Case no. 08A88

IN THE

SUPREME COURT OF THE UNITED STATES

in-chambers application to

Justice Ruth Bader Ginsburg

Circuit Justice for the Second Circuit

for injunctive relief and a stay in

DR. RICHARD CORDERO, Petitioner

v.

DAVID AND MARY ANN DELANO, Respondents

Docket no. 06-4780-bk in
the United States Court of Appeals
for the Second Circuit

June 30, 2008

by

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I. REASONABLE ASSUMPTIOM THAT THE JUSTICES WILL INTERVENE

1. The evidence presented below shows that the Court of Appeals for the Second Circuit (CA2) has supported or tolerated fraud and its cover up through, among other means, the denial of discovery rights, bias and arbitrary conduct, and the disregard for the law and the facts by bankruptcy and district judges, their staff, other court officers, trustees, and other insiders of the bankruptcy system participating in a bankruptcy fraud scheme. Such evidence gives rise to the issue whether ascertaining and eliminating fraud that corrupts judicial process is sufficiently compelling for the Court and its justices to consider that CA2‟s conduct "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court‟s supervisory power"; SCtR 10(a). If so, they should take the preliminary step of issuing the requested stay order for the purpose of reviewing with the aid of the requested documents such conduct and how it led to CA2‟s order dismissing *DeLano* by not just „the non-application of an improperly stated rule of law" (cf. id.), but rather by the disregard of the rule of law itself and its application in due process.
2. In deciding that issue, the Court and each justice should consider that using this case to restore integrity to judicial process is justified not only by the fact that Petitioner Dr. Cordero is entitled to the due process that he has been denied all along below, but also the public at large is Constitutionally entitled to due process and to expect the Court not to shirk its responsibility to examine how its peers have allowed power and money to become the driving forces of the antithesis of justice through due process of law, namely, fraud on and by the court. If neither the Court nor its justices were to deem that a case that reveals systemic fraud in a court of appeals and the courts below is "of such imperative public importance" as to require their intervention because judicially supported or tolerated fraud is "the accepted and usual course of judicial proceedings", they would be abdicating their position as protectors of the Constitution by

allowing fraud to fester and corrupt the Constitutional guarantee that is the prerequisite for the protection of all other guarantees, namely, due process of law.

3. If the Court and its members reduce themselves to the role of traffic cops that decide which circuit has the right of way to the construction of a legal instrument, they would substantially impair their moral standing in our society as the entity entrusted with the lofty mission of safeguarding and dispensing Justice. If they were to refuse to intervene in a case so rife with fraud by the courts, they would give not just the appearance of partiality, but also proof that fraud by their peers is tolerable because "Equal Justice Under Law" is a naïve notion not applicable to those that can abuse their power to put themselves in a high position above the law.
4. Hence, one must assume that Circuit Justice Ginsburg together with all the other justices will vote to issue the requested orders and eventually to grant the petition for a writ of certiorari.

II. APPLICATION FOR INJUNCTIVE RELIEF

A. Applicable principle of law

28 U.S.C.A. §§ 1651

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

A Supreme Court justice may grant a party's application for injunctive relief, where there is significant possibility that the Court would note probable jurisdiction of the appeal of the underlying suit and reverse, and there is likelihood that irreparable injury would otherwise result. (Per Justice Blackmun, as Circuit Justice.) *American Trucking Associations, Inc. v. Gray*, 108 S.Ct. 2, U.S. Ark., 1987, U.S.Sup.Ct.Rule 44, 28 U.S.C.A

Circuit justice's issuance of original writ of injunction, pursuant to All-Writs Act and Supreme Court Rule, does not simply suspend judicial alteration of status quo but grants judicial intervention that has been withheld by lower courts and, thus, demands significantly higher justification than that required for stays of final judgments or decrees of any court to enable party aggrieved to obtain writ of cer-

tiorari from Supreme Court. (Per Justice Scalia, Circuit Justice). *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Com'n,* 107 S.Ct. 682, U.S., 1986.

B. Statement of facts showing why it is reasonable to expect that at least four justices would vote to grant certiorari insofar as the Court is determined to safeguard due process of law from being systematically denied by judges supporting or tolerating a bankruptcy fraud scheme

5. At bar is a bankruptcy case, *Dr. Richard Cordero v. David and Mary Ann DeLano,* 06-4780, CA2, (hereinafter *DeLano* and the DeLano Debtors or DeLanos) which deals with a bankruptcy fraud scheme supported and tolerated by federal judges with the participation of court staff, trustees, and other court officers and insiders of the bankruptcy system. (¶53 below)
6. What is at issue for this Court and its members is their willingness to safeguard the integrity of judicial process and cure the blatant denial of due process that the schemers have employed to cover up their scheme and escape incrimination in it.
7. Due process was denied to Petitioner Dr. Richard Cordero, Esq., creditor and appellant below, when in spite of his right to discovery *every single document* that he requested was denied by the Bankruptcy Court, WBNY, the District Court, WDNY, and the Court of Appeals for the Second Circuit (CA2) to defend against the DeLanos‟ motion to disallow his claim as creditor and to establish his claim as an interested party that their bankruptcy petition, comprising Schedules A-J, the Statement of Financial Affairs, and the Plan for Debt Repayment, had been used to conceal assets and evade debts, thus rendering the petition and all orders supporting it null and void.

1. The DeLanos, inherently suspicious debtors in bankruptcy, and other members of the cast of insiders of the bankruptcy system

8. Likewise, *every single document* that Dr. Cordero requested to defend against the disallowance motion was denied by Mr. and Mrs. DeLano as they prepared to retire. Mr. DeLano, a 39-year

career financial and banking officer (Transcript, page 15 Line 17 to pg 16 L15=Tr:15/17-16/15), Mrs. DeLano was a Xerox technician, a person experienced in thinking methodically along a series of technical steps. Both knew exactly what moves to make to prepare for a debt-free asset-loaded golden retirement by "going bankrupt" although their assets of $263,456 far exceeded their liabilities of $185,462. (D:29) Indeed, when they filed their petition, Mr. DeLano was and continued to be employed as an officer in precisely the bankruptcy department of a major bank, M&T Bank, with $65 billion in assets at the end of 2007. Hence, they filed their petition under 11 U.S.C. Chapter 13 "Adjustment of debts of an individual with regular income", thus avoiding liquidation under Chapter 7. Mr. DeLano was 62 when together with the petition they filed a plan for debt repayment to their creditors for the minimum of 3 years, at the end of which he would be 65 and could collect a 100% of his social security pension.

9. An insider of the bankruptcy system, Mr. DeLano had learned during his long career how to keep people afloat with financial advice and how to sink them with stories of their wrongdoing, actually a library of stories spanning his long 39 years dealing with one of the two most insidious corruptors: *Money!*, money deposited, money lent, and money invested. Mr. DeLano had his petition as well as his denial of documents to Dr. Cordero supported by Bankruptcy Judge John C. Ninfo, II, WBNY, a partner at the time of taking the bench in the law firm, Underberg & Kessler, LLP, representing both the Bank and Banker DeLano in the case to which *DeLano* traces its origins, to wit, *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, a case also before Judge Ninfo. (http://www.nywb.uscourts.gov/about_judge_ninfo_46.php; D:531) The Judge handled the other most insidious corruptor: *Power!* Judicial power over people's property, liberty, and even life is in practice unaccountable, whereby it becomes absolute…and corrupts absolutely.

