed an appeal, all was done to prevent him from perfecting it, including hindering his getting hold of the transcript.

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

30. To appeal from the court's dismissal, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the December 18 hearing.

After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript. (A:261)

31. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered Dr. Cordero, who had called again to ask about the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for...“You said that it would be around 27?!” exclaimed Dr. Cordero. She told another implausible excuse after which she promised to have everything in two days ‘and you want it from the moment you came in on the phone.’ What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript. (A:283,286)

32. There is further evidence supporting the implication of Reporter Dianetti’s comment and giving rise to the concern that at hearings and meetings where Dr. Cordero appears telephonically the court maneuvers to engage in exchanges with other parties outside his earshot. Thus, on many occasions the court has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms of civility and of its duty to afford all parties the same opportunity to be heard and hear it. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking its gavel, but simply by just pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, the court brought thereby the hearing

or meeting to an end and the parties in the room turned at once on their heels and walked away. By cutting him off, the court, whether by design or in effect, kept Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the court by hanging up on a litigant in the middle of proceedings give to any reasonable observer evidence of rudeness incompatible with the proper decorum of the court and more akin to a manifestation of bias and prejudice that degenerates in partiality and unfairness?

33. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, the date on her certificate. (A:282) Rather, it was filed two weeks later on March 26 (A:453:71), a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon (A:246; 452:60;453:70). Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him, so it reached him only on March 28.

34. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) on "promptly" delivering the transcript "to the party or judge" –was she even the one who sent it to Party Dr. Cordero?- or Rule 8007(a) FRBkrP on asking for an extension. (81 below)

35. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his

speech has many “unintelligible” notations and passages so garbled that it is difficult to make out what he said. If she or the court speakerphone regularly garbled the speech of the person on speakerphone, it is hard to imagine that either would last long in use. This warrants the question whether the Reporter was told to disregard Dr. Cordero’s transcript request; and when she could no longer do so, to garble the transcription of his speech and submit her transcript to a higher-up court officer for he or she to vet it before a final version was mailed to Dr. Cordero. When court officers dare interfere with a transcript, which is a critical paper to take a court on appeal, an objective observer can reasonably question in what other wrongful conduct they would engage to protect themselves at a party’s expense.

G. The court concocts its own kind of ‘discreet discrete hearings’ to avoid transcripts and a public trial

36. The January 10 conference without reporter and the efforts to avoid submission of the transcript of the December 18 hearing justify asking whether the “discrete hearings” that the court will hold for the next nine to ten months beginning next October (61:E below) will be held separate from the broader context of the courtroom and in chambers, in other words, discreet meetings to be held without a court reporter. This is a distinct possibility since in its July 15 order the court states that:

“...this matter, and all related hearings, motions and proceedings, are set down for a **discrete hearing** at 9:30 a.m. in the Rochester Courtroom on October 16, 2003,...and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court...” (emphasis added; 37 below).

37. Given that there is only one court reporter, Ms. Mary Dianetti, but there are several bankruptcy judges, it would suffice for another judge to be using on that Chapter 13 day both the courtroom and the reporter for this “discrete hearing” to continue in chambers without reporter. The scenario has been laid out for this matter to end up in a secret trial, away from the public eye...without even a trial! *What?!*

38. Indeed, the court states in its July 15 order that:

“...at the **discreet** hearings it can make the necessary findings, conclusions and rulings, based upon a full and complete record, that will finalize the matter...and assist the parties in concluding the matter;” (emphasis added to word in original; 36 below)

39. The play with words, calling the hearings “discrete” and “discreet” is the court’s, not Dr. Cordero’s! By making them separate and silent, the court counts on using hearings to end this case without ever having to go to a trial, which would have to be held in public. What a cunning manipulation of process!...and a way to take a pro se litigant for a fool, which the court has already done (48:17-18;55,60 below).

40. The hearings may be so discreet that the court may not issue anything more than oral orders, just as at the January 10 conference it issued its first discovery order orally but never committed it or anything else that happened on that occasion to writing. Such very discreet, non-recorded meetings would afford the court the ideal setting where it can take up all of Dr. Cordero’s motions that it has purposely postponed and abusively deny them by alleging that he failed to prove his evidence beyond a reasonable doubt. Without a transcript, Dr. Cordero would be unable to

substantiate any appeal to Colleague Judge Larimer, let alone to this Court...

41. that is, if an appeal were possible at all. Indeed, as of September 5, 2003, docket no. 02-2230 for Pfuntner v. Gordon et al. is prominently labeled at its top in bold capital letters: **DISMISSED**. (A:548) That label was not there when Dr. Cordero downloaded the docket on June 14. The first time he saw it was on July 17. Are we all being allowed to concern ourselves like fools with a case that the court deemed embarrassing enough to kick out long ago? Are the coming hearings a grotesque sham? Why would the court choose such an unambiguous and unqualified label to give notice to the world that the case is **DISMISSED** if it were not?

H. If there must be a record, the court has disregarded its obligation to create it and foisted the task on the parties

42. The Rules of Procedure mandate how the court must gather evidence for building a record in preparation for trial. Yet, the court has disregarded all of them. (para.12 above) It will do so in the future too, for it is leaving it up to the parties to “complete any discovery which they believe may be required”. (36 below) In so doing, the court disregards Rules 7026 and 26(d) FRCivP, which provides that:

Except...when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).

43. The stringent character of Rule 26(d) is highlighted by the Advisory Committee in its Note to the 1993 Amendment to that Rule:

“Subdivision (d). This subdivision is revised to provide that formal discovery -as distinguished from interviews of potential witnesses and other informal discovery- not commence until the parties have met and conferred as required by subdivision (f). Discovery can begin earlier if authorized under Rule 30(a)(2)(C) (deposition of person about to leave the country) or by local rule, order, or stipulation. This will be appropriate in some cases, such as those involving requests for a preliminary injunction or motions challenging personal jurisdiction.”

44. Clearly, the Committee reserves the use of early discovery orders for cases requiring urgent action. The instant case is not an urgent case, not to mention one in an early stage. A year after the case was filed and just because of its disregard of its obligations under Rule 26(f) Conference of Parties and Planning for Discovery, the court cannot resort to the subterfuge of an order to have the parties engage in discovery pell-mell without any planning.

45. That is, however, precisely what it has done: Last June 10, Mr. Pfuntner’s attorney, Mr. MacKnight, submitted to Dr. Cordero a “Notice to Admit”, i.e., a Rule 36 Request for Admission. (A:533) At the hearing on July 2, Dr. Cordero protested because there has been no Rule 26(f) Conference of the Parties. The court once more disregarded the rules and again failed to make a decision, postponing instead Dr. Cordero’s request to quash the “Notice to Admit” until its review at the October hearing. Thereby it disregarded the fact that Dr. Cordero only had 30 days to reply or face sanctions for failure to do so. As a result, the court unnecessarily and irresponsibly created a situation of legal uncertainty: To be on the safe side, Dr. Cordero had to comply with the request even though months later the court could

determine that Mr. MacKnight had no right to engage in discovery and that Dr. Cordero had been made to further waste his time, effort, and money while his replies empowered Mr. Pfuntner with additional information.

I. The court's unreasonable expectation that parties will engage voluntarily in discovery betrays its efforts to avoid discovery

46. At the April 23 hearing and at the request of Plaintiff Pfuntner and Att. MacKnight, precisely the parties that had disregarded the first discovery order of January 10, (57 below) the court issued a second order requiring Dr. Cordero to travel from NY City to Rochester and Avon to inspect storage containers labeled with his name, maybe holding his property, and found in Mr. Pfuntner's warehouse (A:364); if he failed to comply within four weeks, it would order the containers removed at Dr. Cordero's expense to any other warehouse in Ontario, that is, whether in another county or another country, the court could not care less.
47. But the court failed to ensure that the Plaintiff and his representatives attended the inspection requested by them and at their own warehouse. Their absence was compounded by their failure, acknowledged by the court (A:34), to take the necessary measures for the inspection, which took place on May 19; yet it was on January 10 when Dr. Cordero first brought the need for those measures to the court's and the parties' attention (A:364,368). Despite the ample time to comply, these parties contemptuously disregarded the two discovery orders of the court, which nevertheless never imposed sanctions or ordered them to compensate Dr. Cordero. (A:512)

48. Likewise, Mr. Palmer, who sought for his company Premier the court's protection in bankruptcy and is still under its jurisdiction, has never answered a single paper served on him or his attorney by Dr. Cordero. Thus, the latter applied for his default judgment. (A:290) However, the court recommended that Judge Larimer deny it and he did. (A:306,339; 50 below) As for Mr. David Dworkin, owner/manager of the Jefferson Henrietta warehouse, from where Mr. Palmer operated Premier, he lied to Dr. Cordero about his property being safe and in his warehouse, even billed him for storage fees, and concealed from him that Premier was not only in bankruptcy, but also in liquidation. (A:79,81,88,90-92) For his part, the Trustee would not give Dr. Cordero any information about his property in storage with Premier though he was liquidating that company and the storage contract was an income-producing asset. (A:1,2,7,19,38) The court dismissed Dr. Cordero's cross-claims against Trustee Gordon despite the genuine issues of material fact involved and before any discovery whatsoever had taken place. (45 below)

49. Despite these facts, the court states that the parties, who have disregarded its orders and jurisdiction, and lied to Dr. Cordero or refused to communicate with him, if only left to their own devices from mid July until mid October, will on their own find a way to 'complete' discovery, which they have not even started, and even 'meet, negotiate, and settle', which they have not been able to do in two and a half years since the Premier case was filed on March 5, 2001. (36 below) What kind of naïve wishful thinking is the court prattling about!? Or is it rather an incredibly

ludicrous subterfuge for not complying with its obligation to provide for discovery, which could expose its mishandling of the case and its relation with the parties?

J. The court's impermissible roles while using its 'discrete discreet hearings' for incompatible purposes

50. The court has set down its 'discrete discreet hearings' "to ensure that there is a full and complete record created". However, it will also use them to "make the necessary findings, conclusions and rulings...and finalize the matter." How can even the court believe that it can use its secluded secret hearings as discovery vehicles for gathering evidence to create a record in preparation for trial, while at the same time use them as instruments for piecemeal finalization of issues so that nothing is left for trial? The only trial allowed will be the trial by ordeal of Dr. Cordero, a pro se litigant that will be forced, before the whole evidentiary mosaic has been cobbled together, to prove his evidence beyond a reasonable doubt.

51. The image of a conclave where the court will use inquisitorial methods is advisedly evoked since the court could execute in chambers Judge Larimer's order to conduct "an inquest concerning damages" (A:339) to dispose of Dr. Cordero's application for default judgment against Mr. Palmer. To that end, it has already disregarded Rules 7055 and 55 providing that default judgment is entered, not because of any property loss justifying damages, but because of the defendant's failure to heed the summons. (82 below; A:317, 326) It will conduct the "inquest" in the absence of Mr. Palmer, defaulted by the Clerk of Court (para. 56 below), and

of his attorney, excused by the court from the January 10 in-chambers conference (A:297). Hence, at the “inquest” the court will play the roles of defendant, his advocate, expert witness for the storage industry, factfinder, and judge. At the time of Torquemada so many conflicting roles could be concentrated on one inquisitor; but in our adversarial system of justice a single person cannot arrogate all of them to himself, much less after giving evidence that he will abuse them. (A:344)

52. This is particularly so for a court that cannot play even its own role of a neutral and prudent judge: It is so biased that on February 4, months before the inspection finally took place on May 19, it recommended denial of Dr. Cordero’s application by daring to prejudge that

within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993 (A:306)

53. To indulge in its prejudgment, the court disregarded the only available evidence, which pointed to the property’s likely loss or theft and had been submitted by Mr. Pfuntner, who has never seen the property, just containers in his warehouse bearing Dr. Cordero’s name. (A:24, para.17; 364) After the May 19 inspection it had to be concluded that some was damaged and other had been lost. (A:522-H; 34 below)
54. Similarly, without conducting any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what (52 below), the court decided against Dr. Cordero, in addition to

central issues of fact, the key issues of liability and recoverability:

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 (A:307]

55. If you were Dr. Cordero, would you like your odds of winning in a courtroom, let alone a discrete discreet chamber without court reporter, where an “inquest” was conducted by a judge who had so firmly made up his mind on findings and conclusions against you before any discovery or judicial process had taken place?...not even the defendant had ever been heard protesting your claims! During the Inquisition, the accuser need not appear in court for the accused to be tried. Here, Defendant Palmer need not appear anywhere for Plaintiff Cordero to be put through the judgment of God: to walk pro se on burning books of law and rules and pick out of a pail of boiling water the key notions of fairness and impartiality.

K. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero’s application for default judgment against Palmer

56. Dr. Cordero submitted the application for default judgment against Palmer on December 26, 2002. (A:290) Upon its receipt, Case Administrator Karen Tacy, failed to enter it in the docket. For his part, Clerk of Court Paul Warren, failed to certify the default of the defendant as required under Rule 55 (82 below) where, as here, the defendant has failed to appear and defend. When a month passed by without Dr. Cordero hearing anything from the court on his application, he called

to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo. Dr. Cordero had to write to the court to request that it either enter default judgment or explain its refusal to do so. (A:302) Only on February 4, 2003, the day it wrote its Recommendation to District Judge Larimer to deny the application (A:306), did both court officers carry out their obligations, belatedly certifying default (A:303,334,337) and entering the application in the docket (A:450:51).

57. It is not reasonable to think that Clerk Warren and Deputy Tacy just by coincidence disregarded their legal obligations to act upon receiving Dr. Cordero's application (50 below), kept it in legal limbo for over 5 weeks, and then happened to fulfill their duty on February 4. As in the case of Court Reporter Dianetti (para. 30, above), what or who guided and motivated their wrongful actions?

L. Court officers have disregarded even their obligations toward the Court of Appeals

58. Court officers at the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to this Court. Although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court. (A:469, 467,468) Thus they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. (A:455,459,463) Similarly, they failed to docket or forward the March 27

orders (A:211,350), which are the main ones appealed from, thereby putting at risk the determination of timeliness of the appeal to this Court. (A:507;70 below)

IV. Legal standard for determining that the writ should issue

59. ‘A claim of bias and prejudice strikes at the integrity of the judicial process’, *In re IBM Corp.*, 618 F.2d 923 (2d Cir.1980). Thus, this Court has adopted the test of objective appearance of bias and prejudice:

"would an objective, disinterested observer fully informed of the underlying facts, entertain significant doubt that justice would be done absent recusal." *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).

60. If this objective test for judicial disqualification is met, recusal of the judge is mandated under 28 U.S.C. §455(a). (81 below) It follows that to disqualify a judge, an opinion based on reason, not certainty based on hard evidence of partiality, is all that is required and what provides the objectivity element of the test. As the Supreme Court has put it, “[t]he goal of section 455(a) is to avoid even the appearance of partiality...to a reasonable person...even though no actual partiality exists because the judge...is pure in heart and incorruptible,” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988).

61. The Supreme Court’s construction derives from the legislative intent for §455(a). Congress adopted it on the grounds that “Litigants ought not have to face a judge where there is a reasonable question of impartiality,” S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351,

6355. Thus, Congress provided for recusal when there is "'reasonable fear" that the judge will not be impartial, *id.*

62. The test is reasonably easy to meet because 'the statute's paramount concern of protecting the integrity of the judiciary requires recusal where there is appearance of partiality', *U.S. v. Brinkworth*, 68 F.3d 633 (2d Cir. 1995). Moreover, recusal does not depend on whether the judge is aware of his bias or prejudice given that

"[s]cienter is not an element of a violation of §455(a), [since] the advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew." *Liljeberg*, at 859-60.

63. An objective, disinterested observer informed of the totality of circumstances here would conclude on the need for recusal, *In re Aguinda*, 241 F.3d 194 (2d Cir. 2001), for justice cannot obtain where law, rules, and facts are systematically disregarded, as they have been by the court and other court officers. Such disregard lays the ground for reasonably questioning their impartiality, which warrants the court's recusal. *King v. First American Investigations, Inc.*, 287 F.3d 91 (2d Cir. 2002).
64. The extraordinary circumstances required for a writ to issue are satisfied too. The court and other court officers have dealt with bias and prejudice with Dr. Cordero, whether to cover up the mishandling of Premier's bankruptcy and liquidation and secure benefits for themselves by derailing his appeals or for other motives. Their conduct has produced a travesty of justice that has denied him the clear and

undisputable right to fair and impartial judicial process, *In re Dow Corning Corp.*, 261 F.3d 280 (2d Cir. 2001). Thereby the court has breached its non-discretionary statutory duty to exercise its authority according to law and free of partiality and unfairness. Moreover, Dr. Cordero cannot seek relief from the district court given its involvement in the complained-about pattern of disregard of law, rules, and fact, *In re Austrian, German Holocaust Litigation*, 250 F.3d 156 (2d Cir. 2001); yet, relief is needed before the first ‘discrete discreet hearing’ of October 16.

65. The writ should also issue not only for the sake of justice, but also on account of judicial economy since any rulings made at those ‘discrete discreet hearings’ are likely to be stricken as procedurally and substantively defective, not to mention inherently suspicious. That would require the retrial of the entire case. Due to the court’s failure to take this case through its procedural stages, removal now would hardly cause any waste and can be ordered under 28 USC §1412. (82 below):

V. Relief sought

66. Therefore, Dr. Cordero respectfully requests that this Court:

- i) order the disqualification of the Hon. John C. Ninfo, II, from *Pfuntner v. Trustee Gordon et al.*, dkt. no. 02-2230, including *Cordero v. Trustee Gordon*, dkt. no. 03-CV-6021, *Cordero v. Palmer*, dkt. no. 03-MBK-6001, and *In re Premier Van Lines*, dkt. no. 01-20692, and rescind his orders (A:151,24,259,306;32 below) on grounds of the fact or the appearance of his unfairness and partiality due to bias,

prejudice, and self-interest;

- ii) order both Judge Ninfo and the Hon. David Larimer, District Judge, to transfer the whole case to the U.S. District Court for the Northern District of New York, at Albany, so that, at the appropriate time in light of the appeal pending in this Court, it may rule on the motions in abeyance for sanctions and compensation (A:500,510,538), provide for discovery, and try this case to a jury;
- iii) launch an investigation to establish Judge Ninfo's bias and prejudice toward and against the several parties; and determine whether he actively coordinated, or created the atmosphere of disregard of law, rules, and fact that led, other court officers to engage in the complained-about pattern of wrongful acts;
- iv) determine whether Judge Larimer failed to read or sufficiently consider Dr. Cordero's motions, thus violating 28 U.S.C. 157(c)(1) and denying his due process right to an opportunity to be heard so that his orders (A:200,211,339,350) are null and void;
- v) grant Dr. Cordero any other relief that is just and fair.

VI. Table of exhibits (after this brief and referred to thus: (#, below))

1. Judge Ninfo's Order of July 15, 2003.....	32 [A:666]
2. Dr. Cordero's motion of August 8, 2003, for recusal and removal	38 [A:672]
3. Judge Ninfo's letter of August 14, 2003, to Dr. Cordero	79 [A:712]
4. Dr. Cordero's renote of August 18, 2003, of motion for recusal and removal	80 [A:713]
5. Text of laws and Rules cited.....	81 [A:646a]

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Postal Service copies of my mandamus brief on the following parties:

Hon. John C. Ninfo, II
United States Bankruptcy Judge
1400 United States Courthouse
100 State Street
Rochester, NY 14614
tel. (585) 263 3148

Hon. David G. Larimer
United States District Judge
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585) 263-6263

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

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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
Office of the United States Trustee
Western District of New York
100 State Street, Room 609
Rochester, New York 14614
tel. (585) 263-5706
fax (585) 263-5862

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

Respectfully submitted on

September 12, 2003

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

5. Text of laws and rules cited in the petition for a writ of mandamus

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)

28 U.S.C. §455(a)

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

28 U.S.C. §753. Reporters

...

(b) ...

...Upon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of the judge of the court, the reporter...shall **promptly** transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request. [emphasis added]

28 USC §1412

A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties.

F.R.Bkr.P. Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

(a) Duty of reporter to prepare and file transcript

If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

F.R.Civ.P. 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)

(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)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANN B. MACKECHNIE
CLERK

Docketing Letter - ORIGINAL PROCEEDING

DATE: September 16, 2003

Richard Cordero
59 Crescent St.
Brooklyn, NY 11208-1515

Re: 03-3088 In Re: Cordero v.

District Court Docket No. 01-20692

Deputy Clerk: Siomara Martinez Telephone: (212) 857-8637

Dear Counsel:

We have today docketed a Petition for Writ of Mandamus filed by Richard Cordero in the above referenced case as docket number 03-3088. **This** docket number must appear on all documents related to this case which are submitted to this Court. Enclosed are a copy of our docket sheet including the caption page. Also enclosed is an acknowledgement letter. **Please** return the enclosed acknowledgement within ten days of the date of **this** letter with the following information:

YOUR CORRECT ADDRESS AND TELEPHONE NUMBER: Please check the enclose attorney listing page of the docket sheet and advise this Court of any incorrect information in writing on the enclosed acknowledgement form. **THE COURT WILL GIVE NOTICE OR SERVE COPIES OF ORDERS TO ONLY ONE COUNSEL PER PARTY (OR GROUP OF COLLECTIVELY REPRESENTED PARTIES.) COUNSEL ARE REQUIRED TO DESIGNATE ON THE ATTACHED ACKNOWLEDGEMENT LETTER A LEAD ATTORNEY TO ACCEPT ALL NOTICE FROM THIS COURT IN THIS APPEAL, WHO WILL, IN TURN, BE RESPONSIBLE FOR NOTIFYING ANY ASSOCIATED COUNSEL.**

CAPTION: Pursuant to Local Rule 21(a), the caption in a Petition for a Writ of Mandamus of Writ or Prohibition shall not bear the name of the District judge, but shall be entitled simply:
"In re _____, Petitioner."

DESIGNATION OF RESPONDENTS: All parties below other than the petitioner shall be deemed respondents for all purposes. [FRAP21(b)]

Please note: No answer to a petition for writ of mandamus or prohibition will be accepted unless the Court directs the filing of an answer. [FRAP21(b)]

If you have any questions with regard to this pending petition, please call the Deputy Clerk whose name is given above.

Sincerely,

ROSEANN B. MACKECHNIE, Clerk

Enclosures: USCA Docket Sheet, including Caption Page
 Instructions
 Acknowledgement Form

Proceedings include all events.
03-3088 In Re: Cordero, et al v. , et al

Official Caption 1/

Docket No. [s] : 03-3088

In Re: RICHARD CORDERO,

Petitioner.

Premier Van Lines, Inc.,

Debtor,

James Pfunter,

Plaintiff,

v

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,

v

David Palmer, David Dworkin, David Delano,
Jefferson Henrietta Associates,

Third party defendants.

Authorized Abbreviated Caption 2/

Docket No. [s] : 03-3088

In Re: Cordero

Docket as of September 18, 2003 3:57 pm

Page 3

Proceedings include all events.
03-3088 In Re: Cordero, et al v. , et al

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only.

Proceedings include all events.

03-3088 In Re: Cordero, et al v. , et al

9/12/03 Case Docketed: Petition for Writ of Mandamus on behalf of
Petitioner Richard Cordero filed, with proof of service.
[03-3088] (ps38)

9/12/03 Copy of receipt re: payment of docketing fee filed on
behalf of Petitioner Richard Cordero. Receipt #: 169997.
[03-3088] (ps38)

9/12/03 Petitioner Richard Cordero appendix filed, w/pfs. (ps38)

9/12/03 Note: This appeal was PRO SE when filed. (ps30)

9/16/03 Copy of the Petitioner Richard Cordero Writ of Mandamus
served on Respondent by Case Manager. (ps38)

9/16/03 NOTE: See related case 03-5023. (ps38)

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re Richard Cordero

Petitioner

case no. 03-3088

Return of Acknowledgment
Form and request for Correction
of Mandamus Docket
Caption and Service

In re PREMIER VAN LINES, INC.,
Debtor

Chapter 7 bankruptcy case
no. 01-20692, Ninfo, WBNY

JAMES PFUNTER,

Plaintiff

Adversary proceeding
no. 02-2230, Ninfo, WBNY

v.

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

v.

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

Third party defendants

RICHARD CORDERO

Cross-plaintiff

v.

KENNETH W. GORDON, Trustee

Cross-defendant

RICHARD CORDERO

Third party-plaintiff

v.

DAVID PALMER

Third party defendant

Appeal
no. 03-CV-6021
Larimer, WDNY

Appeal
no. 03-MBK-6001
Larimer, WDNY

To: Mr. Robert Rodriguez, Deputy Clerk of Court, CA2

A:652 Dr. Cordero's return of 9/21/3 to CA2 of acknowledgment form & request for correction of mandamus dkt.

Please find herewith the acknowledgment form that you sent me after our conversation on September 17, in which I called to your attention my concerns about how the docket for my petition for a writ of mandamus had been styled. I am herewith returning that form dully filled out. However, I respectfully point out that there remain other possible mistakes in the docket caption and Acknowledgment Letter. Hence, I am attaching hereto the pages bearing them, on which I have made corrections.

Similarly, I am filing a statement concerning service in light of several entries relative to service contained in the mandamus docket as well as the Acknowledgment Letter that they accompanied. Thus, consider the following:

[docket page 1]

Lower court information:

District: 0209-06: 01-20692

Trial Judge: David G. Larimer

[page 1 of the Docketing Letter – ORIGINAL PROCEEDING]

Re: 03-3088 In Re: Cordero v.

District Court Docket No. 01-20692

To begin with, case 01-20692 is a Bankruptcy docket number since the case that it identifies, namely, Premier Van Lines, Inc., was filed in Bankruptcy, not District, Court. Moreover, the presiding judge was not District Judge David G. Larimer, but rather Bankruptcy Judge John C. Ninfo, II.

Case 01-20692 -Premier Van Lines, Inc.- is the bankruptcy case that gave rise to Pfuntner v. Gordon et al, which is an adversary proceeding in Bankruptcy Court and bears docket no. 02-2230. Both are pending before Bankruptcy Judge Ninfo.

In turn, Pfuntner v. Gordon spun two appeals to the District Court, which came before District Judge Larimer, namely: Cordero v. Gordon, docket no. 03-CV-6021, and Cordero v. Palmer, docket no. 03-MBK-6001.

Likewise, there is the following entry in the docket:

[docket page 5]

9/16/03

Copy of the Petitioner Richard Cordero Writ of Mandamus served on Respondent by Case Manager. (ps38)

When this entry is read together with the previous two, it can reasonably be assumed that the Case Manager considers that there is only one Respondent to my mandamus petition, to wit, Judge Larimer, and that only he was served. That would be a mistake, for Bankruptcy Judge Ninfo is also a Respondent, that is, I am complaining about him and requesting the Court of Appeals to issue an order also to him. Consequently, I served each of them with a copy of my

mandamus brief and the appendix. Therefore, if the Case Manager has to serve any judge, Judge Ninfo as well as Judge Larimer must be served.

I am very concerned that mistakes in the case docket numbers, courts, and judges may later on give rise to problems relating to the scope of my petition for writ of mandamus, to defective notice of legal action to the judges in question, or to improperly limited request for an answer to my request, if any is requested. Hence, I am timely and diligently bringing this matter to your attention so that any mistakes may be corrected timely. To that end, you might wish to examine the caption of this statement, which lists the case names and docket numbers, the courts, and the judges concerned by my mandamus petition.

I kindly request that you let me know in writing whether you are taking any action in response to this statement and, if so, which.

Respectfully submitted on

September 21, 2003

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
Petitioner Pro Se
tel. (718) 827-9521

GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 03-3088

Filed: 9/12/03

Nsuit: 0

In Re: Cordero, et al v. , et al

Appeal from: U.S. District Court WDNY

Case type information:

- 1) Original Proceedings
- 2) mandamus
- 3) none

also 02-2230: Pfuntner v. Gordon et al.
Adversary Proceeding derived from 01-20692-----
Lower court information:

District: 0209-06: 01-20692
Trial Judge: David G. Larimer
Date Filed: **/**/**
Date order/judgment: **/**/**
Date NOA filed: **/**/**

IN Bankruptcy, not District Court
In re Premier Van Lines, Inc.,
Bankruptcy Judge: John C. Ninfa, II03-CV-6021 : Cordero v. Gordon
03-MBK-6001: Cordero v. Palmer-----
Fee status: paid-----
Prior cases:

None

Current cases:

None

Panel Assignment:

Proceedings include all events.
03-3088 In Re: Cordero, et al v. , et al

In Re: RICHARD CORDERO
Petitioner

Richard Cordero
718-827-9521
[COR LD NTC]
59 Crescent St.
Brooklyn, NY 11208-1515

Debtor: PREMIER VAN LINES
Debtor

JAMES PFUNTER
Plaintiff

David D. MacKnight, Esq.
716-454-5650
2nd Flr.
[COR LD NTC inf]
Lacy, Katzen, Ryen & Mittleman
The Granite Bldg.
130 E. Main St.
Rochester, NY 14604

RICHARD CORDERO
Third-Party-Plaintiff

Richard Cordero
718-827-9521
[COR LD NTC]
59 Crescent St.
Brooklyn, NY 11208-1515

v.

DAVID PALMER, David Dworkin,
David Delano, Jefferson
Henrietta Associates
Third-Party-Defendant

David Palmer
[COR LD NTC]
1829 Middle Rd.
Rush, NY 14543

KENNETH W. GORDON, Esq., as
Trustee in Banckruptcy for
Premier Van Lines, Inc.,
Richard Cordero, Rochester
Americans Hockey Club, Inc.,
and M&T BANK,
Defendant

Kenneth W. Gordon, Esq.
585-244-1070
[COR LD NTC inf]
Gordon & Schaal, LLP
100 Meridian Centre Blvd.
120
Rochester, NY 14618

ACKNOWLEDGEMENT LETTER - ORIGINAL PROCEEDING

Return this letter to Court within 10 days of date of docketing letter.

Re Docket Number: 03-3088

Title of Case: In Re: Cordero v.

Dear Siomara Martinez, Deputy Clerk:

This is to acknowledge receipt of your docketing letter in the above case. I acknowledge that I am the (Lead) attorney of record for:

Dr. Richard Cordero, Petitioner ProSe

My **NAME, ADDRESS** and **PHONE NUMBER** on your court records is:

☒ Correct

☐ Incorrect. Please amend your record as follows:

Name: _____

Firm: _____

Address: _____

Telephone: _____

Sincerely,

Dr. Richard Cordero

(Signature and Print Name)

Dr. Richard Cordero

opcsdkt_frm

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

In re Richard Cordero

Docket Number(s): 03-3088

Motion for: Expedited action before October 10, 2003, on mandamus petition

Statement of relief sought:

- 1) Disqualify the Hon. John C. Ninfo, II, from Pfuntner v. Gordon, et al, dkt. no. 02-2230, and In re Premier, dkt. no. 01-20692; rescind his orders and those of the Hon. David G. Larimer in Cordero v. Gordon, dkt. no. 03-CV-6021 and Cordero v. Palmer, dkt. no. 03-MBK-6001;
- 2) remove and transfer these cases from WDNY in Rochester to NDNY in Albany;
- 3) launch an investigation of both judges and other court officers for their participation in a pattern of non-coincidental, intentional, and coordinated acts of disregard of facts, law, and rules revealing unfairness and partiality;
- 4) grant any other proper relief.