10. It was the DeLanos who listed Dr. Cordero among their unsecured creditors in their voluntary

bankruptcy petition of January 2004. (D:40) Then, as they had to, they submitted it together with their debt repayment plan to Chapter 13 Trustee George Reiber for examination. Trustee Reiber was supposed to represent unsecured creditors. (Revision Notes and Legislative Report on 11 U.S.C. §704, 1978 Acts, 2nd para.; D:882§II) However, he could hardly have the time or need to do so given that, according to PACER, he had 3,907 *open* cases before Judge Ninfo out of his 3,909 *open* cases. The Trustee depends on Judge Ninfo to have his recommendations for bankrupts‟ plans approved so that he may keep his 10% fee of every payment made through him under the plan to the creditors. (28 U.S.C. §586(e)(1)(B)(ii)(I)) The Trustee‟s frequent appearances before the Judge and his financial interest in the Judge‟s goodwill toward him have developed a modus operandi between them that has led to the Trustee‟s loyalties to run to the Judge, not to one-time creditors, much less to non-local ones who live hundreds of miles away from Rochester, NY, such a Dr. Cordero, a resident of NY City. When the relationship between the trustee and the judge works smoothly, so flows the enormous amount of money that they control…in just this one case $673,657 of the DeLanos whose whereabouts are still unknown. (CA:1654)

11. It was Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Trustee Reiber, who allowed him to amass such an unmanageable number of cases. So much so that since he could not be at the same time in all places where he was needed, she allowed him to conduct the meeting of creditors (11 U.S.C. §341: D:23) of the DeLanos on March 8, 2004, not only in a room connected to her office, but also unlawfully through his attorney, James Weidman, Esq. For a trustee not to conduct a meeting of creditors personally is such a serious violation of his duty that it is listed in 28 CFR §58.6(10) among the causes for his removal. (SApp:1689) Trustee Reiber was taking care of business downstairs in Judge Ninfo‟s courtroom. In a well coordinated scheme everybody has to pitch in. Trustee Schmitt‟s friendly next door neighbor is the local office of the U.S. Department of Justice in the cozily small federal building in Rochester.

2. The meeting of creditors of the DeLanos confirms that the insiders knew that they had committed bankruptcy fraud

12. In any event, Mr. Weidman knew perfectly well what was going on. At that meeting, he examined the DeLanos under oath while being officially recorded on an audio-tape. Accompanying the DeLanos were their attorneys, Christopher Werner, Esq., who had brought 525 cases before Judge Ninfo, and Michael J. Beyma, Esq., who is also a partner in Underberg & Kessler, the same law firm in which Judge Ninfo was a partner at the time of his appointment to the bankruptcy judgeship. After examining the DeLanos, Mr. Weidman asked whether any of their creditors were in the audience. Dr. Cordero was the only one present. He identified himself and stated his desire to examine them. Mr. Weidman asked him to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form (D:68) as well as copies to him and Mr. Werner of his Objection to Confirmation of their Plan of Debt Repayment (D:63). No sooner had he asked Mr. DeLano to state his occupation –he answered „a bank loan officer"- and then how long he had worked in that capacity -he said 15 years, but see Tr:15/17-16/15- than Mr. Weidman unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos" having committed fraud, and when he would not reveal what he knew, Att. Weidman put an end to the meeting even though Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)

13. Later that afternoon at the confirmation hearing before Judge Ninfo in the presence of Trustee Reiber and Att. Weidman and without being contradicted, Dr. Cordero brought to the Judge"s attention how that Attorney had prevented him from examining the Debtors. Rather than uphold the law and his right thereunder, Judge Ninfo faulted Dr. Cordero for applying the Bankruptcy Code too strictly and thereby missing "the local practice". He stated that Dr. Cordero should have phoned to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. (D:99§C) Thereby the Judge

protected the co-scheming "locals" from the law of the land of Congress, which provides for a series of meetings where creditors can engage in a very wide-scope examination of the debtors. (§341; FRBkrP 2004(b); D:283¶¶a-b, 98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)

14. For the next six months the DeLanos treated Dr. Cordero as a creditor, pretending to be obtaining the documents that he had requested through Trustee Reiber. (D:63, 151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203) They also pretended to be available for an adjourned meeting of creditors where those documents would be used to examine them under oath. (CA:1731¶25) But the documents only trickled in. Worse yet, the documents that they produced during the dragged-on period were incomplete, even missing pages! (D:194§II) Had Mr. DeLano lasted 39 years in banking if this performance had been a reflection of his competency to obtain the documents necessary for his bank to decide on their clients‟ financial applications?

15. So it was that Trustee Reiber moved to dismiss the petition "for unreasonable delay which is prejudicial to creditors, or to convert to a Chapter 7 proceeding", that is, liquidation. (D:164) This was only for show, or for other purpose, given that the Trustee never asked the DeLanos, despite Dr. Cordero‟s requests, to produce documents as obviously pertinent to determine the good faith of any petition (11 U.S.C. §1325(a)(3)) as their bank account statements, which they have not produced to date. Neither Trustee Schmitt nor her superior, U.S. Trustee for Region 2, Deirdre A. Martini, required him or the DeLanos to produce those documents. Yet, it was the trustees‟ duty to request those documents as a matter of course to examine any bankruptcy petition for compliance with the requirements of the Bankruptcy Code and to meet the request of a party in interest. (11 U.S.C. §§1302(b)(1), 704(a)(4) and (7)) What is more, they had a particular reason to demand those documents from the DeLanos: Their petition contained a statement of financial affairs so intrinsically incongruous and implausible as to justify the strong

suspicion that their petition was a vehicle of concealment of assets and evasion of debts.

3. The DeLanos' intrinsically incongruous and implausible statement of financial affairs

16. Indeed, the DeLanos declared in Schedules A-J, the Statement of Financial Affairs, and the Plan for Debt Repayment accompanying the petition (collectively referred to herein as the petition):

    a. that their total assets were $263,456 while their total liabilities were only $185,462, yet they proposed to repay only 22¢ on the dollar (D:29, 23);

    b. that they had in cash and on account only $535 (D:31), although they declared that their excess income after subtracting from their monthly income their monthly living expenses was $1,940 (D:45), and that in just the three fiscal years preceding their bankruptcy filing they had earned $291,470 (D:47; 2001-03 1040 IRS forms at D:186-188);

    c. that they owed $98,092 on 18 credit cards (D:38), while they valued their household goods at only $2,810 (D:31), less than their $3,880 excess income in only two months and less than even 1% of the $291,470 that they had earned in the previous three years! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their worklives of more than 30 years;

    d. that their only real property was their home, appraised two months before their filing at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and having received during that period at least $382,187 through a string of eight known mortgages! (D:341-354) *Mind-boggling!* For each of those mortgages they had to pay closing costs. For example, just for the last known mortgage they had to pay $3,444. (D:351, 354 lines 1400 and 1602) None of the trustees or any of the judges that had the duty to review the facts could have

either competently or honestly believed that Career Banker DeLano would waste on closing costs for eight mortgages more money than the equity he ended up with in his home. They had to ask: "What did you do with all that money?"

17. None did despite Dr. Cordero‟s request that they do. On the contrary, Trustee Reiber was ready to recommend after the meeting of creditors on March 8, 2004, the approval by Judge Ninfo of the DeLanos‟ plan of debt repayment without ever having requested any supporting document at all. Only Dr. Cordero‟s objection prevented him from doing so.

4. To stop Dr. Cordero from proving a bankruptcy fraud scheme, the DeLanos used the artifice of a motion to disallow his claim as creditor and Judge Ninfo staged a sham evidentiary hearing, for which both denied him *every single document* that he requested and at which the Judge dismissed Mr. DeLano's testimony and disallowed the claim for failure to introduce documents

18. Dr. Cordero continued analyzing the petition intrinsically and extrinsically for its consistency with the few documents produced. (D:63, 165-188) In a written statement submitted to Judge Ninfo (D:193), Dr. Cordero showed that the DeLanos had concealed assets, a violation of 18 U.S.C. §152(1), and thereby committed bankruptcy fraud, which is punishable by up to 20 years in prison and a fine of up to $500,000 under 18 U.S.C. §§152-157, 1519, and 3571 (D:46).