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

OPPOSSING PARTIES: Hon. John C. Ninfo, II, and
Hon. David G. Larimer
US Court House
100 State Street
Rochester, NY 14614-1387
tels: (585) 263 3148 and (585) 263-6263

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS
AND INJUNCTIONS PENDING APPEAL**

Has consent of opposing counsel been obtained: No respondent known
Is oral argument requested?: Yes

Has request for relief been made below: Yes; see mandamus brief, pages 38 et seq.
Has this relief been previously sought in this Court: Yes, in mandamus brief, pages 29-30

Requested return date and explanation of emergency:

The requested return date is as soon as possible but in any event before October 10 so that there is enough time to respond accordingly.

This motion for expedited action on the petition for a writ of mandamus is warranted because under FRAP 21(b)(6) "The proceeding **must** be given

preference over ordinary civil cases” (emphasis added). Reasonably relying on the expectation that such preference would be given to his petition, Dr. Cordero paid the required filing fee of \$100. He filed the petition in this Court on September 12, 2003, and stated in the mandamus brief (MB) the need for the Court to take timely action, and at any rate before next October 16, in order to prevent the bankruptcy and the district court below and court officers therein from further injuring him by continuing their pattern of non-coincidental, intentional, and coordinated acts of disregard of facts, law, and rules. (MB-1,29).

The importance of action reasonably in advance of October 16, is due to the fact, as discussed in the brief, that Judge Ninfo, pursuant to his order of July 15, 2003 (MB-32), has set October 16 and 17 for “discrete, discreet hearings” (MB-17) to begin at 9:30 a.m. in Rochester, in all likelihood in chambers without court reporter (MB-13), where despite his failure to enforce the rules of discovery in this year-old civil case, he will require Dr. Cordero, a pro se defendant, to prove beyond a reasonable doubt (MB-12) his motions that the Judge has systematically postponed. Given the Judge’s already demonstrated bias and prejudice against Dr. Cordero and in favor of the local parties, the ensuing orders will be tainted with unfairness and partiality as are those challenged on appeal to this Court, dkt. no. 03-5023. Requiring Dr. Cordero, the only non-local party, to prepare for and attend Judge Ninfo’s “discrete, discreet hearings” will inflict upon him the irreparable harm of:

- 1) being subjected to further abuse under the Judge’s pattern of disregard of substantive and procedural requirements (MB-7) in violation of Dr. Cordero’s rights,
- 2) being forced to make a major effort and investment of time to engage in legal research to prepare, as a pro se litigant and without the benefit of

discovery (MB-21), for “discrete, discreet hearings” without even knowing what the standards for such unknown proceedings are;

- 3) being forced to free in his calendar and lose the three working days of October 15, 16, and 17,
- 4) being caused to spend hundreds and hundreds of dollars to travel from NY City to and from Rochester, and on room and board at hotels and restaurants, local transportation, etc., and
- 5) being exposed to incur the enormous amount of work, expense, and aggravation of challenging any new orders.

Due to Judge Ninfo’s failure to comply with procedural requirements it is only at these “discrete, discreet hearings” that the Judge will begin to consider the Plaintiff’s pleadings, over a year after the case was filed. Hence, the transfer of this case now to the U.S. District Court in Albany for a jury trial will avoid the waste of judicial resources entailed in allowing any proceedings on October 16 and 17 only for this Court to find in the pending appeal that the challenged decisions were unfair and partial, and declare them null and void.

There is a substantial probability that this Court will do so because in application of the objective test for judicial disqualification that it adopted in *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992) for the application of 28 U.S.C. §455(a) (MB-81):

an objective, disinterested observer fully informed of the underlying facts [MB-7 et seq. and the supporting documents in the Appendix], [would] entertain significant doubt that justice would be done absent recusal.

The likelihood that this test will be met and that the Court will grant the

disqualification sought by Dr. Cordero is all the greater since the U.S. Supreme Court has stated in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988), that for disqualification to be required under §455, there is no need to prove actual partiality on the part of the judge, but rather “even the appearance of partiality...to a reasonable person...” is enough (MB-27).

What is more, docket no. 02-2230 for Pfuntner v. Gordon et al., is labeled at the foremost right top **DISMISSED** (Appendix-548 and so when last checked on September 28, 2003), whereby all those “discrete, discreet hearings” may well be nothing but a sham!

Has argument date of appeal been set? No

Signature of Moving Attorney:

Has service been effected? Yes

Proof of service is attached

Dr. Richard Cordero

Date: September 30, 2003

Dr. Richard Cordero
Petitioner Pro Se

ORDER

IT IS HEREBY ORDERED that the motion is granted denied.

**FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk**

Date: _____

By: _____

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by United States Postal Service copies of my mandamus brief on the following parties:

Hon. John C. Ninfo, II
United States Bankruptcy Judge
1400 United States Courthouse
100 State Street
Rochester, NY 14614
tel. (585) 263 3148

Hon. David G. Larimer
United States District Judge
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585) 263-6263

Kenneth W. Gordon, Esq.
Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618
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Rochester, NY 14614
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Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Office of the United States Trustee
Western District of New York
100 State Street, Room 609
Rochester, New York 14614
tel. (585) 263-5706
fax (585) 263-5862

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

Respectfully submitted on

September 30, 2003

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

**United States Court of Appeals
for the Second Circuit**

Thurgood Marshall United States Courthouse
40 Centre Street
New York, NY 10007
(212) 857-8500

4 October 2003

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

|

DATE: October 2, 2003

TO: Richard Cordero
59 Crescent St.
Brooklyn, NY 11208-1515

RE: In Re: Richard Cordero

DOCKET NO: 03-3088

Your petition for writ of mandamus and motion to expedited. Have been received and filed. They have been added to the substantive motions calendar for **Tuesday, October 7, 2003 ***ON SUBMISSION*****

There will be no oral argument on these motions.

Opposing papers, if any, must be filed in quintuplicate with proof of service. Such papers must be filed not later than seven days after service of a motion served in person, or ten days after service of a motion served by mail, but in no event later than 12:00 noon of the Thursday preceding the Tuesday for which the motion is noticed (See Local Rule § 27)

OPPOSITION PAPERS DUE BY 10/6/03.

Very truly yours,

Roseann B. MacKechnie, CLERK
by: Ana Vargas


Calendar Deputy Clerk

cc: David D. MacKnight, Esq.
David Palmer
Kenneth W. Gordon, Esq.

CA2' notice of 10/2/3 to Dr. Cordero of the filing of his mandamus petition & mtn for expedited action on it A:663

Oct 10, 2003

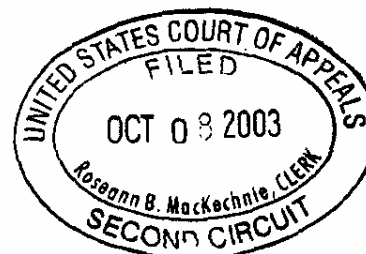
W.D.N.Y.
03-cv-6021
Larimer, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 8th day of October two thousand and three,

Present:

Hon. John M. Walker, Jr.
Chief Judge,
Hon. Wilfred Feinberg,
Hon. Richard J. Cardamone,
Circuit Judges.



In re Richard Cordero,

03-3088

Petitioner.

Petitioner, *pro se*, petitions for a writ of mandamus from this Court requiring (1) the Honorable John Ninfo, II to disqualify himself from adversary proceedings in Pfunter v. Gordon, et al., 02-02230 (W.D.N.Y. Bankr.), and a related bankruptcy proceeding, In re Premier Van Lines, Inc., 01-20692 (W.D.N.Y. Bankr.); (2) transfer of these cases from the Western District of New York to the Northern District of New York; (3) an investigation into unfair and biased conduct by judges and other court officers; and (4) the bankruptcy court to allow him to participate by telephone in the bankruptcy court proceedings. On September 30, 2003, Petitioner filed a "Motion for Expedited Action Before October 10, 2003 on the Mandamus Petition" because a hearing is scheduled in the bankruptcy court on October 16, 2003.

Upon due consideration, it is hereby ORDERED that the motion for expedited action is granted and the mandamus petition is DENIED. See In re United States, 10 F.3d 931, 933 (2d Cir. 1993) (for a writ of mandamus, petitioner must show "(1) the presence of a novel and significant

question of law; (2) the inadequacy of other remedies; and (3) the presence of a legal issue whose resolution will aid in the administration of justice.”).

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: Lucille Carr

SAO/ASmi

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GENERAL DOCKET FOR
Second Circuit Court of Appeals

Court of Appeals Docket #: 03-3088

Filed: 9/12/03

Nsuit: 0

In Re: Cordero, et al v.

Appeal from: U.S. District Court WDNY

Case type information:

- 1) Original Proceedings
- 2) mandamus
- 3) none

Lower court information:

District: 0209-06: 01-20692
Trial Judge: John C. Ninfo, II
Date Filed: **/**/**
Date order/judgment: **/**/**
Date NOA filed: **/**/**

Fee status: paid

Prior cases:

None

Current cases:

None

Panel Assignment:

Docket as of October 29, 2003 1:41 am

Page 1

INDIV PROSE
SUBMTD CLOSED
2

Proceedings include all events.

03-3088 In Re: Cordero, et al v.

Debtor: PREMIER VAN LINES

Debtor

In Re: RICHARD CORDERO

Petitioner

Richard Cordero

718-827-9521

[COR LD NTC]

59 Crescent St.

Brooklyn, NY 11208-1515

JAMES PFUNTER
Plaintiff

David D. MacKnight, Esq.
716-454-5650
2nd Flr.
[COR LD NTC inf]
Lacy, Katzen, Ryen & Mittleman
The Granite Bldg.
130 E. Main St.
Rochester, NY 14604

v.

RICHARD CORDERO
Third-Party-Plaintiff

Richard Cordero
718-827-9521
[COR LD NTC]
59 Crescent St.
Brooklyn, NY 11208-1515

v.

DAVID PALMER
Third-Party-Defendant

David Palmer
1829 Middle Rd.
Rush, NY 14543

DAVID DELANO
Third-Party-Defendant

David Delano
1829 Middle Rd.
Rush, NY 14543

DAVID DWORKIN
Third-Party-Defendant

Karl S. Essler, Esq.
585-232-1660
14th fl.
[COR LD NTC ret]
Fix, Spindelman, Brovitz
& Goldman
2 State St.
CrossRoads Bldg.
Rochester, NY 14614-1369

JEFFERSON HENRIETTA ASSOCIATES
Third-Party-Defendant

Karl S. Essler, Esq.
(See above)
[COR LD NTC ret]

Docket as of October 29, 2003 1:41 am

Page 2

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Proceedings include all events.
03-3088 In Re: Cordero, et al v.

KENNETH W. GORDON, Esq., as
Trustee in Banckruptcy for
Premier Van Lines, Inc.,

Kenneth W. Gordon, Esq.
585-244-1070
#120

Richard Cordero, Rochester
Americans Hockey Club, Inc.,
and M&T BANK,
Defendant

[COR LD NTC inf]
Gordon & Schaal, LLP
100 Meridian Centre Blvd.
Rochester, NY 14618

Docket as of October 29, 2003 1:41 am

Page 3

INDIV PROSE
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Proceedings include all events.
03-3088 In Re: Cordero, et al v.

Official Caption 1/

Docket No. [s] : 03-3088

In Re: RICHARD CORDERO,

Petitioner.

Premier Van Lines, Inc.,

Debtor,

James Pfunter,

Plaintiff,

v

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,

v

David Palmer, David Dworkin, David Delano,
Jefferson Henrietta Associates,

Third party defendants.

Authorized Abbreviated Caption 2/

Docket No. [s] : 03-3088

In Re: Cordero

Docket as of October 29, 2003 1:41 am

Page 4

INDIV PROSE
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Proceedings include all events.
03-3088 In Re: Cordero, et al v.

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only.

Docket as of October 29, 2003 1:41 am

Page 5

INDIV PROSE
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Proceedings include all events.
03-3088 In Re: Cordero, et al v.

9/12/03 Case Docketed: Petition for Writ of Mandamus on behalf of
Petitioner Richard Cordero filed, with proof of service.
[03-3088] (ps38)

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Gordon received. (ps38)

9/30/03 Petitioner Richard Cordero motion for "Expedited
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Injunctions pending appeal" FILED (w/pfs). [2443389-3]
(ps33)

10/8/03 Order FILED GRANTING motion to expedite appeal [2443389-1]
by Petitioner by Richard Cordero, endorsed on motion form
dated 9/30/03. Upon due consideration, it is hereby

ORDERED that the motion for expedited action is granted.
(ps38)

Docket as of October 29, 2003 1:41 am

Page 6

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SUBMTD CLOSED

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Proceedings include all events.

03-3088 In Re: Cordero, et al v.

10/8/03 Order denying petition for writ of mandamus. "Petitioner, pro se, petitions for a writ of mandamus from this Court requiring (1) the Honorable John Ninfo, II to disqualify himself from adversary proceedings in Pfunter v. Gordon, et al., 02-02230 (W.D.N.Y. Bankr.), and a related bankruptcy proceeding, In re Premier Van Lines, Inc., 01-20692 (W.D.N.Y. Bankr.); (2) transfer of these cases from the Western District of New York to the Northern District of New York; (3) an investigation into unfair and biased conduct by judges and other court officers; and (4) the bankruptcy court to allow him to participate by telephone in the bankruptcy court proceedings. On September 30, 2003, Petitioner filed a "Motion for Expedited Action Before October 10, 2003 on the Mandamus Petition" because a hearing is scheduled in the bankruptcy court on October 16, 2003. Upon due consideration, it is hereby ORDERED that the motion for expedited action is granted and the mandamus petition is DENIED. See In re United States, 10 F.3d 931, 933 (2d Cir. 1993) (for a writ of mandamus, petitioner must show "(1) the presence of a novel and significant question of law; (2) the inadequacy of other remedies; and (3) the presence of a legal issue whose resolution will aid in the administration of justice."). (ps38)

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A:665e

Docket of petition for a writ of mandamus *In re Richard Cordero*, 03-3088, CA2, as of 10/29/3

10/9/03 Letter dated October 6, 2003 submitted by Karl S. Essler,
Esq., regarding that he is the attorney of counsel to
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Henretta Associated in the above-reference matter.,
received (ps38)

10/28/03 Mandate receipt returned from the district court. (red)

Docket as of October 29, 2003 1:41 am

Page 7

If you view the full docket, you will be charged for 7 Pages \$ 0.56

US Court of Appeals for the Second Circuit Case Summary

Court of Appeals Docket #: 03-3088

Filed: 9/12/03

Nsuit: 0

In Re: Cordero, et al v.

Appeal from: U.S. District Court WDNY

Lower court information:

District: 0209-06: 01-20692

Trial Judge: John C. Ninfo, II

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PACER Service Center

Transaction Receipt

05/15/2006 11:05:20

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Description:	dkt summary	Case Number:	03-3088
Billable Pages:	1	Cost:	0.08

General Docket

US Court of Appeals for the Second Circuit

INDIV PROSE
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Filed: 9/12/03

Court of Appeals Docket #: 03-3088
Nsuit: 0
In Re: Cordero, et al v.
Appeal from: U.S. District Court WDNY

Case type information:
1) Original Proceedings
2) mandamus
3) none

Lower court information:
District: 0209-06: 01-20692
Trial Judge: John C. Ninfo, II
Date Filed: **/**/**
Date order/judgment: **/**/**
Date NOA filed: **/**/**

Fee status: paid

Prior cases:
None
Current cases:
None

Panel Assignment:

Docket as of October 29, 2003 1:41 am

Page 1

INDIV PROSE
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03-3088 In Re: Cordero, et al v.