19. Only thereafter, in July 2004, after the DeLanos had treated Dr. Cordero as a creditor for six months, did they come up with the idea of a motion to disallow his claim as creditor (D:218). They did not cite any authority at all for challenging the presumption of validity of a creditor‟s claim. (D:256§VII) Moreover, their challenge had become barred by waiver and laches. (D:255§VI) They themselves had listed in Schedule F (D:40) Dr. Cordero‟s claim against them in *Pfuntner* precisely because Mr. DeLano had been aware for more than a year and a half that in November 2002, he had been brought into *Pfuntner* as a third party defendant by Dr. Cordero

(Add:785), who months before their motion, in May 2004, had reminded them thereof by filing his proof of claim (D:142) with relevant excerpts of the third party complaint (D:250§I). What is more, in April 2004 they had raised the objection, already untimely after treating Dr. Cordero as their creditor for months, that he "is not a proper creditor in this matter". (D:118) Less than 10 days later Dr. Cordero had timely countered their objection. (D:128) Then they simply dropped the issue…for months. Their own conduct shows that their motion to disallow was a desperate attempt to get rid of Dr. Cordero and his overt charge of bankruptcy fraud grounded in their own petition and additional trickle of documents. (D:253§V)

20. Judge Ninfo came to the assistance of Co-scheming Insider Mr. DeLano. On his own initiative, he called in his order of August 30, 2004, for an evidentiary hearing to determine the motion to disallow. (D:272) He required that at that hearing Dr. Cordero introduce evidence to establish his claim against Mr. DeLano in *Pfuntner*, that is, in isolation from all the other parties, their claims and defenses, and issues. Dr. Cordero realized that he was being set up to try piecemeal in *DeLano* one claim severed from *Pfuntner*. So he moved in CA2 to quash Judge Ninfo‟s order. (D:441) CA2 merely "Denied" the motion with no explanation whatsoever. (D:312)

21. Judge Ninfo also required that discovery for the evidentiary hearing be completed by December 15, 2004, when he would set its date. (D:278¶3) On the strength of that order, Dr. Cordero requested documents from the DeLanos, including those to which he was entitled not only as a creditor, but also as a mere party in interest and as party in *Pfuntner*. (D:287) But the DeLanos and Mr. Werner, the attorney that had brought 525 cases before Judge Ninfo, denied him *every single document*, whether in the context of *Pfuntner* or *DeLano*, self-servingly characterizing all of them as irrelevant. (D:313, 314) Dr. Cordero moved Judge Ninfo to order the DeLanos to comply with the discovery provisions of his order and respect his right to discovery under FRBkrP 7026-7037 and FRCivP 26-37. (D:320§II) Disregarding his own order and showing his

contempt for the rules, Judge Ninfo aided and abetted the DeLanos‟ blatant violation of the right to discovery (D:325) and denied *every single document* that Dr. Cordero had requested! (D:327) In December, he scheduled the evidentiary hearing for March 1, 2005. (D:332)

22. Having no documents to introduce, Dr. Cordero examined Mr. DeLano at the evidentiary hearing. Judge Ninfo acted as Mr. DeLano‟s Chief Advocate, as if he still were a partner in the law firm of one of his attorneys, Mr. Beyma, who was there and had entered his appearance. (Tr:2) So he objected on behalf of Mr. DeLano to Dr. Cordero‟s questions, warned him about how to answer them, and engaged Dr. Cordero in an adversarial discussion. While Judge Ninfo reduced Atts. Beyma and Werner to deferential silence, they were not inactive at all. Far from it, they signaled answers to Mr. DeLano while he was on the stand being examined under oath by Dr. Cordero. When the latter protested in each of several occasions, Judge Ninfo ludicrously pretended that he had not seen them do so despite the fact that the attorneys were only a few feet in front of him and near Dr. Cordero‟s table in the courtroom. (Tr.28/13-29/4:Beyma, 75/8-76/3:Beyma, 141/20-143/16:Werner; Pst:1289§f). What prompted their effort to suborn perjury was that the testimony that Mr. DeLano was giving confirmed the facts supporting Dr. Cordero‟s claim against him in *Pfuntner*. (Pst:1285¶70) So Judge Ninfo simply dismissed Mr. DeLano‟s testimony against self-interest as “confused” and found that Dr. Cordero had not introduced any documents to prove his claim, the very same ones that they had taken care to deny him during discovery. Thereby the Judge justified entering the predetermined result: He disallowed Dr. Cordero‟s claim against Mr. DeLano in *Pfuntner* and deprived him of his standing to participate in *DeLano* anymore. (Pst:1281.d) Judge Ninfo can be “heard” as the partisan, leading voice for the schemers in the transcript. (Pst:1255§E). Dr. Cordero had indeed been set up.

23. Does the use of a motion to disallow as an artifice to conceal incriminating documents and of a sham evidentiary hearing to eliminate an uncomfortable party that could blow the cover of a

bankruptcy fraud scheme seem to you to have anything to do with due process, the rule of law, fairness, or equity or rather to be the coordinated wrongdoing of insiders of the bankruptcy system protecting themselves and their scheme? Will you countenance it without qualms because it involves a peer or condemn it with outrage because it offends justice and the conscience?

5. District Judge Larimer in coordination with court clerks tried to keep Dr. Cordero from obtaining incriminating transcripts and denied him *every single document* that he requested

24. On appeal from the disallowance of the claim against the DeLanos, District Judge David G. Larimer, WDNY, protected Judge Ninfo, his peer downstairs, by denying *every single documen*t that Dr. Cordero requested (Add:951, 1021; Pst:1307), including the transcripts of the initial and the adjourned meetings of creditors (D:333; Pst:1262¶¶13-21). He even maneuvered together with Bankruptcy Court clerks, trustees, and Court Reporter Mary Dianetti to prevent the incriminating transcript of the evidentiary hearing from being incorporated into the record on appeal. (Add:870, 911, 991, 993, 1019; Pst:1264 ¶22 et seq.) It cost Dr. Cordero seven month‟s worth of effort and money to thwart their maneuver and have that transcript produced so that he could use it to write and support his appellate briefs to the District Court and eventually to CA2 and this Court. (Add:1027, 1031; CA1735§1)

25. In any event, Judge Larimer affirmed the disallowance in a conclusory order (SApp:1501) that did not make even one reference to Dr. Cordero‟s brief. What is more, he did not use once the term fraud even though that term and the subject of a scheme to commit bankruptcy fraud permeated the brief. Actually, Judge Larimer did not address even one of the four questions presented on appeal (Pst:1257§C; CA:1749§2). On the contrary, he committed the gross mistake of stating that the „“preserved, appellate issues” had been “set forth” by the DeLanos‟ attorneys‟ (SApp:1502 2nd para.); however, those attorneys never filed a cross appeal and thereby could

not present any issues on appeal at all. (CA:1746§1) The issues that Judge Larimer went on to name were those "set forth" by those attorneys in their response to Dr. Cordero"s brief. (Pst:1365) But he did he engage in any legal analysis of even those issues. (CA:1756§4) The fact is that to write his order he need not have read Dr. Cordero"s brief at all; he only needed to skim over the DeLanos". (Pst:1361, 1398§§II-III, 1409§V) By so doing, Judge Larimer showed blatant partiality (CA:1752§3) and denied Dr. Cordero an opportunity to be heard. He proceeded with professional irresponsibility to decide questions put to him by the appellant, Dr. Cordero, that he knew nothing about. Consequently, Judge Larimer denied Dr. Cordero due process of law and did so intentionally as part of coordinated wrongdoing aimed at protecting a bankruptcy fraud scheme and its participants. CA2 dismissed the appeal without a reference to this or anything else in Dr. Cordero"s brief; it just could not care less. (CA:2180) Do you care?

6. CA2 denied *every single document* not only that Dr. Cordero requested, but also that it needed to discharge its duty to know the facts to which to apply the law and to safeguard the integrity of judicial process in the circuit from its corruption by judges participating in a bankruptcy fraud scheme

26. When its turn arrived, CA2 covered for both Peer Judge Larimer and its Twice Appointed Bankruptcy Judge Ninfo (28 U.S.C. §152) It docketed the appeal in *DeLano* on October 25, 2006 (Sapp:1571), and the following day it entered Dr. Cordero"s Statement of Issues to be Presented and Designation of the Record on Appeal (SApp:1508). The Court dismissed the appeal on February 7, 2008 (CA:2180), and denied Dr. Cordero"s petition for panel rehearing and hearing en banc (CA:2191) last May 9 (CA:2209).
27. On June 16, Dr. Cordero was notified of CA2"s denial of his motions to recall and stay the mandate in *DeLano* (CA:2211) and to remove and stay *Pfuntner* (CA:2222; ¶53 below). On 12 occasions during the appeal, Dr. Cordero requested that CA2 order the production of the

documents listed in his proposed order of production, but it denied him *every single document*, doing so summarily, with no explanation, only an expedient "Denied".