Debtor: PREMIER VAN LINES
Debtor

In Re: RICHARD CORDERO
Petitioner

Richard Cordero
718-827-9521
[COR LD NTC]
59 Crescent St.
Brooklyn, NY 11208-1515

JAMES PFUNTER
Plaintiff

David D. MacKnight, Esq.
716-454-5650
2nd Flr.

[COR LD NTC inf]
Lacy, Katzen, Ryen & Mittleman
The Granite Bldg.
130 E. Main St.
Rochester, NY 14604

v.
RICHARD CORDERO
Third-Party-Plaintiff

Richard Cordero
718-827-9521
[COR LD NTC]
59 Crescent St.
Brooklyn, NY 11208-1515

v.
DAVID PALMER
Third-Party-Defendant

David Palmer
1829 Middle Rd.
Rush, NY 14543

DAVID DELANO
Third-Party-Defendant

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(See above)
[COR LD NTC ret]

Docket as of October 29, 2003 1:41 am

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03-3088 In Re: Cordero, et al v.

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Trustee in Banckruptcy for
Premier Van Lines, Inc.,
Richard Cordero, Rochester
Americans Hockey Club, Inc.,
and M&T BANK,
Defendant

Kenneth W. Gordon, Esq.
585-244-1070
#120
[COR LD NTC inf]
Gordon & Schaal, LLP
100 Meridian Centre Blvd.
Rochester, NY 14618

Docket as of October 29, 2003 1:41 am

Page 3

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03-3088 In Re: Cordero, et al v.

Official Caption 1/

Docket No. [s] : 03-3088

In Re: RICHARD CORDERO,
Petitioner.

Premier Van Lines, Inc.,
Debtor,

James Pfunter,
Plaintiff,

v

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for Premier Van Lines, Inc., Richard Cordero,
Rochester Americans Hockey Club, Inc.,
and M&T Bank,
Defendants,

Richard Cordero,
Third party plaintiff,

v

David Palmer, David Dworkin, David Delano,
Jefferson Henrietta Associates,
Third party defendants.

Authorized Abbreviated Caption 2/

Docket No. [s] : 03-3088

In Re: Cordero

Docket as of October 29, 2003 1:41 am

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Docket as of October 29, 2003 1:41 am

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Page 7

PACER Service Center			
Transaction Receipt			
05/15/2006 11:07:00			
PACER Login:		Client Code:	
Description:	dkt report	Case Number:	03-3088
Billable Pages:	7	Cost:	0.56

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC.,

CASE NO. 01-20692

Debtor.

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,
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.

ORDER

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner") commenced an adversary proceeding against Kenneth W. Gordon, Esq., as trustee ("Gordon"), Richard Cordero ("Cordero"), Rochester Americans Hockey Club, Inc. ("Rochester Hockey") and M&T Bank ("M&T") (the "Adversary Proceeding"); and

WHEREAS, the Adversary Proceeding sought to have the Court determine: (1) the rights of the various parties, if any, in property (the "Stored Property") which Premier Van Lines, Inc. (the "Debtor") had stored, pursuant to a lease (the "Lease") with Pfuntner at his property at 2140 Sacket Road, Avon, New York ("Sacket Road"); (2) that Pfuntner had no liability, or that he should otherwise be indemnified for any adverse claims to the Stored Property; (3) that the unpaid monthly rental due under the Lease, or reasonable storage charges for the Stored Property, be paid by the Debtor to Pfuntner as Chapter 11 and 7 administrative expenses; (4) that the Court vacate the automatic stay so as to permit Pfuntner to: (a) evict the Debtor and those claiming under the Debtor from Sacket Road in New York State Court; (b) remove the goods left at Sacket Road by the third parties; and (c) collect from those responsible such fair use and occupancy fees as may be determined by a New York State Court; and (5) various other requests for relief; and

WHEREAS, in this non-core proceeding, in November 2002, Cordero filed an Answer and Counterclaim, and Crossclaims against David Palmer ("Palmer"), the principal shareholder of the Debtor, Gordon, Pfuntner, David Dworkin ("Dworkin"), the owner or manager of the Jefferson-Henrietta Warehouse formerly utilized by the Debtor, and David Delano ("Delano"), an officer of M&T Bank, which held a security interest in the personal property assets of the Debtor; and

WHEREAS, on December 23, 2002, this Court granted Gordon's Motion to Dismiss Cordero's Crossclaims against him, which was appealed to and affirmed by the United States District Court for the Western District of New York (the "District Court"), and is now

on appeal to the United States Court of Appeals for the Second Circuit; and

WHEREAS, on February 4, 2003, for various reasons, including that Cordero had failed to provide satisfactory evidence that would demonstrate that he had incurred damages of \$14,000.00, the Bankruptcy Court recommended to the District Court in this non-core matter that the default judgment requested by Cordero not be entered against Palmer; and

WHEREAS, in March 2003, the District Court determined that it was not appropriate to enter a default judgment in favor of Cordero and against Palmer, and referred Cordero's request for a default judgment back to the Bankruptcy Court for a determination of damages; and

WHEREAS, a trip by Cordero to Sacket Road did not result in: (1) a satisfactory inspection of all of the property stored by the Debtor at Sacket Road, including the property of Cordero that was at one time stored with the Debtor; (2) the ability of Cordero to fully determine whether there was any damage to his stored property, and, if there was, whether any of the various entities that had stored his property for him over approximately the last ten years might be responsible for any such damage, and if so, which entities; (3) Cordero's ability to remove his stored property; and (4) this matter being satisfactorily resolved by all of the interested parties; and

WHEREAS, as a result of: (1) Pfuntner and his representatives having failed to take the necessary steps for Cordero to accomplish at least the first three of the items set forth in the preceding paragraph; and (2) the Court advising Cordero that it would

entertain a motion for reasonable reimbursement in connection with his trip to Sacket Road, in June 2003, Cordero filed a motion for sanctions and compensation to be paid by Pfuntner and his attorney (the "Sanction Motion"); and

WHEREAS, the Sanction Motion included: (1) a request for compensation for Cordero at the rate of \$250.00 per hour for the hours he spent on various matters involved in the Adversary Proceeding, including preparing and researching the Sanction Motion; and (2) the reimbursement of undocumented travel expenses, for a total request of \$36,075.00; and

WHEREAS, in connection with the Sanction Motion, Cordero's only justification for requesting compensation for his time at \$250.00 per hour is that Pfuntner advised him that this was the amount he paid his attorney, however, there is no proof of that in the record, and there is no other justification in the record for compensating a *pro se* litigant at that rate, so that the compensation issue and the undocumented expenses will be the subject of inquiry at the upcoming hearings; and

WHEREAS, the Court, in recently reviewing Cordero's renewed motion for a default judgment against Palmer, has focused on the Affidavit of Service of the Crossclaim, which does not indicate that Palmer was properly personally served by mail in accordance with the Federal Rules of Civil Procedure, so that this service issue will be the subject of inquiry at the upcoming hearings; and

WHEREAS, although the Court has allowed Cordero to appear by telephone in connection with a number of pretrial proceedings and motions in this Adversary Proceeding, in the Court's opinion few of

those telephone appearances have resulted in an accurate and comprehensive record; and

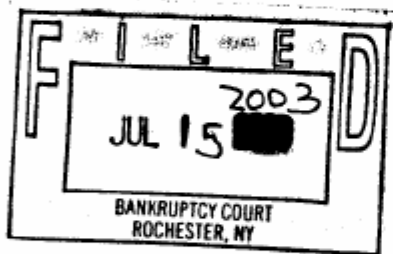
WHEREAS, the Court believes that setting this Adversary Proceeding down for discrete hearing dates in October and November, when the Court will not have any other matters before it and Cordero can appear in person, will: (1) afford the interested parties a sufficient amount of time to meet and negotiate to determine whether this matter, which should be able to be settled, can be settled without the need for further hearings and proceedings; (2) complete any discovery which they believe may be required; (3) afford Cordero, who has represented himself *pro se* in this Adversary Proceeding, the opportunity to consult with an attorney: (a) to discuss substantive legal, factual and other relevant matters involved in the Adversary Proceeding; and (b) to advise him how to properly prepare and present evidence at the upcoming hearings should Cordero continue to elect not to be represented by counsel; (4) afford the parties sufficient time to finally complete an inspection of the Stored Property at Sacket Road, and attempt to assess: (a) the ownership of the Property; (b) any damages to the Property; and (c) whether any parties to the Adversary Proceeding are responsible for any such damage; and (5) afford the Court the opportunity to focus more fully on this non-core Adversary Proceeding so that at the discreet hearings it can make the necessary findings, conclusions and rulings, based upon a full and complete record, that will finalize the matter; and, therefore,

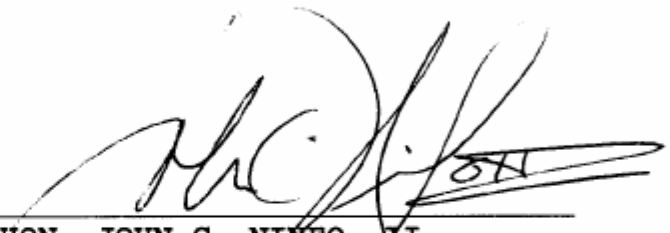
For the above reasons, and in order to: (1) ensure that there is a full and complete record created in this Adversary Proceeding; and (2) ensure that the Court can effectively manage the numerous issues that have been raised and assist the parties in concluding

the matter, this matter, and all related hearings, motions and proceedings, are set down for a discrete hearing at 9:30 a.m. in the Rochester Courtroom on October 16, 2003, at which time the Court will address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward, and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court, and if necessary for further hearings on November 14, 2003 at 9:30 a.m. in the Rochester Courtroom.

SO ORDERED.

DATED: July 15, 2003




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

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

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

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

NOTICE OF MOTION
FOR RECUSAL
AND
REMOVAL

RICHARD CORDERO

Third party plaintiff

-VS-

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

Third party defendants

Madam or Sir,

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

Notice is hereby given that Dr. Cordero is not able to appear in person and has requested the court to accord him the same opportunity to appear by phone as the court continues to accord other parties to proceedings before it. Thus, the parties may wish to ascertain with Case Administrator Karen Tacy if, and if so how, the hearing will be conducted; they should confirm so before going to court on the return date.

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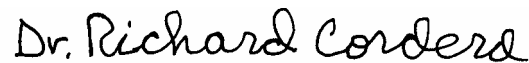
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Dated: August 8, 2003
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Brooklyn, NY 11208



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

**UNITED STATES BANKRUPTCY COURT
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Defendants

MOTION
FOR RECUSAL
AND
REMOVAL

RICHARD CORDERO

Third party plaintiff

-VS-

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

Third party defendants

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

1. This court, the Hon. John C. Ninfo, II, presiding, and court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice against Dr. Cordero.
2. Therefore, Dr. Cordero moves for Judge Ninfo to recuse himself from this adversary proceeding under 28 U.S.C. §455(a), which provides that:

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

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

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

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

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

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

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

6. Dr. Cordero -who resides in NY City, entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993. From then on he paid storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about his property. Mr. Palmer and his attorney, Raymond Stilwell, Esq., assured him that it was safe and in his warehouse at Jefferson-Henrietta, in Rochester). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.
7. In search of his property in storage with Premier Van Lines, Dr. Cordero was referred to Kenneth Gordon, Esq., the trustee appointed for its liquidation. The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him.
8. Eventually Dr. Cordero found out from third parties that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to

the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but in a letter of September 23, 2002, improper in its tone and unjustified in its content, he also enjoined Dr. Cordero not to contact him or his office anymore. [A:1]

9. Dr. Cordero applied to this court, to whom the Premier case had been assigned, for a review of the Trustee's performance and fitness to serve. [A:7,8]
10. In an attempt to dissuade the court from undertaking that review, Trustee Gordon submitted to it false statements as well as statements disparaging of the character and competence of Dr. Cordero. [A:19] The latter brought this matter to the court's attention. [A:32,38] However, the court did not even try to ascertain whether the Trustee had made such false representations in violation of Rule 9011(b)(3) FRBkRP. Instead, it satisfied itself with just passing Dr. Cordero's application to the Trustee's supervisor, an assistant U.S. Trustee, who was not even requested and who had no obligation to report back to the court. [A:29]
11. By so doing, the court failed in its duty to ensure respect for the conduct of business before it by an officer of the court and a federal appointee, such as Trustee Gordon, and to maintain the integrity and fairness of proceedings for the protection of injured parties, such as Dr. Cordero. The court's handling of Dr. Cordero's application to review Trustee Gordon's performance, even before they had become parties to this adversary proceeding, would turn out to be its first of a long series of manifestations of bias and prejudice in favor of Trustee Gordon and other parties and against Dr. Cordero.

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

12. In October 2002, Mr. Pfuntner served the papers for this adversary proceeding on several defendants, including Trustee Gordon and Dr. Cordero. [A:21]
13. Dr. Cordero, appearing pro se, cross-claimed against the Trustee, who moved to dismiss. [A:70,133] Before discovery had even begun or any initial disclosure had been provided by the other parties –only Dr. Cordero had disclosed numerous documents with his pleadings- and before any conference of parties or pre-trial conference under Rules 26(f) and 16 FRCivP,

respectively, had taken place, the court summarily dismissed the cross-claims at the hearing on December 18, 2002. [A:151] To do so, it disregarded the genuine issues of material fact at stake as well as the other standards applicable to motions under Rule 12(b)(6) FRCP, both of which Dr. Cordero had brought to its attention. [A:143]

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

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

"I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court...it's all part of the Trustee just trying to resolve these issues." (Transcript, pp.10-11 [A:274-275])

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

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

16. The order dismissing Dr. Cordero's cross-claims was entered on December 30, 2002, and mailed from Rochester. [A:151] Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003. [A:153] It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved in

district court to dismiss it as untimely filed. [A:156]

17. Dr. Cordero timely mailed a motion to extend time to file the notice under Rule 8002(c)(2) FRBkrP. [A:214] Although Trustee Gordon himself acknowledged on page 2 of his brief in apposition that the motion had been timely filed on January 29 [A:235], this court surprisingly found that it had been untimely filed on January 30!
18. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly have made a mistake on such a critical matter. Nevertheless, the court disregarded the factual discrepancy without even so much as wondering how it could have come about, let alone ordering an investigation into whether somebody and, if so, who, had changed the filing date and on whose order. The foundation for this query is provided by evidence of how court officers mishandled docket entries and the record for Dr. Cordero's cases (paras. 32 below and 97 below). Instead, the court rushed to deny the motion to extend, which could have led to the review of its dismissal of Dr. Cordero's cross-claims.

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

19. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript. [A:261]
20. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for..."You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript.
21. There is further evidence supporting the implication of Reporter Dianetti's comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant the court engages in exchanges with parties in Dr. Cordero's absence. Thus, on many occasions

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

22. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking its gavel, but simply by just pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, the court brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left. What is not only likely but in fact certain is that by so doing, the court, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the court have given by such conduct to any reasonable person at the opposite end of the phone line cause for offense and the appearance of partiality and unfairness?
23. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, the date on her certificate.[A:282] Indeed, it was filed two weeks later on March 26, a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. [A:242] Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28. [A:262, 287]]
24. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA:86) on "promptly" delivering the transcript "to the party or judge" –was she even the one who sent it to the party?- or Rule 8007(a) FRBkrP (SPA:65) on asking for an extension.
25. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. [A:287] As a result, the transcription of his speech has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in use. But no imagination is needed, only an objective assessment of the facts and the applicable legal provisions, to ask whether the Reporter was told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript to a higher-up court officer to be vetted before

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

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

26. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees for years. Mr. Palmer, as president of the Debtor, was already under the bankruptcy court's jurisdiction. Nonetheless, he failed to answer Dr. Cordero's summons and complaint. [A:70,95] Hence, Dr. Cordero timely applied under Rule 55 FRCivP for default judgment for a sum certain on December 26, 2002. [A:290-296] But nothing happened for over a month during which Dr. Cordero had no oral or written response from the court to his application.
27. Dr. Cordero called to find out. He was informed by Case Administrator Karen Tacy that the court had withheld his application until the inspection of his property in storage because it was premature to speak of damages. Dr. Cordero indicated that he was not asking for damages, but rather for default judgment as a result of Mr. Palmer's failure to appear. Ms. Tacy said that Dr. Cordero could write to the court if he wanted.
28. Dr. Cordero wrote to the court on January 30, 2003, to request that the court either grant his application or explain its denial. [A:302]
29. Only on February 4, did the court take action, or Clerk of Court Paul Warren, or Clerk Tacy, for that matter. [A:303] In addition, when Dr. Cordero received a copy of the papers file by the court, what he read was astonishing!

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

30. Clerk Paul Warren had an unconditional obligation under Rule 55 FRCivP: **"the clerk shall enter** the party's default," (emphasis added) upon receiving Dr. Cordero's

application of December 26, 2002. Yet, it was only on February 4, 41 days later and only at Dr. Cordero's instigation), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. [A:303] The Clerk lacked any legal justification for his delay. He had to certify the fact of default to the court so that the latter could take further action on the application. It was certainly not for the Clerk to wait until the court took action.

31. It is not by coincidence that Clerk Warren entered default on February 4, the date on the bankruptcy court's Recommendation to the district court. [A:304-307] Thereby the Recommendation appeared to have been made as soon as default had been entered. It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.
32. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (docket entries no. [A:553] 51, 43, 46, 49, 50, 52, 53)? Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer. Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it?
33. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

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

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

...within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993. [A:306¶6]
35. The court wrote that on February 4, but the inspection did not take place until more than 3 three months later on May 19; it was not even possible to open all containers; the failure to enable the opening of another container led to the assumption that other property had been

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

36. What a totally wrong forecast! Why would the court cast aside all judicial restraint to make it? Because it was in fact a biased prejudgment. It sprang from the court's need to find a pretext to deny the application. Such denial was pushed through by the court disregarding the provisions of Rule 55, which squarely supported the application since it was for judgment for Mr. Palmer's default, not for damage to Dr. Cordero's property; Mr. Palmer had been found in default by Clerk of Court Warren; and it requested a sum certain. [A:303, 294]
37. What is more, for its biased prejudgment, the court not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, the storage containers with Dr. Cordero's property were said to have been left behind by Mr. Palmer in the warehouse of Mr. Pfuntner. The latter had written in his complaint that property had been removed from his warehouse premises without his authorization and at night. [A:24¶17] Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero's property could also have been stolen or damaged.
38. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From a court who forms anticipatory judgments, a reasonable person would not expect to receive fair and impartial treatment, much less a fair trial because at trial the prejudiced court could abuse his authority to show that its prejudgments were right.

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

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

requirements on that industry.

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

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

41. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in its Recommendation of February 4, 2003 [A:307], that:

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

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

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

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

[Dr. Cordero] must still establish his entitlement to damages since the matter **does not involve a sum certain** [so that] it may be

necessary for [sic] an inquest concerning damages before judgment is appropriate...the Bankruptcy Court is the proper forum for conducting [that] inquest. (emphasis added) [A:339]

44. What an astonishing statement!, for in order to make it, the district court had to disregard five papers stating that the application for default judgment did involve a sum certain:
 - 1) Dr. Cordero's Affidavit of Amount Due; [A:294]
 - 2) the Order to Transmit Record and Recommendation; [A:304]
 - 3) the Attachment to the Recommendation; [A:306]
 - 4) Dr. Cordero's March 2 motion to enter default judgment; [A:327¶¶58, 59]and
 - 5) Dr. Cordero's March 19 motion for rehearing re implied denial of the earlier motion. [A:344¶6]
45. The district court made it easy for itself to disregard Dr. Cordero's statement of sum certain, for it utterly disregarded his two motions that argued that point, among others.
46. After the district court denied without discussion and, thus, by implication, the first motion of March 2 [A:339], Dr. Cordero moved that court for a rehearing so that it would correct its outcome-determinative error since the matter did involve a sum certain. However, the district court did not discuss that point or any other at all. Thereby it failed to make any effort to be seen if only undoing its previous injustice, or at least to show a sense of institutional obligation of reciprocity toward the requester of justice, a quid pro quo for his good faith effort and investment of countless hours researching, writing, and revising his motions. It curtly denied the motion "in all respects" period! [A:350]
47. Also with no discussion, the district court disregarded Dr. Cordero's contention that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.
48. By making such a critical mistake of fact and choosing to proceed so expediently, the district court gave rise to the reasonable inference that it did not even read Dr. Cordero's motions, thereby denying him the opportunity to be heard, particularly since there was no oral argument. Instead, it satisfied itself with just one party's statements, namely the bankruptcy court's February 4 Recommendation. If so, it ruled on the basis of what amounted to the ex parte approach of the bankruptcy court located downstairs in the same building. It merely rubberstamped the bankruptcy court's conclusion...after mistranscribing its content, a quick job that did justice to nobody. Would such conduct give to an objective observer the

appearance of unfairness toward Dr. Cordero and partiality in favor of the colleague court?

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

49. The equities of this case show that Mr. Palmer had such dirty hands that he did not even dare come to court to answer Dr. Cordero’s complaint. Yet, both courts spared him the consequences of his default and instead weighed down Dr. Cordero’s shoulders with the contrary-to-law burden of proving damages at an inquest. [A:339] The latter necessarily would have to be conducted by the bankruptcy court playing the roles of the missing defendant, its expert witness, the jury, and the judge. For a court to conduct an inquest under such circumstances would offend our adversarial system of justice, and all the more so because the court has demonstrated to have already prejudged the issues at stake and its outcome. Would an objective observer reasonably expect the bankruptcy court to conduct a fair and impartial inquest or the district court to review with any degree of care its findings and conclusions?

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

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

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

52. At a hearing the following week, on July 2, Dr. Cordero brought up again his application for

default judgment. The court not only repeated that Dr. Cordero would have to prove damages, but also stated that he had to prove that he had properly served Mr. Palmer because it was not convinced that service on the latter had been proper. What an astonishing requirement!

53. And so arbitrary: Dr. Cordero served Mr. Palmer's attorney of record, David Stilwell, Esq., who has proceeded accordingly [A:18]; Dr. Cordero certified service on him to Clerk of Court Warren [A:95] and the service was entered on the docket on November 21, 2002 [A:551:14,17]; subsequently Dr. Cordero served the application on both Mr. Palmer and Mr. Stilwell on December 26 [A:296; 553-35]. What is more, Clerk Warren defaulted Mr. Palmer on February 4, 2003, thus certifying that Mr. Palmer was served but failed to respond. [A:303} Hence, with no foundation whatsoever, the court cast doubt on the default entered by its own Clerk of Court. [cf. A:341]
54. Likewise, with no justification it disregarded Rule 60(b), which provides an avenue for a defaulted party to contest a default judgment. Instead of recommending the entry of such judgment under Rule 55 and allowing Mr. Palmer to invoke 60(b) to challenge service if he dare enter an appearance in court, the court volunteered as Mr. Palmer's advocate in absentia. In so doing, the court betrayed any pretense of impartiality. Would a reasonable person consider that for the court to protect precisely the clearly undeserving party, the one with dirty hands, it had to be motivated by bias and prejudice against Dr. Cordero or could it have been guided by some other interest?

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

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

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

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

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

56. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect the storage containers that bear labels with his name at Plaintiff Pfuntner's warehouse. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties. Nonetheless, the court neither answered it nor informed Dr. Cordero of the most convenient date.
57. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, Mr. MacKnight, who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed. But Dr. Cordero had to keep those six dates open on his calendar for no good at all and to his detriment.

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

58. Months later Mr. Pfuntner wanted to get the inspection over with to clear his warehouse, sell it, and be in Florida worry-free to carry on his business there. Out of the blue he called Dr. Cordero on March 25 and proposed dates in one week. When Dr. Cordero asked him whether he had taken the necessary preparatory measures discussed in his January 29 letter, Mr. Pfuntner claimed not even to have seen the letter.
59. Thereupon, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of

Rule 9003(a) FRBkrP. Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually. [A:372]

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

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

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

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

strip the parties of their claims against him through the expedient of a summary judgment while leaving them holding the bag of thousands and thousands of dollars in legal fees and shouldering the burden of an enormous waste of time, effort, and aggravation. Dr. Cordero analyzed in detail for the court Mr. MacKnight's mendacity and lack of candor, to no avail.

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

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

63. Nor did the court impose on Mr. Pfuntner or Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court ordered Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.
64. Pursuant to the second court order Dr. Cordero went all the way to Rochester and on to Avon on May 19 to inspect at Mr. Pfuntner's warehouse the containers said to hold his property. However, not only did both Mr. Pfuntner and his warehouse manager fail even to attend, but they had also failed to take any of the necessary preparatory measures discussed since January 10 and which Mr. MacKnight had assured the court at the April 23 hearing had been or would be taken care of before the inspection.
65. At a hearing on May 21 Dr. Cordero reported to the court on Mr. Pfuntner's and Mr. MacKnight's failures concerning the inspection and on the damage to and loss of his property. Once more the court did not impose any sanction on Mr. Pfuntner or Mr. MacKnight for their disobedience of the second discovery order and merely preserved the status quo.

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

66. But the court was not going to make it nearly that easy for Dr. Cordero. At that May 21 hearing Dr. Cordero asked for sanctions against and compensation from Mr. Pfuntner and Mr. MacKnight for having violated to his detriment both of the discovery orders. The court asked that he submit a written motion. Dr. Cordero noted that he had already done so. The court said that he should do so in a separate motion and that in asking him to do so the court was trying to help him.
67. Dr. Cordero wrote a motion on June 6 for sanctions and compensation under Rules 37 and 34 FR CivP, made applicable in adversary proceedings by Rules 7037 and 7034 FR BkrP, respectively, to be imposed on Mr. Pfuntner and Mr. MacKnight. [A:510] It was not only a legal document that set out in detail the facts and the applicable legal standards, but also a professionally prepared statement of account with exhibits to demonstrate the massive effort and time that Dr. Cordero had to invest to comply with the two discovery orders and deal with the non-compliance of the other parties. To prove compensable work and its value, it contained an itemized list more than two pages long by way of a bill as well as a statement of rates and what is more, it provided more than 125 pages of documents to support the bill. [A:510§IV]
68. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions too were warranted: Neither Mr. Pfuntner, Mr. MacKnight, nor the warehouse manager attended the inspection and none of the necessary preparatory measures were taken. Worse still, they engaged in a series of bad faith maneuvers to cause Dr. Cordero not to attend the inspection, in which case they would ask the court to find him to have disobeyed the order and to order his property removed at his expense from Mr. Pfuntner's warehouse; and if Dr. Cordero nevertheless did attend, to make him responsible for the failure of the inspection, for the fact is that Mr. Pfuntner never intended for the inspection to take place. It was all a sham!
69. Yet, Mr. Pfuntner and Mr. MacKnight had nothing to worry about. So much so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and compensation. Mr. MacKnight did not even object to it at its hearing on June 25. The court did it for them at the outset, volunteering to advocate their interests just as it had advocated Mr. Palmer's to deny Dr. Cordero's application for default judgment.

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

70. The court refused to grant the motion alleging that Dr. Cordero had not presented the tickets for transportation –although they amount to less than 1% of the total [A:733]- or that he had not proved that he could use Mr. MacKnight's hourly rate –even though that is the legally accepted lodestar method for calculating attorney's fees-. But these were just thinly veiled pretexts. The justification for that statement is that the court did not even impose any of the non-monetary sanctions. It simply was determined to protect Mr. Pfuntner and Mr. MacKnight from any form of punishment for having violated two of its own orders, its obligation to safeguard the integrity of the judicial process notwithstanding.
71. The court was equally determined to expose Dr. Cordero to any form of grief available. Thus, it denied the motion without giving any consideration to where the equities lay between complying and non-complying parties with respect to its orders; or to applying a balancing test to the moral imperative of compensating the complying party and the need to identify a just measuring rod for the protection of the non-complying parties required to compensate; or to the notion of substantial compliance when proving a bill for compensation; let alone the applicable legal standards for imposing sanctions. Even a court's intent can be inferred from its acts: Once more, this court had simply raised Dr. Cordero's expectations when requiring him to submit this motion because 'I'm trying to help you here' while it only intended to dash them after Dr. Cordero had done a tremendous amount of extra work. Once more, the court took Dr. Cordero for a fool and thereby intentionally inflicted emotional distress on him! Is this not the way for a court to impress upon a reasonable person the appearance of deep-seated prejudice and gross unfairness?

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

72. The June 25 hearing was noticed by Dr. Cordero to consider his motion for sanctions and compensation as well as his default judgment application. However, the court had its own agenda and did not allow Dr. Cordero to discuss them first. Instead, it alleged, for the first

time, that it could hardly understand Dr. Cordero on speakerphone, that the court reporter also had problems understanding him, and that he would have to come to Rochester to attend hearings in person; that the piecemeal approach and series of motions were not getting the case anywhere and that it had to set a day in October and another in November for all the parties to meet and discuss all claims and motions, and then it would meet with the parties once a month for 7 or 8 months until this matter could be solved.

73. Dr. Cordero protested that such a way of handling this case was not speedy and certainly not inexpensive for him, the only non-local party, who would have to travel every month from as far as New York City, so that it was contrary to Rules 1 FRCivP and 1001 FRBkrP.
74. The court replied that Dr. Cordero had chosen to file cross-claims and now he had to handle this matter that way; that he could have chosen to sue in state court, but instead had sued there, and that all Mr. Pfuntner wanted was to decide who was the owner of the property; that instead Dr. Cordero had claimed \$14,000, but the ensuing cost to the court and all the parties could not be justified; that the series of meetings was necessary to start building a record for appeal so that eventually this matter could go to Judge Larimer.
75. The court's statements are mind-boggling by their blatant bias and prejudice as well as disregard of the facts and the law. To begin with, it is just inexcusable that the court, which has been doing this work for over 30 years, has mismanaged this case for eleven months since September 2002, so that it has:
 - a) failed to require even initial disclosure under Rule 26(a);
 - b) failed to order the parties to hold a Rule 26(f) conference;
 - c) failed to demand a Rule 26(f) report;
 - d) failed to hold a Rule 16(f) scheduling conference;
 - e) failed to issue a Rule 16(f) scheduling order;
 - f) failed to demand compliance with its first discovery order by not requiring Mr. MacKnight as little as to choose one of Dr. Cordero's six proposed dates for the Rochester trip and inspection;
 - g) failed to insure execution by Mr. Pfuntner and Mr. MacKnight of its second and last discovery order.
76. It is only now that the court wants to 'start building a record'...what a damning admission that it has not built anything for almost a year! However, it wants to build it at Dr. Cordero's

expense by requiring him to travel monthly to Rochester for an unjustifiably long period of seven to eight months after the initial hearings next October and November. This is not so much an admission of incompetence as it is an attempt to further rattle Dr. Cordero and maximize the transactional cost to him in terms of money and inconvenience, just as the court put Dr. Cordero through the extra work of resubmitting the default judgment application (paras. et seq. 50 above) and writing a separate sanctions and compensation motion (paras. 66 above) only to deny both of them on already known or newly concocted grounds.