Documents requested by Dr. Cordero and denied by CA2				
	Requests		**Denials**	
	page #	**date**	**page #**	**date**
1.	CA:1606	December 19, 06	SApp:1623	January 24, 07
2.	CA:1618	January 18, 07	SApp:1634	February 1, 07
3.	CA:1637	February15, 07	SApp:1678	March 5, 07
4.	CA:1777	March 17, 07	CA:2180	February 7, 08
5.	CA:1932	June 14, 07	CA:2180	February 7, 08
6.	CA:1975¶59a	July 18, 07	CA:2182	February 7, 08
7.	CA:2081¶c.1	August 29, 07	CA:2181	February 7, 08
8.	CA:2126¶e	November 8, 07	CA:2180	February 7, 08
9.	CA:2140¶e	November 27, 07	CA:2180	February 7, 08
10.	CA:2165¶33e	December 26, 07	CA:2180	February 7, 08
11.	CA:2179	January 3, 08	CA:2180	February 7, 08
12.	CA:2205¶25c	March 14, 08	CA:2209	May 9, 08

28. Instead of granting the request for documents and undertaking their examination, CA2 showed in its three-liner order of dismissal (CA:2180) not to have examined even Dr. Cordero's appellate brief. In fact, it omitted using even once the term describing what was at stake, namely, fraud, never mind bankruptcy fraud, much less bankruptcy fraud scheme, just as District Judge Larimer had failed to do (Pst:1257§C). Yet, Dr. Cordero had paid the filing fee of $455 for CA2 to render a service, namely, that of adjudicating according to law the four issues that he presented to it on appeal. He expressly stated that the issue unifying the four of them was fraud and the effect and means of running a bankruptcy fraud scheme. (CA:1719§V) Consequently, CA2 failed to dispose of the legal controversy presented to it for adjudication by the appellant, Dr. Cordero,

and by him alone since the DeLano respondents filed no cross-appeal and, thus, stated no additional issues.

29. CA2, just as any other court, is not an independent entity above the people with its own source of power. Rather, it is only part of the government set up by the people for public servants to render it certain services, that is, judicial services necessary for the orderly and consistent resolution of the controversies that inevitably arise among people due to the multiplicity of their views and their competing interests. Nevertheless, CA2 chose to serve its own: Peer Larimer, Reappointee Ninfo, and their bankruptcy system insiders and co-schemers. Disregarding its legal and ethical duties to uphold the law and do what was right, CA2 went for what was expedient: It invoked some kind of *sua sponte* authority to fetch an "equitable mootness" doctrine as grounds for dismissing the appeal in a three-liner summary order that it cobbled together without making sure whether the two cases that it slapped on the paper had anything to do with the facts of *DeLano* or the law applicable to it. (CA:2180, 2191)

C. This Court would set the dismissal order aside due to CA2's disregard for the facts and the law and its toleration of the orders of the District and Bankruptcy Courts, which were entered through fraud on and by the court, whereby they are nullities

30. Underlining or circling the choice "Denied" as opposed to "Granted" on the Motion Information Sheet is not dispensing justice. It is merely a fiat decreed by an entity wielding unaccountable power to dispense with any contractual responsibility for giving a judicial review service after taking in a filing fee and to arrogate the privilege to show contemptuous unresponsiveness to the filer or movant"s investment of effort, time, and money as well as emotion in writing the motion"s supporting paper to request a just and fair resolution of the issue presented. Dismissing a case with a statement that has no bearing to either its facts or the applicable law is the result of

the arrogant attitude that states, “We can get rid of any of your requests however we feel like it because you do not have the means of holding us up to any standard of responsible conduct”. Such fiat and attitude negate what was recognized a long time ago as constituting an essential and indispensable component of justice:

> "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)

1. CA2’s order rests on the wrong law and the disregard of the facts of *DeLano*

31. CA2 pretended that it was dismissing *DeLano* on “equitable mootness” grounds and cited two cases, *In re Metromedia Fiber Network, Inc.,* 416 F.3d 136, 144 (2d Cir. 2005) and *In re Chateaugay*, 988 F.2d 322, 326 (2d Cir. 1993) in support of its order (CA:2180). However, neither of those cases even insinuated that the doctrine of equitable mootness is available to cure bankruptcy fraud, much less a bankruptcy fraud scheme. In fact, neither deals with fraud at all.

32. Nor do they deal, as *DeLano* does, with bankruptcies under 11 U.S.C. Chapter 13 and its simple “adjustment of debts of an individual with regular income” to creditors under a repayment plan that provides merely for the debts owed them to be reduced by payment of only the same number of cents on the dollar and, after revocation of the discharge, for the continued payment to creditors of what the debtor still owes them.

33. Rather, *Metromedia* and *Chateaugay* dealt with Chapter 11 bankruptcies and the complex reorganization of bankrupt companies. Actually, they are even more complex, for they involved arrangements, not only between the bankrupt companies and their creditor companies, but also third companies and individuals that were not even parties to the bankruptcy cases. Indeed, those cases dealt with the release of debt owed by non-party companies to the reorganizing debtor company in exchange for a substantial contribution to its reorganization plan and a challenge

after the completion of the arrangement by a creditor, to whom giving relief would have required "unraveling the Plan". *Metromedia §III* To avoid the dire consequences of such "unraveling", the doctrine of equitable mootness was applied, which provides as follows:

> Equitable mootness is a prudential doctrine that is invoked to avoid disturbing a reorganization plan once implemented. [E]quitable mootness is a pragmatic principle, grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable. The doctrine [is] merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties. *Metromedia, §III*, internal quotations omitted.

34. Ordering production of the requested documents, identifying thanks to them the concealed assets of the DeLano Debtors, and finding that they committed bankruptcy fraud would not disturb their completed debt repayment plan in any way whatsoever. There would be nothing "impractical, imprudent, and therefore inequitable" in asking the DeLanos, once shown to have filed a fraudulent petition to begin with and gotten it approved through the fraud of the trustees, Judge Ninfo, and other co-scheming insiders, to continue paying to their creditors what they owe them. This would only mean that, instead of getting away with evading their debts by paying even fewer than the initially proposed 22¢ on the dollar (D:59: Pst:1174; CA:1933), the DeLanos would have to reduce their fraudulently-gotten enjoyment of their golden retirement and use their concealed assets in order to pay in full the principal of their debts and the interest on it. Ordering the DeLanos to do so would absolutely not entail any "recoupment of these funds „already paid from non-parties, and the continued payment to creditors would be neither impracticable nor" "impose an unfair hardship on faultless beneficiaries who are not parties to this appeal", *Chateaugay, §II*. There would only be completion of payment to the only innocent parties here, those who in good faith became the DeLanos" creditors and to whom it would be inequitable to deprive of what is owed them in order to allow the DeLanos to benefit from their participation in

the bankruptcy fraud scheme or to protect judicial peers that supported or tolerated such scheme.

35. Additionally, the companies in *Metromedia* and *Chateaugay* that challenged those complex debt-release arrangements failed to do so until after their completion. In this respect, the court in *In re Chateaugay Corp*., 94 F.3d 772, 776 (2d Cir.1996), "presume[d] that it will [not] be inequitable or impractical to grant relief after substantial consummation, [if], among other things, the entity seeking relief has diligently pursued a stay of execution of the plan throughout the proceedings". This is precisely what Dr. Cordero did: He "diligently pursued a stay of execution of the [DeLanos"] plan" of debt repayment and was denied his motions by Judge Ninfo (D:21) and Judge Larimer (Add:881, 974¶7, 1021; Pst:1182 entry 10; CA:2199¶13). He even pursued the revocation of the confirmation order in Bankruptcy Court (Add:1038, 1066, 1094, 1095, 1125) as well as in District Court (Add:1064, 1070, 1121¶61, 1126, 1155; Pst:1306¶123, 1313¶21).

36. The pretense of "equitable mootness" as the grounds for dismissing *DeLano* is objectively inapplicable to *Pfuntner*, which is pending before Judge Ninfo and revived by the dismissal of *DeLano*. (¶53 below) In *Pfuntner,* discovery has not even begun! Hence, it cannot be applied to prevent the disturbance of debt-release arrangements where there are no arrangements to disturb to begin with. Furthermore, there are parties to *Pfuntner* that were not parties to *DeLano* and whose rights and liabilities as a matter of law cannot possibly have been disposed of through CA2"s dismissal of *DeLano* or the Bankruptcy Court"s disallowance of Dr. Cordero"s claim. As a matter of fact, neither those parties nor their rights were even hinted at in the CA2"s three-liner summary order.

37. This shows that CA2 proceeded to dismiss the appeal without any justification in law and with disregard for the facts of *DeLano*. It simply fetched the term "equitable mootness", strung together two citations, and pasted them on an order form without ascertaining whether either the term or the cases were applicable to the case on appeal to begin with. It never considered the

issue whether equity favored such dismissal, let alone required it. In so doing, CA2 not only committed an inequity by depriving Dr. Cordero, an innocent party, of his claim against the DeLanos, the fraudsters, but it denied him due process by dispensing with the rule of law in order to cover for Reappointee Ninfo and Peer Larimer and protect its own interest in not giving them occasion to incriminate it for supporting or tolerating their bankruptcy fraud scheme. Faced with a conflict of interests between its duty to apply the law to determine impartially controversies before it and its interest in preserving its good name and protecting its very survival (CA:1963§III), CA2 compromised its integrity: By looking after itself and its own it acted as a Worker of Injustice.

38. This Court must not join CA2 in so doing. It must neither condone CA2‟s denial of due process to a litigant nor countenance its abandonment of the duty of impartiality and its issuing of an unresponsive and irresponsible order in defense of its own unlawful individual and judicial class interests. Therefore, it is reasonable to expect that after granting certiorari, the Court will set aside CA2‟s order dismissing Petitioner Dr. Cordero‟s appeal in *DeLano*.

2. CA2′ dismissal order is a nullity as a means used together with the orders of the other two lower courts to cover up a bankruptcy fraud scheme and thereby protect itself, its peer, and its reappointed bankruptcy judge from incrimination in it

39. CA2 had the duty to declare null and void all of Judge Ninfo‟s orders (¶60 below), which paved the way for the artifice of the motion to disallow Dr. Cordero‟s claim against Mr. DeLano, led to the sham of the evidentiary hearing that maneuvered the disallowance and the stripping of his standing (D:3) to object to the confirmation of the DeLanos‟ plan of debt repayment, and culminated in discharging the DeLanos‟ debts (D:508.o). Likewise, CA2 had the duty to declare Judge Larimer‟s orders upholding those of Peer Ninfo nullities. Those orders were tainted by

fraud on the court through in the triggering document, i.e., the DeLanos‟ bankruptcy petition that concealed assets and falsely stated their financial affairs, and fraud by the court through the cover up that denied *every single document* that Dr. Cordero requested to expose it, thus denying him his right to discovery and to due process to assert his claims and defenses.

40. Far from it, through its own orders disposing of motions and dismissing the appeal (¶27 above), CA2 added to the fraud and aided and abetted its cover up. It did not even mention fraud or its coordination among parties that gave rise to a bankruptcy fraud scheme, although they constituted the express issues presented on appeal. (CA:1719§V) It too denied Dr. Cordero *every single document* that could have exposed the DeLanos‟ fraud and the co-schemers. Then it pretended that it was dismissing the appeal on "equitable mootness", as if bankruptcy fraud could become moot and lawful, and allowing the DeLanos to file a fraudulent petition and an artifice of a motion to disallow but denying Dr. Cordero his right to discovery and to any document that could enable him to defend and assert claims were equitable. CA2 cannot call on equity to excuse bankruptcy fraud or employ it to preemptively moot an investigation of the participation of its reappointee, Bankruptcy Judge Ninfo, and its colleague, District Judge Larimer, in a bankruptcy fraud scheme.

41. CA2 not only erred in failing to hold the disallowance motion and the evidentiary hearing for what they were: a process-abusive artifice and an outcome-predetermined sham. It also committed fraud by the court by covering up the fraud on and by the court of the DeLanos, Judges Ninfo and Larimer, and the other co-schemers. It is reasonable to assume that this Court, as the ultimate protector of Constitutional guarantees as well as statutory and regulatory rights whose respect in practice ensure due process of law, will hold CA2‟s orders, just as those of the lower judges, not only in error and set them aside, but also null and void as vehicles of fraud.

D. The lack of the documents requested but denied in violation of discovery rights and due process will substantially and likely irreparably prejudice both Dr. Cordero in showing that the orders entered in DeLano and Pfuntner are nullities due to fraud on and by the courts and this Court in safeguarding the integrity of judicial process

1. Dr. Cordero will be prejudiced in restoring his disallowed claim against the DeLanos, litigating the pending proceedings in *Pfuntner* and restoring therein his claims against Mr. DeLano and Trustee Gordon, and having his petition for a writ of certiorari granted

42. Mr. Justice Rehnquist, as Circuit Justice, stated in *Barthuli v. Board of Trustees of Jefferson Elementary School Dist.,* 98 S.Ct. 21 U.S.Cal.,1977:

> "It is only where rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially that the Supreme Court or members thereof can take judicial action."

43. The documents sought by Petitioner Dr. Cordero from the DeLano Debtors alone –other documents were requested from other parties, such as the trustees (CA:1777)- would have allowed him to show, inter alia, the following:

a. Their bank account statements would have shown that, contrary to their statement in Schedule B of their petition that they had in hand and on account only $535 (D:31), they actually had a much larger amount both of the $291,470 that they had earned in just the three years preceding their filing (D:47; 2001-03 1040 IRS forms at D:186-188) and of their declared monthly excess income of $1,940 (D:45) after subtracting their monthly living expenses from their monthly income.

b. Their mortgage and property documents would have shown their use of the proceeds of eight known mortgages through which they received at least $382,187 and their equity built through their payment of monthly mortgage installments for at least 30 years far

exceeding the mere $21,416 (D:30) that they claimed to have in the sole real property that they declared in Schedule A, that is, their home, on which they declared an outstanding mortgage of $77,084…after 30 years?!

c. Their monthly credit card statements indicating their "1990 and prior Credit card purchases", a phrase that they themselves used 18 times in Schedule F (D:38), would belie their statement in Schedule B (D:31) that their household belongings were worth only $2,810 despite their declared credit card debt of $98,092 on 18 credit cards (D:38).

d. Those documents would have shown the source of $27,953 that the DeLanos, with the Trustee‟s recommendation (937-938; Pst:1175) and Judge Ninfo‟s approval (Add:942), were allowed to pay in legal fees for their attorneys (Add:871-875) to oppose Dr. Cordero‟s requests for documents from them.

e. The source of the belief of their attorney, Christopher Werner, Esq., who signed off after they "declare[d] under penalty of perjury that the information provided in this petition is true and correct", including their statement that they only had $535 in hand and on account (D:31), that he and his colleague, Devin Palmer, Esq., could keep providing them with legal services and racking up such high legal fees because the DeLanos had money to pay them. (D:31; CA:1924§V)

44. As a result, those documents would have allowed Dr. Cordero to prove that:

a. the DeLanos committed bankruptcy fraud through the concealment of assets and the false statement of their financial affairs;

b. their motion to disallow his claim was an artifice to disallow the claim and deprive him of standing to keep requesting those documents;

c. their petition (D:23) and Judge Ninfo‟s order of February 7, 2007, discharging their debts (D:508.o) were tendered or procured through fraud that rendered them nullities;

d. as instruments tainted by fraud, neither the petition nor the discharge could affect Dr. Cordero‟s claim against the DeLanos or provide a basis for Judge Ninfo‟s order disallowing it (D:3); and consequently

e. Dr. Cordero can pursue his claim against Mr. DeLano in the pending proceedings in *Pfuntner*, revived by the dismissal of *DeLano* (¶53 below) and that Mr. DeLano is still a party to it and can be found liable to Dr. Cordero.

45. Moreover, those and other documents requested would have shown that Trustees Reiber, Schmitt, and Martini as well as Judges Ninfo, Larimer, and CA2:

a. knew or should have known had they discharged their duties to ascertain the DeLanos‟ petition and the facts of the case that the DeLanos had committed bankruptcy fraud;

b. wrongfully denied Dr. Cordero‟s requests for documents; and

c. protected the DeLanos from exposure in order to protect themselves from being incriminated in turn by Insider Mr. DeLano in having during many of his 39 years as a financing or banking officer supported or tolerated a bankruptcy fraud scheme;

d. the orders entered in the pending proceedings in *Pfuntner*, including Judge Ninfo‟s order of December 23, 2002, dismissing Dr. Cordero‟s cross-claims against Trustee Kenneth Gordon (Add:536 entry 30) were intended to afford the same protection to the insiders and co-schemers and further the same scheme and as such they are nullities that must be vacated and those cross-claims must be reinstated;

e. *Pfuntner* must be started anew after removing it to a court not under the control of the schemers and it must be tried to a jury.