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

77. At the June 25 hearing to the court proposed a slate of dates for the first hearings in October and November and asked the parties to state their choice at a hearing the following week.
78. At the July 2 hearing, Dr. Cordero again objected to the dragged-out series of hearings. The court said that the dates were for choosing the start of trial. Nevertheless, Dr. Cordero withheld his choice in protest.
79. But the court has just issued an order dated July 15 where there is no longer any mention of a trial date. The dates in October and November are for something that the court designates as “discrete hearings.” Dr. Cordero has been unable so far to find in either the FRBkrP or the FRCivP any provision for “discrete hearings,” much less an explanation of how they differ from a plain “hearing.” Therefore, Dr. Cordero has no idea of how to prepare for a “discrete hearing.” [A:670]
80. In any event, the point is this: There is no trial, just the series of hearings announced by the court at the June 25 hearing, which will be dragged out for seven to eight months after those in October and November. There is every reason to believe that the court will in fact drag out this series that long, for it stated in the order that at the “discrete hearings” it will begin with Plaintiff Pfuntner’s complaint. [A:671] Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case past the opening pleading. Given the totality of circumstances relating to the way the court has treated Dr. Cordero, would an objective observer reasonably fear that by beginning at that elemental stage of the case, the court will certainly have enough time to teach Dr. Cordero a few lessons of what it entails for a

non-local pro se to come into its court and question the way it does business with Trustee Gordon or the other locals?

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

81. At the July 2 hearing Dr. Cordero protested the court's denial of his motion for sanctions and compensation and his default judgment application. The court said that if he wanted, he could present his evidence for his motions in October. However, it warned him that he would have to present his evidence properly, that it was not enough to have evidence, but that it also had to be properly presented to meet the burden of proof beyond a reasonable doubt, and that on television sometimes the prosecutor has the evidence but he does not meet the burden of reasonable doubt and he ends losing his case, and that likewise at trial Dr. Cordero would have to be prepared to meet that burden of proof.
82. What an astonishing statement! It was intended to shock Dr. Cordero and it did shock him with the full impact of its warning: It did not matter if he persisted in pursuing his motions, the court would hold the bar so high that the he would be found to have failed to clear it. It was not just a warning; it was the announcement of the court's decision at the end of trial, the one that had not yet started!
83. But the shock was even greater when Dr. Cordero, a pro se litigant, realized that he could not be required to play the role of a prosecutor, that this is an adversary proceeding and as such a civil matter, not a criminal case. Upon further research and analysis, Dr. Cordero became aware of the fact that to prove something beyond a reasonable doubt is the highest of three standards of proof, and that there are two lower ones applied to civil matters, namely proof by a preponderance of the evidence and the one requiring clear and convincing evidence. Moreover, there is no compelling reason why Dr. Cordero should not be allowed to prove his claims against Mr. Palmer, Mr. Pfuntner, and Mr. MacKnight by a preponderance of the evidence, the lowest standard. The court's warning was just intended to further rattle Dr. Cordero and intentionally inflict on him even more emotional distress. There is further evidence supporting this statement.

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

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

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

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

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

4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights

87. The court blames Dr. Cordero for having to travel now to Rochester monthly since he chose to sue in federal court. This statement flies in the face of the facts. At the outset is the fact that Mr. Palmer had the bankruptcy and liquidation of his company, Premier Van Lines, dealt with

in federal court under federal law. Then Mr. Pfuntner brought his adversary proceeding in federal court and under federal law. He sued not only Dr. Cordero, but also Trustee Gordon, a federal appointee, and other parties. He claims from them \$20,000 and has asked for contribution from all of them. [A:18a]

88. Contrary to the court's misstatement, Mr. Pfuntner did not only want to determine who owned what in his warehouse. He also sued for administrative and storage fees. [A:27] What is more, no two parties were adverse claimants to the same property in Mr. Pfuntner's warehouse. Far from it, Trustee Gordon and the Bank have let the court know in writing that neither lays claim to Dr. Cordero's property and that they encourage Mr. Pfuntner to release that property to him. [A:357,63,96] Thus, Mr. Pfuntner's claim in interpleader is bogus. All Mr. Pfuntner wanted was to recoup somehow the lease fees that Mr. Palmer owes him. To that end, he sued everybody around, even the Hockey Club, which has stated not to have any property in the warehouse at all, but whose name Mr. Pfuntner found on a label.
89. If Dr. Cordero had filed his counter-, cross-, and third-party claims in state court, he would still have had to travel to Rochester, so what difference does it make whether he has to travel to Rochester to attend proceedings in a state court in Rochester or in a federal court in Rochester? If Dr. Cordero had filed his claims in state court, whether in New York City or in Rochester, Mr. Pfuntner and the other parties could have removed them to federal court under 28 U.S.C. §1452(a) if only for reasons of judicial economy, assuming that the state court had agreed to exercise jurisdiction at all given that property of the Premier estate was involved, e.g. the storage containers and vehicles, over which the federal court has exclusive jurisdiction under 28 U.S.C. §1334(e).

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

90. The court asserts that Dr. Cordero sued for \$14, 000. [A:668] This amount is only one item of Dr. Cordero's claim against only one party, namely, Mr. Palmer. The total amount of that claim appears in Dr. Cordero's application for default judgment against that party, to wit, \$24,032.08. [A:294] The reason for the court asserting that the claim is only \$14,000 is that in its Recommendation of February 4, 2003, for the district court to deny the application, the court cast doubt on the recoverability of "moving, storage, and insurance fees" (para. 39

above), never mind that to do so it had to indulge in a prejudgment before having the benefit of disclosure, discovery, or a defendant given that Mr. Palmer has not showed up to challenge either the claim or the application.

91. Since that February 4 prejudgment, the court's prejudice against Dr. Cordero has intensified to the point that now the court has definitely discounted the amount in controversy, although it legally remains valid until disposition of the claim at trial or on appeal. What is more, the court has already dismissed Dr. Cordero's claims against the other parties, for example, the claim for \$100,000 against Trustee Gordon for defamation and the claim for the Trustee's reckless and negligent liquidation of Premier, claims that the court dismissed but that are on appeal and can be reinstated, unless the court presumes to prejudge the decision of the Court of Appeals for the Second Circuit. Likewise, the court's prejudice has already dismissed Dr. Cordero's claims against Mr. Dworkin, Jefferson Henrietta Associates, Mr. Delano, and the Bank for their fraudulent, reckless, or negligent conduct in connection with Dr. Cordero's property as well as those for breach of contract, not to mention the request for punitive damages. And why would the court ignore Dr. Cordero's claims against Mr. MacKnight's client, Mr. Pfuntner, for compensation, among other things, for denying his right to access, inspect, remove, and enjoy his property?
92. This set of facts warrants the question whether a court that reduces a party's claim to a minimal expression even before a trial date is anywhere in the horizon and loses sight altogether of other claims can give the appearance of either impartiality or knowing what it is talking about. Would an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic facts of a case that has been before it for almost a year or rather because its bias and prejudice against Dr. Cordero prompts it to make any statement, however ill-considered or contrary to the facts, so long as it is to Dr. Cordero's detriment? Is it not quite illogical for the court, on the one hand, to blame Dr. Cordero for having run up excessive costs for the court and the parties given that his claim is only for \$14,000, and on the other hand, to drag out this case for the next 9 to 10 months?

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

93. There must be no doubt that the court intends to maximize Dr. Cordero's transactional cost of prosecuting this case: On June 5 Mr. MacKnight submitted representations to the court concerning Dr. Cordero's conduct at the inspection. Whereas Mr. MacKnight did not attend, Dr. Cordero did and he knows those representations to be objectively false. After the appropriate request for Mr. MacKnight to correct them and the lapse of the safe haven period under Rule 9011 FRBkrP, Dr. Cordero moved for sanctions on July 20. Mr. MacKnight must have received from the court such an unambiguous signal that he need not be afraid of the court imposing any sanctions requested by Dr. Cordero that again he did not even bother to oppose the motion.
94. Instead, the court had Case Administrator Karen Tacy call Dr. Cordero near noon on Thursday, July 31, to let him know that it had denied his request to appear by phone and that if he did not appear in person, it would deny the motion; otherwise, he could contact all the parties to try to obtain their consent to its postponement until the hearing in October.
95. The court waited until only 6 days before the hearing's return date of August 6 to let him know. Moreover, it knows because Dr. Cordero has brought it to its attention that Mr. MacKnight has ignored the immense majority of his letters and phone calls, and has even challenged the validity of Mr. Pfuntner's written agreement to the May 19 inspection. Dr. Cordero could not risk being left waiting by Mr. MacKnight only to play into his hands given the foreseeable consequences. He withdrew the motion.
96. To appear in person would have cost Dr. Cordero an enormous amount of money, for he would have had to buy flight and hotel tickets at the highest, spot price and cut to pieces two weekdays on very short notice. And what for? To be in court at 9:30 a.m. for a 15 to 20 minutes hearing. Would an objective person who knew about the court's indifference to the submission of falsehood to it have expected the court to give more importance to imposing sanctions for the sake of the court's integrity than to denying them to make Dr. Cordero's trip for naught in order to keep wearing him down financially and emotionally?

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

97. Dr. Cordero knew that to perfect his appeal to the Court of Appeals he had to comply with Rule 6(b)(2)(B)(i) FRAP by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. [A:593] He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so surprisingly prevented him from refileing his notice of appeal to the district court (paras. 16 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted in January 2003 was back in bankruptcy court; hence, he was supposed to send his Redesignation and Statement to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.
98. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a cover letter to District Clerk Rodney Early. [A:469]
99. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of the notice of appeal to the Court of Appeals, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as *Cordero v. Palmer*. [A:467a] Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?
100. The district court transferred the record on May 19 to the Court of Appeals. The latter, in turn, acknowledged the filing of the appeal by letter to Dr. Cordero. When he received it on May 24, imagine his shock when he found out that the Court's docket showed no entry for his Redesignation and Statement! [A:467] Worse still, he checked the bankruptcy [A:455] and the district [A:457, 459, 463] courts' dockets and neither had entered it or even the letter to Clerk Early! Dr. Cordero scrambled to send a copy of his Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. [A:468] Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28. [A:469, 470]
101. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul

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

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

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

103. Rules 4(a)(1)(A) and 28(a)(C) FRAP consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to the Court and, if so, whether they were intentional.
104. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding *Pfuntner v. Gordon* et al did not carry an entry [cf. A:557] for the district court's March 27 denial "in all respects" [A:211] of Dr. Cordero's motion for reconsideration in *Cordero v. Gordon* [A:205]. By contrast, it did carry such an entry for the district court's denial, also of March 27 [A:350; 557 entry 69, cf. A:339], of Dr. Cordero's motion for reconsideration in *Cordero v. Palmer* [A:342].
105. Also on May 19, the district court certified the record on appeal to the Court of Appeals, but it failed to send to it copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal's timeliness. The fact is that the Court's docket for this case as of July 7, 2003, did not have entries for copies of either of the March 27 decisions, although it carried entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. [A:470; 507] However, Dr. Cordero's notice of appeal to the Court

made it clear that the March 27 orders were the main orders from which he was appealing since it is from them that the timeliness of his notice of appeal would be determined. [A:429]

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

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

107. Section §455(a) of 28 U.S.C. provides for judicial disqualification "in any proceeding in which [the judge's] impartiality **might** reasonably be questioned" (emphasis added; para. 2 above). This is a test based on reason, not on the certainty provided by hard evidence of partiality. A reasonable opinion is all that is required and what affords the test's element of objectivity. Whenever the test is met, recusal of the judge is mandated.
108. As the Supreme Court has put it, "[t]he goal of section 455(a) is to avoid even the appearance of partiality...to a reasonable person...even though no actual partiality exists because the judge...is pure in heart and incorruptible," *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).
109. The Supreme Court's construction derives from the legislative intent for §455(a), which Congress adopted on the grounds that "Litigants ought not have to face a judge where there is a reasonable question of impartiality," S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355. Thus, Congress provided for recusal when there is "'reasonable fear' that the judge will not be impartial", *id.*
110. Recognizing that public confidence in those that administer justice is the essence of a system

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

111. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Thus, the petitioner of recusal need not prove that the judge is aware of his bias or prejudice given that "[s]cienter is not an element of a violation of §455(a)," since the "advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew;" *Liljeberg*, at 859-60. All is needed is that the petitioner be "a reasonable person, [who] knowing all the circumstances, would believe that the judge's impartiality could be questioned;" *In Re: International Business Machines*, 618 F.2d 923, at 929 (2d Cir.1980).
112. The facts stated in Part I (paras. 5 et seq. above) are apt to raise the inference of lack of impartiality and fairness, both of which are critical characteristics of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes. However, the sharing here has been in the bias and prejudice shown by this court, the court reporter, the clerk of court, the district judge, and assistant clerks. The facts bear this out and provide the basis for their impartiality to be questioned. That is more than is required for recusal; for "what matters is not the reality of bias or prejudice but its appearance"; *Liteky v. United States*, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994).

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

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

114. This court has shown disregard for facts, rules, and laws; tolerance for parties' submissions of false and disingenuous statements and disobedience to its orders; and misleading and injurious inconsistency in its positions. Through its disrespect for truth and legality it has breached its duty to maintain the integrity of the judicial process. Instead of promoting legal certainty it has indulged in arbitrariness that has irreparably impaired the trust that a litigant must have in its good judgment and precluded his reliance on its sense of justice. That is what an objective §455 inquiry would reveal if "made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances"; *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1309 (2d Cir. 1988).
115. The bias and prejudice that the court has exuded has permeated the atmosphere that other court officers in both the bankruptcy and the district court have breathed. By failing to exhibit an unwavering commitment to upholding the high ethical standards that should guide the administration of justice, it has fostered a permissive environment. In it the performance of administrative tasks, critical for the judicial process to follow its proper course, is vitiated by disregard for the rules and facts as well as lack of candor. This breeds unpredictability and unreliability, which are inimical to due process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden*, 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997). Also these court officers have allowed their conduct to give the appearance of bias and prejudice against Dr. Cordero.
116. By contrast, Dr. Cordero can with clean hands protest to being the target of this bias and prejudice. He has no other fault than being in the unfortunate position of having paid storage and insurance fees for almost ten years to store his property and upon searching for it to have found a pack of mendacious characters who handled it negligently, recklessly, and fraudulently and bounced him between themselves until they threw him into this court. Here Dr. Cordero has made his best effort to comply conscientiously and at a high professional level with all his legal obligations and court rules.
117. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done;" *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923). However, what Dr. Cordero has seen is acts and omissions done by the court and court officers that have so consistently worked to his detriment and the others parties' benefit that they cannot reasonably be explained away as a coincidental series of mistakes of incompetence. Rather, to an "objective, disinterested

observer," *In re: Certain Underwriter Defendants, In re Initial Public Offering Securities Litigation*, 294 F.3d 297 (2d Cir. 2002), those acts and omissions would look like a pattern of intentional and coordinated wrongs targeted on him, a pro se party living hundreds of miles away whom these court and officers have deemed weak enough to treat as expendable. Dr. Cordero should not be subjected to the same abuse at their hands for the many months that the court has already stated it will drag out this case. Equity should not tolerate that to happen. Enough is enough! From now on, "Justice must satisfy the appearance of justice," as the Supreme Court reaffirmed recently in *Aetna Life Insurance Co. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

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

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

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

119. On equitable and judicial economy considerations, this case should be removed to a court that is likely unfamiliar with any of the parties, neutral to their interests, and not under the influence of any of the court officers in question. Only such a court can reasonably be expected to conduct a fair and impartial judicial process, including eventually a trial, for all the parties. Consequently, this adversarial proceeding should be transferred in its entirety to the District Court for the Northern District of New York, held at Albany, which meets these criteria and is fairly equidistant from all the parties.
120. Such removal can be carried out under 28 U.S.C. §1412, which provides as follows:

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

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

121. Retaining the proceeding in this court would subject Dr. Cordero to further bias and prejudice from the part of the court and its officers. It will amount to intentionally inflicting on him even more emotional distress as well as causing him additional waste of time, effort, and money. Therefore, to avoid this result, the removal must be carried out forthwith. It follows that this motion must be decided now. The court must neither put off deciding it nor cause its postponement until October as it has done with three other motions of Dr. Cordero, which has redounded to his detriment and to the benefit of other parties.
122. Hence, the court should not discriminatorily deny Dr. Cordero's request to appear by phone to argue this motion while it allows the continued use of the speakerphone in its courtroom. Nor should the court require that Dr. Cordero spend hundreds of dollars to travel to Rochester and stay overnight in a hotel there and thus disrupt two days so that he can appear in person at a 20 minutes hearing. That would constitute an additional act of disregard of Rules 1001 FRBkrP and 1 FRCivP requiring that proceedings be conducted speedily, inexpensively, and justly.