46. It follows that the denial by this Court of the petition for injunctive relief in the form of an order for those documents to be produced will substantially and likely irreparably prejudice Dr. Cordero in asserting his claims against the DeLanos, Mr. DeLano, and Trustee Gordon, in

participating in the pending proceedings in *Pfuntner* that are revived by the dismissal of *DeLano*, and in writing his brief in support of his petition for a writ of certiorari and, if granted, in writing the merits brief.

2. The lack of the requested documents will prejudice the Court in deciding the upcoming petition for a writ of certiorari and, if granted, the case in chief, and in safe-guarding the integrity of judicial process by identifying and eliminating the bankruptcy fraud scheme that has corrupted it as part of coordinated wrongdoing in the courts below

47. By the same token, the lack of those documents will prejudice this Court because they are "necessary [and] appropriate in aid of…its jurisdiction", as provided under the All Writs Act (US:2251§II above), both to administer justice in accordance with due process of law to the litigants before it and to exercise its own supervisory function over the integrity of judicial process conducted by the courts subject to its review. If it does not order production of those documents, it would be lending its support to the cover-up mounted by the courts below to avoid incrimination in, and protect, a bankruptcy fraud scheme.

48. In deciding whether to order those documents produced, the Court should consider that the appellate courts below, that is, CA2 and District Judge Larimer, did not deny or protest Dr. Cordero‟s assertion of the existence of a bankruptcy fraud scheme, or dispute the evidence that he presented that points to such existence. As a matter of fact, they did not even use the terms fraud or scheme in their summary orders even though the issues presented to them for adjudication as well as the supporting briefs and motions unambiguously made of the bankruptcy fraud scheme and its cover up the factual source of both the controversy that they were called upon to resolve and the cause of impairment of the judicial integrity that they have the duty to safeguard.

49. What is more, neither CA2 nor Judge Larimer showed even an awareness that the issues

presented to them include two concerning the lawfulness of a district court rule and the constitutionality of a law. Those issues could not have been disposed of by the disposition of the controversy between the parties to this case. They continue to affect every other litigant and non-litigant in that district and the Second Circuit as well as in the nation, respectively. Those two issues are the following:

> c) Whether WDNY Local Rule of Civil Procedure 5.1(h) (Add:633), which requires for filing a claim under RICO, 18 U.S.C. §1961 et seq., such detailed evidence before discovery has even started as to make such filing impossible in practice, is thereby void as inconsistent with the notice pleading and enabling provisions of the FRCivP, as a deprivation of a right of action granted by an act of Congress, and as a subterfuge crafted in self-interest through the abuse of judicial power to prevent the exposure of judicial involvement in a bankruptcy fraud scheme. (CA:1720; Pst:1257¶2c))
>
> d) Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process of law, provides for forum shopping, and denies equal protection under law so that it is unconstitutional and has been abused to terminate the BAP in the Second Circuit and allow local operation of a bankruptcy fraud scheme. (CA:1720; Pst:1257¶2d)

50. Neither of those issues became moot by any order entered below. What is more, it can reasonably be assumed that to keep running the bankruptcy fraud scheme and protect themselves from incrimination in it, the schemers have dealt and can be expected to deal with any case pregnant with those issues by mislabeling them with the term moot or similar ones intended to abort consideration of them before the case ever reached or reaches this Court for adjudication. By so doing, the courts below in practice act in coordination and self-interest to deprive this Court of jurisdiction over those issues to the detriment of both the litigants in those cases and the public at large as well as the integrity of judicial process.
51. Consequently, the requested documents, which will prove that the DeLanos committed bankruptcy fraud as part of a bankruptcy fraud scheme, will enable this Court to determine the

extent to which the existence and running of the scheme led those supporting or tolerating it to give rise to the circumstances addressed by those issues. This shows once more how „necessary those documents are in aid of this Court‟s jurisdiction‟.

III. APPLICATION FOR A STAY

A. Applicable principle of law

28 U.S.C. §2101

> (f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by…a justice of the Supreme Court,…

Rule 23 of the Rules of the Supreme Court of the United States:

> 1. A stay may be granted by a Justice as permitted by law.
> 2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U.S.C. §2101(f).

B. The application to CA2 for a stay of *Pfuntner* was denied

52. CA2 dismissed *DeLano* on February 7, 2008 (CA:2180), and denied the petition of Dr. Cordero for panel rehearing and hearing en banc (CA:2191) last May 9 (CA:2209). On May 23, he moved CA2 to recall and stay the mandate (CA:2211) and on May 24 to prevent further denial of due process and avoid waste of litigants‟ and the court‟s resources by removing and staying the pending proceedings in *Pfuntner* in the Bankruptcy and District Courts, WDNY, or transferring that case to the U.S. District Court in Albany, NY (CA:2222). He received notice on June 16 of CA2‟s denial of both motions (CA:2233).

C. CA2′s order dismissing *DeLano* and the pending proceedings in *Pfuntner* that it revives should be stayed because to allow

those proceedings to be conducted before judges that have shown so much bias, arbitrariness, and abuse of power to protect the bankruptcy fraud scheme and themselves as schemers would be not only to condone their denial of due process, but also to stage a travesty of justice

1. The parties common to *DeLano* and *Pfuntner* are local and insiders of the bankruptcy system, except for Dr. Cordero

53. CA2"s dismissal of *DeLano* revives the case to which it traces its origin, namely, *Pfuntner v. Trustee Gordon et al*,, 02-2230, WBNY (¶36 above), which is pending before Judge Ninfo. The Judge himself linked it to *DeLano* when he disallowed Dr. Cordero"s claim on April 4, 2005 (D:3; Add:853), as did the DeLanos" attorney, Devin L. Palmer, Esq., (Add:711-752). Among the parties to *Pfuntner* are the following:

a. Judge Ninfo, "At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester…From 1970 until 1992 he engaged in private law practice with the Rochester firm of Underberg and Kessler" (http://www.nywb.uscourts.gov/about_judge_ninfo_46.php, Add:636)

b. Mr. DeLano (Add:797);

c. M&T Bank, Mr. DeLano"s employer, (Add:712);

d. Michael J. Beyma, Esq., (Add:531, 532, 778, 784, 811), who represents both Mr. DeLano and M&T Bank; he is a partner in Underberg & Kessler, LLP (http://www.underberg-kessler.com/Attorneys/Detail/?ID=30), the same law firm in which Judge Ninfo was a partner at the time of being appointed by CA2 to his first 14-year term as bankruptcy judge, and "was a founding partner of Boylan, Brown LLP in 1974", that is, the law firm in which the DeLanos" lawyer, Christopher Werner, Esq., is a partner; Mr. Beyma attended both the DeLanos" meeting of creditors on March

8, 2004 (D:79¶3), and the evidentiary hearing of the DeLanos‟ motion to disallow Dr. Cordero‟s claim on March 1, 2005 (Tr:2); he felt so confident in the presence of his old buddy John as to signal answers to Mr. DeLano while the latter was on the witness stand giving testimony under oath in response to Dr. Cordero‟s questions, but Judge Ninfo ludicrously claimed not to have seen him do so just in front of the bench! (Tr.28/13-29/4, 75/8-76/3) Mr. Werner did so too (Tr:141/20-143/16; Pst:1289§f) and felt so confident about how Judge Ninfo, before whom he had taken, according to PACER, 525 cases, would determine at the end of that evidentiary hearing his motion to disallow Dr. Cordero‟s claim against Mr. DeLano that neither he nor Mr. DeLano had read the complaint containing it (Add:785) or the proof of claim (D:142) or even brought a copy of either to the hearing so that in the middle of it Mr. Werner asked Dr. Cordero to lend them his copy! (Tr.49/13-50/25; Pst:1288§e; law firm addresses on page 2291 below)

e. Dr. Cordero, who impleaded Mr. DeLano as a third party defendant (Add:785); it was the DeLanos who in their voluntary bankruptcy petition included Dr. Cordero among their creditors (D:40);

f. David Palmer (D:793§A, 803§B), who borrowed money from M&T for his company,

g. Premier Van Lines, the moving and storage company of Mr. Palmer, who collected fees from Dr. Cordero to store his property even after having abandoned it at the warehouse of Mr. Pfuntner, and whose bankruptcy (*In re Premier Van Lines, Inc.*, 01-20692, WBNY) was handled by Mr. DeLano; Dr. Cordero also impleaded Mr. Palmer, who never answered the summons or otherwise appeared in court, yet Judge Ninfo (Add:397§B, 597§B) and Judge Larimer (Add:401§C) protected him by refusing to grant Dr. Cordero‟s application for default judgment despite the unambiguous provision of FRBkrP 7055 and FRCivP 55 and this indisputably obvious warning in the summons itself, in

bold capital letters across the page:

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

h. Chapter 7 Trustee Kenneth W. Gordon, who according to PACER, had 3,382 cases out of 3,383 before Judge Ninfo as of June 26, 2004 (Add:891§III); no wonder Judge Ninfo summarily dismissed Dr. Cordero‟s cross-claims for defamation and reckless and negligent performance against Trustee Gordon (Add:798§f, 803§C) despite the genuine issues of material facts that they raised (Add:593¶11; CA:2026§2=Dr. Cordero‟s brief in *Premier Van et al*., 03-5023, CA2, 10§2);

i. Assistant U.S. Trustee Schmitt, who allowed Trustee Gordon to accumulate such an unmanageable number of liquidations, as did her supervisor, U.S. Trustee for Region 2, Carolyn S. Schwartz (D:85§A; Add:534 entry no. 19; 570¶19), whose successor, U.S. Trustee Deirdre A. Martini (D:90§VII, 104), did likewise with regard to the 3,909 cases that Trustee Reiber amassed, of which 3,907 of them before Judge Ninfo;

j. Bankruptcy Court Reporter Mary Dianetti, who was a party both in *Pfuntner* and *DeLano* to a coordinated wrongful effort to deprive Dr. Cordero of the transcript of the hearing of Trustee Gordon‟s motion to dismiss Dr. Cordero‟s cross-claims against him (D:395§4; Add:918§II) and the transcript of the evidentiary hearing of the DeLanos‟ motion to disallow in *DeLano* Dr. Cordero‟s claim against Mr. DeLano in *Pfuntner* (Pst:1266§1; CA:1735§B).

54. It follows from this list that the parties common to both *DeLano* and *Pfuntner* are insiders of the bankruptcy system, with the exception of Petitioner Dr. Cordero. If CA2‟s dismissal of *DeLano* is not stayed, he will have to „continue‟ to litigate *Pfuntner*, from the start of discovery (D:409§E; CA;2037§9), before Judge Ninfo and eventually Judge Larimer. Both these judges

have engaged in conduct so consistently to Dr. Cordero‟s detriment, the sole non-local party, who resides in New York City, and who is also the sole pro se party, and to the benefit of the local parties, who are resident in Rochester, NY, and bankruptcy system insiders, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing (CA:1846§II, 2070§D) in furtherance of a bankruptcy fraud scheme. (D:458§V) The conduct of these judges in coordination with the other insiders and co-schemers shows bias and requires their disqualification and the transfer of the case away from all of them. *Liteky v. United States*, 510 U.S. 540, 551, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) (defining bias as a favorable or unfavorable predisposition so extreme as to display clear inability to render fair judgment).

2. The prejudice that the co-scheming insiders already caused Dr. Cordero anticipates the prejudice that they will inflict on him in the absence of a stay because their motive is the same: to avoid incrimination in, and keep running, the bankruptcy fraud scheme

55. The reasonable consequences of having Dr. Cordero litigate before Judges Ninfo and Larimer and the other co-schemers are that they will heap upon him yet more of their bias, arbitrariness (D:355, 385, 454§IV), and contempt for the law of the land of Congress and the facts of the case at hand in order to run things in accordance with their own brand of "local practice" (D:98§II, 358§A) so that they can protect the scheme while avoiding incrimination in it. It follows that those that allow that to happen intend that it should so happen and are responsible for the denial of due process that it entails.

56. For instance, if instead of denying *every single document* that Dr. Cordero requested, as they did in *DeLano* (¶¶7 and 26 above), the schemers allowed discovery in *Pfuntner* in keeping with FRBkrP 7026-7036 and FRCivP 26-36, they would be exposed as having participated in bankruptcy fraud. (¶¶43-45 above) In addition to being found liable to Dr. Cordero, they could

be criminally prosecuted for participation in a racketeering enterprise under RICO, 18 U.S.C. §1961(1)(D), which covers "any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title", and for bankruptcy fraud under 18 U.S.C. §§152-157, 1519, and 3571, which carries a sentence of up to 20 years in prison and devastating fines of up to $500,000. (D:46)

57. To avoid such dire consequences, the judges and the schemers can be reasonably expected:

    a. to deny Dr. Cordero even a constitutional right, as Judge Ninfo did by denying his application for a trial by jury (D:425; Add:741);

    b. to prevent discovery, as Judge Ninfo did in *Pfuntner* by dragging it along for months on end (D:379§3, 409§E);

    c. to prejudge the stakes and any potential recovery, as Judge Ninfo did by grossly discounting the amount of Dr. Cordero‟s claim and doing so without providing any justification whatsoever, in the absence of any opposing party‟s request therefor, and before discovery had even commenced (D:414§5);

    d. to try to wear him down by causing him enormous waste of effort, time, and money as well as emotional distress by raising false hopes, as Judge Ninfo already did in *Pfuntner* by asking Dr. Cordero to make applications that he had every intention to deny on new and untenable grounds (D:238§III, 364§B, 407§§6-7; Add:592§A) and announcing a series of monthly hearings for 7 or 8 months to be held in Rochester and to be attended in person, not by phone, by Dr. Cordero, the only non-local party (D:409§E);

    e. to disregard a dispositive procedural rule, such as the requirement to answer a summons and its penalty as unambiguous and non-discretionary as entry of default judgment (CA:2029§5, 2039§C);

    f. to impose on Dr. Cordero unlawful burdens without citing any authority at all, such as

Judge Ninfo (D:464§I-II) and Judge Larimer (D:394§2, 401§C) did by requiring the conduct of an "inquest" before deciding Dr. Cordero‟s application for default judgment against David Palmer under FRBkrP 7055 and FRCivP 55 and requiring him to travel to Avon, Rochester, to inspect his property (Add:597§B, 609§B) rather than order Mr. Palmer, a local resident, to appear in court to answer why default judgment should not be entered against him;

g. to protect the locals after they have disobeyed their own orders, as Judge Ninfo did to protect Mr. Pfuntner and his attorney, David MacKnight, Esq., after they ignored for months Judge Ninfo‟s discovery order and even failed to show up at the inspection of Dr. Cordero‟s property at Mr. Pfuntner‟s warehouse in Avon, Rochester, on May 19, 2003 (D:404§D; CA:2034§8);

h. to disregard the purpose of „these rules to make the determination of every case and proceeding inexpensive‟ (FRBkrP 1001 and FRCivP 1), as Judge Ninfo did by arbitrarily denying Dr. Cordero applications to appear by phone at hearings so as to make him travel from NY City to Rochester on short notice (D:412§3, 415§6; Add:1062¶66e, 1065, 1066);

i. to disregard evidentiary rules and unlawfully heighten the standard of proof, as Judge Ninfo already did by requiring Dr. Cordero to introduce evidence to prove his motions beyond a reasonable doubt (D:411§2);

j. to change the date of filing of any of Dr. Cordero‟s papers, as Judge Ninfo already did to pretend that he had dismissed it as untimely filed, despite Trustee Gordon‟s admission against legal interest that the paper had been timely filed (CA:2027§3=Dr. Cordero‟s brief in *Premier Van et al.*, 03-5023, CA2, 11§3);

k. to disregard procedural rules in order to impede the introduction in the record of

incriminating evidence, as the bankruptcy clerks did to conceal evidence of biased, arbitrary, and abusive conduct during hearings, by transmitting indisputably incomplete records under FRBkrP 8006 and 8007 (Add:1082§I) to Judge Larimer and the latter accepting them and scheduling Dr. Cordero‟s brief (Add:692, 695, 831, 836, 839) before the court reporter had even had time to reply to his request for the incriminating transcripts, which they did both in *Pfuntner* (Add:1011§A, 1086¶16; CA:1737¶38) and *DeLano* (Add:1007§V; 1084§II; CA:1735§B);