IV. Relief Sought

123. Dr. Cordero respectfully requests that:
 - 1) the Hon. John C. Ninfo, II, recuse himself from this adversarial proceeding, namely, *In re Premier Van Lines, Inc.*, dkt. no. 02-2230;
 - 2) this adversarial proceeding be transferred in its entirety to the District Court for the Northern District of New York, held at Albany;
 - 3) the court ask the Director of the Administrative Office of the United States Courts and the judicial council of the second circuit to conduct an investigation into the pattern of wrongful acts complained about here and of the court and court officers that so far appear to have participated in it;

- 4) Dr. Cordero be allowed to present his arguments by phone given that requiring that he appear in person at the hearing of this motion would cause him unjustifiable hardship in terms of cost and time;
- 5) the court not cut abruptly the phone communication with Dr. Cordero, but instead allow him to raise his objections for the record and participate in the hearing until it is definitely concluded for all the parties so that Dr. Cordero may be afforded the same opportunity that it affords to the other parties to be heard and hear its comments;
- 6) the court grant Dr. Cordero any other relief that is just and fair.

Dated: August 8, 2003
59 Crescent Street
Brooklyn, NY 11208

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

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Dated: August 8, 2003
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**United States Bankruptcy Court
Western District of New York**

1400 UNITED STATES COURTHOUSE
ROCHESTER, NEW YORK 14614

Hon. John C. Ninfo, II
CHIEF UNITED STATES
BANKRUPTCY JUDGE

August 14, 2003

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

**Re: Premier Van Lines, Inc. (Case No. 01-20692)
James Pfuntner v. Kenneth Gordon, et al. (AP No. 02-2230)**

Dear Dr. Cordero:

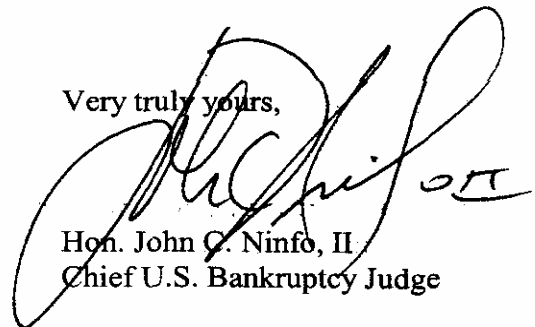
The Court has preliminarily reviewed your Motion for Recusal and Removal dated August 8, 2003 and the relief requested therein. Regrettably, the Court must deny your request to appear by telephone on this motion.

By letter dated April 7, 2003, the Court informed you that you must appear in person to argue any motions which you initiate. Accordingly, the Court requires your personal appearance on August 20, 2003 at 9:30 a.m. in the Rochester Courtroom. Should you choose not to appear on the return date of your motion, the Court will deny your motion without prejudice.

Moreover, this Court's Order entered on July 15, 2003 ordered that all related hearings, motions and proceedings in connection with this Adversary Proceeding are set down for a discrete hearing on October 16, 2003 at 9:30 a.m. in the Rochester Courtroom. Notwithstanding the Court's reference to addressing the matters chronologically as they have appeared in this Adversary Proceeding, the Court will commence the hearing with your Motion for Recusal and Removal if properly re-noticed and served.

Contrary to your repeated assertions that this Court manifests bias against you, your personal appearance will facilitate the proper administration of justice within the Federal Courts system that will assist you in concluding these matters.

Very truly yours,



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

JCN/dd

**UNITED STATES BANKRUPTCY 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

-v.-

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

Defendants

RENOTICE
OF
MOTION
FOR RECUSAL
AND
REMOVAL

RICHARD CORDERO

Third party plaintiff

-v.-

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

Third party defendants

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero is hereby withdrawing the above-captioned motion, originally noticed for August 20, 2003, and renoticing it to be heard next October 16, at 9:30 a.m., at the United States Courthouse on 100 State Street, Rochester, New York, 14614, or as soon thereafter as he can be heard. This renotice is submitted under protest and without prejudice to other avenues of recourse after the Hon. John C. Ninfo, II, by letter of August 14, refused to allow Dr. Cordero to appear by phone to argue this motion. Since the Court still allows other parties to appear by phone, that refusal is discriminatory, unjustified, and causes undue hardship that violates the duty imposed by Rules 1001 and 1 of FRBkrP and FRCivP, respectively, to conduct proceedings in a speedy, just, and inexpensive way. It

constitutes another biased act against Dr. Cordero that warrants this motion for Judge Ninio to recuse himself from this adversary proceeding under 28 U.S.C. §455(a) on the grounds that the bias and prejudice that he has manifested against Dr. Cordero reasonably cast into question his impartiality; and for this proceeding to be removed under 28 U.S.C. §1412 from this court, where he and other court officers in both the Bankruptcy and the District Courts have engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts, to the District Court for the Northern District of New York, located in Albany.

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Dated: August 18, 2003
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UNITED STATES BANKRUPTCY 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

-V.-

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

Defendants

NOTICE
OF
OBJECTIONS TO HEARINGS AND
WITHDRAWAL OF MOTIONS
EXCEPT

RICHARD CORDERO
Third party plaintiff

FOR RECUSAL AND REMOVAL

-V.-

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

Third party defendants

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Dr. Richard Cordero hereby makes the following statement concerning the hearings set to begin on October 16, 2003:

I. Motions withdrawn or maintained

A. Motions withdrawn and no longer up for consideration at the next hearings

1. Dr. Cordero withdraws the following motions and reserves the right to raise them once his Petition for a Writ of Mandamus of September 12, 2003, and his Appeal of April 25, 2003, to the Court of Appeals of for the Second Circuit have been decided:

- a) motion of July 31, 2003, for sanctions and compensation against David MacKnight, Esq., for false representations to the court, (Appendix, page 505=A:505)¹;
- b) application of June 16, 2003, to enter default judgment against David Palmer (A:472);
- c) motion of June 6, 2003, for sanctions and compensation against Mr. James Pfuntner and David MacKnight, Esq., for failure to comply with two discovery orders (A:510);
- d) any other motion or application except the motion for removal and recusal discussed in paragraphs 2 below.

B. The motion for removal and recusal of August 8, 2003, is maintained

2. Dr. Cordero maintains his motion of August 8, 2003, (MB-40), renoticed on August 18, 2003, (MB:80), for the Hon. John C. Ninfo, II, to remove the whole of this case to the U.S. District Court for the Northern District in Albany and to recuse himself under 28 U.S.C. §455(a) on the

¹ Parties in receipt of the Appendix accompanying the Opening Brief of Dr. Cordero's Appeal to the Court of Appeals will find documents with page numbers higher than 430 in Dr. Cordero's Mandamus Brief. Direct reference to a document in the latter is made as MB:#, where # stands for the page number.

grounds that the bias and prejudice that he has manifested against Dr. Cordero reasonably cast into question his impartiality and requires his disqualification.

3. The removal and recusal motion was originally noticed for August 20, 2003. It should have been heard and decided on that date as an urgent matter not susceptible to being postponed given that Judge Ninfo had a statutory obligation to recuse himself under §455(a), which provides as follows:

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

4. Judge Ninfo's obligation to recuse himself was not conditioned upon it being factually proved that he had been partial. What is more, he did not even have to think that he was partial. By its own terms, the statute only requires that "his impartiality **might** reasonably be questioned", (emphasis added). Indeed, the Supreme Court has already stated that:

[s]cienter is not an element of a violation of §455(a)" since "[t]he goal of section 455(a) is to avoid even the appearance of partiality...to a reasonable person...even though no actual partiality exists because the judge...is pure in heart and incorruptible, *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-860 (1988)

5. As a result, the Court of Appeals for this circuit does not allow a judge to make recusal dependent on his subjective assessment of whether he has been partial. Instead, it has adopted an objective test, whereby all is needed for the judge to be required to recuse himself is that:

an objective, disinterested observer fully informed of the underlying facts [would] entertain significant doubt that justice would be done absent recusal; *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992)

6. This is in harmony with a long-standing principle in the Second Circuit providing that disqualification of a judge is required whenever:

a reasonable person, knowing all the circumstances, would believe that the judge's impartiality could be questioned; *In Re: International Business Machines*, 618 F.2d 923, at 929 (2d Cir.1980).

1. Judge Ninfo's handling of the removal and recusal motion is further evidence of his bias and prejudice against Dr. Cordero

7. Far from complying with his obligation to disqualify himself sua sponte or to do so on the reasons presented by Dr. Cordero in his August 8 motion, Judge Ninfo chose to give further evidence of his partiality. Thus, he refused to allow Dr. Cordero to argue that motion by making a telephone appearance because, as the Judge stated in his letter of August 14, 2003, "you must appear in person to argue any motion which you initiate...Accordingly, the Court requires your personal appearance..." (MB-79)
8. What a blatant discrimination against Dr. Cordero! Judge Ninfo imposes on Dr. Cordero a blanket prohibition from appearing by phone even though he still allows other parties in other cases to appear by phone. Moreover, he does so just because Dr. Cordero is the one who initiates a motion.
9. Worse still, the Judge imposes that prohibition in direct violation of his legal obligation under Rules 1 FRCivP and 1001 FRBkrP. Those rules oblige him 'to secure the inexpensive determination of every case, proceeding, and action'. Yet, he requires a personal appearance of Dr. Cordero, the only non-local party, and that he be in court at 9:30 a.m. This entitles for Dr. Cordero the obligation to travel the day before and stay at a hotel, whereby he must clear two days of his calendar for a motion that on average lasts 20 minutes.
10. However, Judge Ninfo has stated in his August 14 letter that he will hear Dr. Cordero's removal and recusal motion at the hearing next October 16 and that he will do so as the first matter in the agenda. But according to his order of July 15, 2003, (MB:32, at 37), the Judge may extend that hearing into October 17. This means that Dr. Cordero must clear three days in his calendar to be available for those hearings.
11. Nevertheless, if upon considering the motion as the first matter the Judge removes the case or recuses himself, then he cannot proceed any further with any other matter on the agenda. Consequently, a motion, which may be decided like any other motion in 20 minutes or so, will have forced Dr. Cordero to free three days in his calendar and to spend hundreds of dollars to travel between New York City and Rochester and on room and board at a hotel or restaurant. This expense does not begin to take into account the numberless hours that Dr. Cordero has had

to invest doing legal research to prepare for those hearings or all the aggravation that this matter has caused him.

12. Yet, there is no warranty that his motion will even be heard at those hearings anyway. Indeed, in his August 14 letter Judge Ninfo states that "...the Court will commence the hearing with your Motion for Recusal and Removal if properly re-noticed and served". What concealed pitfall lurks behind that condition that will give the Judge the pretext to unfairly surprise Dr. Cordero with the finding that his motion was not "properly re-noticed and served" and to refuse even to consider, let alone grant, it? It would not be the first time for the Judge to unfairly surprise Dr. Cordero by pushing one of his motions into a conceal pitfall of refusal, which warrants Dr. Cordero's suspicion. He already did so concerning Dr. Cordero's application to enter default judgment against Mr. David Palmer.

2. How Judge Ninfo unfairly surprised Dr. Cordero by alleging defective service to refuse to grant his application for default judgment

13. Judge Ninfo sprang his unfair surprise on Dr. Cordero thus: Dr. Cordero brought a third-party complaint against Mr. David Palmer (A:70), but the latter failed to answer it or otherwise appear and defend. Hence, on December 26, 2002, Dr. Cordero submitted an application to enter default judgment against Mr. Palmer pursuant to FRCivP Rule 55 (A:290). Judge Ninfo, disregarding the Rule, took no action on it for over a month.
14. Therefore, Dr. Cordero had to write to Judge Ninfo to request that he either grant the application or explain his denial (A:302). Only then did the Judge take action by recommending on February 4, 2003, to the District Court its denial on the grounds that Dr. Cordero had not demonstrated his damages or his right to recover certain fees (A:306). His recommendation disregarded Rule 55, which provides for default judgment because the defendant has failed to appear, not because of any damages sustained by the plaintiff. Likewise, the Judge disregarded the law, for he cited no other legal provision whatsoever supporting his denial on such grounds. The District Court followed the recommendation and denied the application (A:339).
15. However, at a hearing on May 21, Dr. Cordero appeared by telephone to report on the trip to Rochester and inspection that the Judge had ordered him to undertake. Dr. Cordero reported that his property, for whose storage and insurance Mr. Palmer's company had received payment

from Dr. Cordero, was either damaged or lost. Thereupon, Judge Ninfo sua sponte asked Dr. Cordero to resubmit his application to enter default judgment against Mr. Palmer. Dr. Cordero did so on June 16 (MB:472).

16. Imagine how unfairly surprised Dr. Cordero was when, at the hearing on June 25, Dr. Cordero brought up his application for default judgment only for Judge Ninfo to refuse to grant it alleging this time that he was not convinced that Dr. Cordero had properly served Mr. Palmer! For more than six months Judge Ninfo had had the same application, but never had he noticed any alleged defect in service, not upon receiving it after its submission on December 26, 2002, not when he wrote his recommendation to the District Court on February 4, not when he sua sponte asked Dr. Cordero to resubmitted on May 21, but only after he had raised the reasonable expectation in Dr. Cordero that he would grant the application and had put him through the extra work of resubmitting it did the Judge come up with the pretext of a defective service, never mind that:

- a) Dr. Cordero served Mr. Palmer's attorney of record, David Stilwell, Esq. (A:431), who has proceeded accordingly;
- b) Dr. Cordero certified service on Mr. Stilwell to Clerk of Court Warren and the service was entered on the docket on November 21, 2002 (A:448, entries 13-17);
- c) Dr. Cordero served the application on both Mr. Palmer and Mr. Stilwell on December 26 (A:296);
- d) what is more, Clerk Warren defaulted Mr. Palmer on February 4, 2003 (A:303), thus certifying that Mr. Palmer was served but failed to respond. Hence, with no foundation whatsoever, Judge Ninfo cast doubt on the default entered by its own Clerk of Court.

17. If this pretext was not enough for Judge Ninfo to unfairly surprise Dr. Cordero, the Judge also alleged that Dr. Cordero had not proved damages! So, why did he ask Dr. Cordero to resubmit the application if anyway he was not going to grant it on grounds that he had already expressly considered earlier (M:55) as well as on grounds that he had had more than six months to consider? The reasonable inference is that Judge Ninfo never intended to grant the application (MB:56). His request was just another way of intentionally inflicting on Dr. Cordero emotional distress and the economic harm of making him waste more time, effort, and money in order to wear Dr. Cordero down for the reasons discussed elsewhere (MB-2 et seq.).

18. Judge Ninfo proceeded similarly with regard to his request at the May 21 hearing that Dr. Cordero submit a separate motion for sanctions and compensation for Mr. Pfuntner and Mr. MacKnight violating the Judge's two discovery orders to Dr. Cordero's detriment (MB:510). Dr. Cordero submitted that motion, including a painstakingly detailed bill for compensation and supporting documents, totaling more than 150 pages, which he produced at a tremendous cost to him in terms of time, effort, and money. But what an unfair surprise when the Judge refused to grant it alleging the flimsiest of grounds (MB:60-61).

C. How Judge Ninfo disregards the law by surprisingly announcing unheard-of 'discrete discreet hearings' and sets the scenario to disregard the alleged purpose of building a record

19. But this is not all in the way of Judge Ninfo unfairly surprising Dr. Cordero: At the hearings on June 25 and July 2, 2003, which Dr. Cordero attended by phone, Judge Ninfo stated that he was going to hold a series of monthly hearings at which he would require Dr. Cordero to attend personally. The alleged purpose was that he wanted to build a record (so, what was he building for the previous 10 months?). However, in his July 15 order (MB:36, 37), the Judge indicated that what he will hold beginning on October 16 is 'discrete discreet hearings', whatever that is, for neither the FRCivP, the FRBkrP, nor FRAP describe any such type of hearings. The Judge thereby once more disregards the rules and the law.
20. The fact that these hearings may last, not some 20 minutes, as have those that the Judge has so far conducted and in which Dr. Cordero has appeared, but rather two days, for they may be extended into October 17 and may even be continued on November 14! (MB:37), shows that they are of a different nature. So what kind of record is the Judge planning to build if the 'discrete discreet hearings' in which he will develop it are not provided for by law so that Dr. Cordero, a pro se defendant, cannot prepare for them adequately?
21. The only hint as to what these unheard-of 'discrete discreet hearings' could possibly be –aside from being unlawful, for neither rules nor law provide for them–, is provided by Judge Ninfo in his July 15 order. There he states that he will begin the hearing on October 16,

and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court...(MB:37)

22. There is only one court reporter, as Dr. Cordero has been told, and she may be scheduled to work in the courtroom on that Chapter 13 day. Consequently, any hearings may have to take place in chambers without court reporter. This is exactly what happened at the only meeting so far held in this case, namely, the pre-trial conference on January 10, 2003.
23. Therefore, what kind of record does Judge Ninfo intend to build when he will begin these ‘discrete discreet hearings’, not on a Wednesday, which is a motion day, but rather on a Thursday to be continued on a Chapter 13 Friday, so that part, if not all, of these hearings will take place in chambers without a reporter? Does his statement about these unheard-of hearings describe a scenario with the necessary elements for a surprise, unfair because counter to the alleged purpose? Or rather does the scenario have all the trappings of a secret process?: away from the public eye –thus separate from them or ‘discrete’ (MB:17) and exempt from any official recording –so as to keep it silent or ‘discreet’ (MB:13)-, where Dr. Cordero, a pro se litigant and the only non-local party, will be required to prove his case, as stated by the Judge at the June 25 and July 2 hearings, “beyond a reasonable doubt” (MB:12), an unwarranted standard in a civil matter like this, meant only to ensure his failure.
24. Add to all this that Judge Ninfo may allege that the motion for removal and recusal was not “properly re-noticed and served” despite Dr. Cordero having done so (MB:80). That would not only be unfair surprise, but it would also turn those hearings into a sham!

II. Statement of objections and intention to seek compensation

25. A reasonable person fully informed of how blatantly Judge Ninfo has disregarded facts, law, and rules in the past and has given notice that he is prepared to disregard them in the future, all to the detriment of Dr. Cordero and the benefit of local parties, would question the Judge’s impartiality. It is enough that to such person this situation may *appear* to be so for disqualification to be required because “[t]he goal of section 455(a) is to avoid even the appearance of partiality”, *Liljeberg, supra, at 860*.
26. But partiality has manifested itself here in so many instances as to harden reasonable appearance into a confirmed fact: Not only Judge Ninfo, but also other court officers have engaged in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and

facts (Opening Brief (OB):11, 15, 16, 54; MB:10, 14, 25, 26) Hence, a reasonable observer would doubt that absent removal as well as recusal Dr. Cordero could be afforded a fair process in either the Bankruptcy or the District Court .

27. Consequently, Dr. Cordero reiterates his object to Judge Ninfo not having granted his motion for removal and recusal and to discriminating against him by not allowing him to appear by telephone but instead requiring that he make the enormous investment of time, effort, and money to make a three day trip to Rochester to attend those ‘discrete discreet hearings’.
28. Dr. Cordero also objects and will object to any part of such hearings not held in open court, where any member of the public and journalists can normally attend, or held without being recorded by an unbiased and unprejudiced reporter whose impartiality is beyond all doubt (OB:11; MB:13,14; A:261, 283, 286).
29. Moreover, Dr. Cordero reserves the right to sue Judge Ninfo personally and as a court officer who motivated by bias and prejudice has abused his judicial power by requiring his attendance to these ‘discrete discreet hearings’. Dr. Cordero may demand compensation, among other things, for all the enormous amount of time, effort, and money that he has had to invest to prepare for these unknown and unlawful hearings, for all the emotional distress generated by their anticipation, for having to clear three days in his calendar for what could turn out to be a 20 minute hearing where the Judge recuses himself and after removal all further proceedings end, or last for two days only to be declared null and void as tainted by bias and prejudice.
30. In the same vein, Dr. Cordero warns the parties, all of whom are adverse to him and share the common interest of disposing of his claims against each of them, about the legal implications of lending support to, by participating in, any unlawful ‘discrete discrete hearings’ held in chambers or without an impartial reporter recording them officially.

III. Notice of Dr. Cordero’s generally not consenting to faxes or to e-mails not in the form of attachments of digital hardcopies

31. Dr. Cordero gives notice under FRCivP Rule 5(b)(2)(D) that he does not consent to service or communications by fax. However, a party may call him at (718) 827-9521 and seek his express agreement to make arrangements to send him one fax right away upon ending that phone call.
32. Nor does Dr. Cordero consent to any e-mail containing its message in the e-mail text pane.

Rather, any e-mail sent to him must be in the form of an electronic attachment in Microsoft Word 6 or later or a version of Word Perfect that can be converted into such version of Word; and the attachment must consist of a digital version of the hardcopy that would otherwise be sent by regular mail.

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October 6, 2003

Hon. John C. Ninfo, II
U.S. Bankruptcy Judge
1550 U.S. Courthouse
100 State Street
Rochester, New York 14614

Re: Premier Van Lines, Inc., Debtor (Cordero v. Palmer, et al.)
AP Case No.: 02-2230

Dear Judge Ninfo:

I am in receipt of Dr. Cordero's Notice of Objections to Hearings in connection with the above matter, which purports, in part, to withdraw from the hearings currently scheduled for October 16 and 17 "any other motion or application except a motion for removal and recusal." On behalf of the third-party defendants, David Dworkin and Jefferson Henrietta Associates, I object to this request and request some clarification from the Court on the matters that will be addressed at those hearings.

When the Court originally scheduled the hearing dates, it was my understanding that the purpose of these hearings was to resolve **all** outstanding matters in the adversary proceeding, including various motions by Dr. Cordero, as well as the merits of his claims against the third-party defendants regarding any loss or damage to the personal property he originally stored with the Debtor, Premier Van Lines. My clients are most anxious to have this matter finally resolved, and welcome the opportunity, through the hearings scheduled by the Court, to demonstrate that they never had in their possession any of Dr. Cordero's property. We believe that the Court has full authority to conduct a hearing on the merits of the third-party claims and, absent some contrary direction from the Court, will continue to assume that those issues will be addressed at those hearings.

If Dr. Cordero is adamant in his request to withdraw the merits of his third-party claims from the scheduled hearings, I respectfully submit that the Court would be well within its powers to consider that an abandonment of his claims, making them subject to dismissal.

Hon. John C. Ninfo, II
October 6, 2003
Page 2

Finally, I would note that not all of the parties have any particular interest in the various motions Dr. Cordero has made, and it would therefore be helpful for the Court to give the parties some sort of idea of the order in which various issues were to be addressed so as to minimize inconvenience to potential witnesses. Having said that, however, my clients certainly oppose Dr. Cordero's motion for removal and recusal, as we believe the Court has acted properly in this matter in all respects.

Thank you very much for your consideration.

Respectfully yours,



Karl S. Essler

KSE/blr

cc: Kenneth W. Gordon, Esq.
David D. MacKnight, Esq.
Michael J. Beyma, Esq.
Kathleen Dunivin Schmitt, Esq.
✓ Dr. Richard Cordero

**UNITED STATES BANKRUPTCY 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

REPLY
TO ATT. ESSLER'S
MOTION LETTER
TO THE COURT

RICHARD CORDERO

Third party plaintiff

-vs-

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

Third party defendants

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

1. Dr. Cordero has received the letter dated October 6, 2003, from Karl S. Essler, Esq., attorney for Defendants David Dworkin and Jefferson Henrietta Associates. Therein Att. Essler acknowledges receipt of the Notice of 3 October in which Dr. Cordero withdrew his pending motions and applications from the hearings set for October 16, except his motion for removal and recusal.
2. Att. Essler's letter intends to move the Court to take or not to take certain actions at those hearings and provide certain relief for his clients. Among these are that the court "conduct a hearing on the merits of the third-party claims" and, that the Court dismiss "the merits of [Dr. Cordero]'s third-party claims". Therefore, it is in substance a motion. Dr. Cordero opposes it since claims are neither motions nor applications.

3. As a motion in substance, the letter fails to comply with the formal requirements laid down by FRBkrP 9013:

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

4. The Advisory Committee note to this Rule confirms Dr. Cordero's interpretation of the Rule, for the note provides thus:

Advisory Committee Notes

This rule is derived from Rule 5(a) and Rule 7(b)(1) FRCivP. Except when an application is specifically authorized by these rules, for example an application under Rule 2014 for approval of the employment of a professional, all requests for court action must be made by motion.

5. Therefore, Dr. Cordero requests that the Court:
- 1) dismiss Mr. Essler's letter;
 - 2) grant Dr. Cordero any other relief that is just and fair.

Dated: October 11, 2003
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**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re PREMIER VAN LINES, INC.,

Chapter 7 bankruptcy
case no. 01-20692

Debtor

JAMES PFUNTNER,

Plaintiff

Adversary proceeding
no. 02-2230

-v.-

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

Defendants

**ADDENDUM TO
THE MOTION
FOR SANCTIONS
AND COMPENSATION
FOR FAILURE TO COMPLY
WITH DISCOVERY ORDERS**

RICHARD CORDERO,

Third party plaintiff

-v.-

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

Third party defendants

Dr. Richard Cordero affirms under penalty of perjury as follows:

1. Attached hereto is a copy of two transportation tickets that evidence expenses that Dr. Cordero incurred in complying with the Court's order to make a trip from New York City to Rochester to inspect storage containers located at Plaintiff James Pfuntner's warehouse in Avon and said to contain property of Dr. Cordero. The trip took place on May 19, 2003.
2. Mr. Pfuntner and his attorney, David MacKnight, Esq., failed to comply with that order and the previous one concerning the same trip and inspection. Neither attended the May 19 inspection. Dr. Cordero moved for sanctions against and compensation from them. However, the Court required at the May 21 hearing that he submit a separate written motion to that end.
3. Dr. Cordero submitted it on June 6, 2003. To prove compensable work and its value, he included in his motion an itemized list more than two pages long by way of a bill as well as a

statement of rates and what is more, he provided more than 125 pages of documents to support the bill. All in all his motion had more than 150 pages. Therein he also set forth the legal and factual grounds why sanctions and compensation were warranted.

4. However, the Court refused to grant the motion. It alleged at the hearing of June 25 and subsequently stated it in its order of July 15, 2003, that Dr. Cordero had not presented the tickets for transportation –although they amount to less than 1% of the total claim for compensation- and that he had not proved that he could use Mr. MacKnight’s hourly rate – even though that is the legally accepted lodestar method for calculating attorney’s fees-.
5. These were just thinly veiled pretexts not to grant the motion, a statement that is justified by the fact that the Court did not even impose any of the non-monetary sanctions on Mr. Pfuntner or Att. MacKnight. It simply was determined to protect them from any form of punishment for having violated two of its own orders, its obligation to safeguard the integrity of the judicial process notwithstanding.
6. The Court was equally determined to inflict on Dr. Cordero even more aggravation on top of all that Mr. Pfuntner and Att. MacKnight had already caused him. Thus, it failed to grant the motion:
 - a. without considering where the equities lay between a complying party who had provided substantial compliance with the requirement to provide a bill for compensation and two non-complying parties who had egregiously disregarded its orders even though they were the ones who had sought them; or
 - b. without applying a balancing test to the moral and practical imperative of compensating the injured complying party; and the need to be fair in determining the punishment that the non-complying parties deserved; or
 - c. without identify a just measuring rod for calculating compensation; or
 - d. without even discussing the applicable legal standards for imposing sanctions.
7. Even a Court’s intent can be inferred from its acts: The Court raised Dr. Cordero’s expectations when requiring him to submit this motion because, as it stated at the May 21 hearing, ‘I’m trying to help you here’, while it only intended to dash them after putting Dr. Cordero through a tremendous amount of extra work. This was precisely what it did after it took the initiative at the May 21 hearing to ask Dr. Cordero to resubmit his application of December 26, 2002, for default judgment against Mr. David Palmer only to refuse to grant the application by

alleging the same grounds that it had already considered and even new ones that it had had more than half a year to consider. Why then ask Dr. Cordero to resubmit it? The inference is inescapable: The Court intentionally set out not only to wear Dr. Cordero down economically, but also inflict emotional distress on him since it again took Dr. Cordero for a fool!

8. By its acts, the Court would impress upon any reasonable person the appearance of so intense prejudice and gross unfairness as to amount to injurious spite for Dr. Cordero having challenged its decisions. Aware of this, Dr. Cordero submits the accompanying photocopy of transportation tickets only for the sake of eliminating one of the Court's objections to his sanctions and compensation motion. But he thereby does not resubmit that motion to the Court's consideration at this time after he withdrew it from this Court by his notice of October 3. Far from it, on this ground and all those contained in his motion for removal and recusal of August 8, Dr. Cordero reiterates his request that the Court remove this case in its totality to the U.S. District Court for the Northern District in Albany for a jury trial and disqualify itself.

Dated: October 13, 2003
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Dr. Richard Cordero

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TO: NEW YORK	NY	CORDERO RICHARD	ONE WAY/ADULT

***	CITY	***	ARRIVAL	LAYOVER	DEPARTURE	SCHEDULE
	ROCHESTER	NY			04:50p 19May03	NYP 0261
	SYRACUSE	NY	06:30p 19May03	0:15	06:45p 19May03	GLI 4261
	NEW YORK	NY	12:10a 20May03			GLI 4261

FARE PAID:	\$65.00	MASTERCARD	
TAX:	XX	MC/MC	
INSURANCE:	\$0.00	DOC #: 5329	01536 ROCHESTER NY
EXCESS BAG:	\$0.00	AUTH CODE: 030520 045125	19May03 04:45p 2869
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		001 00 29 39693284 0	** VOID IF DETACHED **

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19MAY03 Seq#124 Flt No: 20

Depart: New York City, New York	09:25am
Arrive: Rochester, New York	10:40am

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Security Fee	2.50
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