l. to fail to discharge the basic clerical duty of filing papers, as the bankruptcy clerks already did by keeping the application for default judgment in limbo without filing it for more than a month and filing it only after Dr. Cordero inquired about it of Judge Ninfo (CA:2031§6, 2040§D), or not filing at all papers submitted to the Judge for filing (FRBkrP 5005(a)(1)); D:234§II);

m. to fail to transmit papers from one court to another to cause a dismissal of the case, as the district court clerks did by failing to transmit to CA2 Dr. Cordero‟s Redesignation of Items in the Record and Statement of Issues on Appeal (FRAP 6(b)(2)(C)(i); D:416§F);

n. to allow a court reporter to refuse to certify that her transcript would be complete, accurate, or free from tampering influence (Add:867, 869); to disregard the time limit set under FRBkrP 8007(a) for its production; to submit it, not to Dr. Cordero who had paid for it, but rather to Judge Ninfo for him to manipulate when to transmit it to Dr. Cordero (Add:1739¶¶42-43); and to accept transcripts even though of such substandard quality that Judge Ninfo, Mr. DeLano, his attorneys, and Dr. Cordero, despite all being professionals, come across as babbling in Pidgin English, as Court Reporter Mary Dianetti was allowed to do by Judges Ninfo and Larimer (Add:911, 991, 993, 1019);

o. to allow a trustee to submit a shockingly unprofessional and perfunctory report with

gross mistakes, from its title on and its reference to a non-existent "341 Hearing", without dates but with lots of nonsensical scribblings (Add:937-938, 953§I), no signature of the parties supposedly providing its underlying basis (Add:939, 956§A), no content whatsoever evidencing any investigation of the allegation of the DeLanos‟ bankruptcy fraud, yet claimed by Judge Ninfo that Trustee Reiber investigated it and found no fraud (Add:941, 970§C), both of whom were criticized by Dr. Cordero but approved unquestioningly by Judge Larimer (Add:951, 1022);

p. to allow the DeLanos‟ attorney, Mr. Werner, to respond to a question concerning their mortgages raised at the meeting of creditors on February 1, 2005, by submitting printouts of screenshots of electronic records indexing of the Monroe County Clerk‟s office that are totally useless because they have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement in the mortgage of the U.S. Department of Housing and Urban Development (HUD), etc. (D:477, 492). Likewise, Trustees Reiber, Schmitt, and Martini covered up Mr. Werner‟s blatant pretense at a response that concealed the incriminating facts of those mortgages (SApp:1654, D:341-357) and did not answer Dr. Cordero‟s letter to them.

58. A reasonable person informed of these facts can conclude that Judge Ninfo and Judge Larimer – just as the other co-schemers and insiders- have shown bias and prejudice against Dr. Cordero. This Court‟s standard for interpreting and applying the notion of partiality in 28 U.S.C. §455(a), reaffirmed in *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (Rehnquist, C. J.) is applicable here:

> As this Court has stated, what matters under §455(a) "is not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U. S. 540, 548 (1994). This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. See ibid.; *In re Drexel Burnham Lambert Inc*., 861 F. 2d 1307, 1309 (CA2 1988).

59. If the stay is not granted, a second session of the same abuse of power by law-contemptuous Judge Ninfo, Judge Larimer, the trustees, court clerks, other officers of the court, other bankruptcy system insiders, and local parties will irreparably injure outsider Dr. Cordero by causing him to waste additional years litigating in the pending proceedings –Premier went bankrupt in March 2001, *Pfuntner* was commenced in September 2002, followed by the filing of *DeLano* in January 2004-. The co-schemers will make such litigation cost Dr. Cordero an additional enormous amount of money and investment of effort, whose detrimental effect on him will be exacerbated by the additional tremendous emotional distress that they, as people who in practice are above the law, will intentionally cause him with their arrogant and insensitive denial of his rights and disregard for his wellbeing. (D:231§§I-III) They will see to it that the litigation, however protracted, is an exercise in futility because its final outcome in favor of the schemers is predetermined: the pending proceedings in *Pfuntner* will end with the denial of all of Dr. Cordero‟s claims.

D. Whether the balance of equities is in favor of issuing the stay and the order of document production

60. Judge Ninfo and Judge Larimer scarcely ever cite any authority and never engage in legal analysis in their orders. (Judge Ninfo: D:3, cf. Pst:1293.i; D:220, cf. 231, 272, 327, 332, 508.o; Add: 719, 725, 729, 731, 741, 749, 940, 941, 1065, 1094, 1125, 1933; Judge Larimer: Add:692, 831, 839, 991, 1019, 1021, 1092, 1155, 1214, 1501, 1506) Yet, Judge Ninfo had no qualms about requiring Dr. Cordero to engage in more legal research (cf. Pst:1292§h) even after having disregarded all that which Dr. Cordero had presented to him; just as Judge Larimer dismissed with a conclusory “It has no merits” all the extensive and painstaking legal research and writing that Dr. Cordero conducted and submitted to him. (Add:584)

61. In their disregard of the law, these judges can find comfort in the example set by CA2: It denied all of Dr. Cordero‟s motions with a mere "Denied" (CA:1623, 1632, 1633, 1634, 1678, 1679, 1802, 1880, 1185, 2079, 2143, 2186, 2189, 2209, 2210, 232, 2233) and dismissed *DeLano* with a summary invocation of "equitable mootness" (CA:2180)…as if it had been concerned by equity at all rather than by protecting Peer Larimer and Reappointee Ninfo when it merely cited without discussing two cases as its pretended authority for its dismissal while disregarding both their inapplicability to the law and the facts of *DeLano* (¶31 above). Nor did CA2 show any concern for its responsibility to discharge its contractual duty to Dr. Cordero, who paid the $455 filing fee for appellate review service on October 16, 2006 –just as he paid $255 to the District Court on April 11, 2005–, and to the public at large, who bears the cost of all fraud, to ascertain whether the DeLanos‟ inherently suspicious bankruptcy petition was a vehicle for the concealment of assets and the discharge of debts through fraudulent financial statements.

62. After reading their orders, would you feel proud to call them your peers? Would you say that they have appeared impartial and administered justice to the parties, exercised their judicial power to achieve the objectives of the law, or proceeded in good faith to treat Dr. Cordero fairly? Would it be equitable for you not to grant the stay and allow the dismissal of *DeLano* to revive the pending proceedings in *Pfuntner*, knowing that thereby you will be sending Dr. Cordero back to Judge Ninfo, Judge Larimer, and their co-schemers and other insiders, who will inflict upon him even more of their bias, arbitrariness, and contemptuous disregard for the rule of law and the facts in evidence, thus causing him irreparable loss of effort, time, money, and the unconscionable pain inflicted by not only justice denied, but rather justice perverted?

63. Justice will not emerge from the pending *Pfuntner* proceedings by Dr. Cordero citing even more Supreme Court cases and constitutional provisions, and arguing more statutes and rules, for those to whom he would submit his citations and arguments will not even read them, just as their

orders show that they never bother to read what he submitted to them. More law will make no difference to those judges whose sole concern is to ensure their survival and that of their co-schemers so that they may all continue running their bankruptcy fraud scheme. This negates any equitable considerations in denying the stay on behalf of the scheming parties given that the stay provides them precisely with what they want, namely, the means to avoid further litigation that can expose them as participants in the scheme.

64. Moreover, neither the DeLanos nor the other schemers have any more right to avoid producing documents than can incriminate them in a bankruptcy fraud scheme than they have to produce other documents, such as a bankruptcy petition, in order to commit bankruptcy fraud. By contrast, Dr. Cordero had and still has a right to discovery of the documents that were denied him as well as a due process right to them because they will allow him to defend against the disallowance of his claim against the DeLanos and to assert his right to a fair trial in *DeLano* and *Pfuntner* by proving that the orders already entered are null and void as tainted by fraud.

65. The stay and the document production orders work in the reputational interest of this Court and each justice in not being seen as the complicit protectors of their peers, aiding and abetting their effort to obstruct their exposure as bankruptcy fraud schemers by allowing a predetermined *Pfuntner* case to go forward and suppressing documents with incriminating evidence. Rather, the Court and its members should want to appear as impartial and zealous administrators of a system of justice who are determined to apply the rule of law to all relevant facts available under a liberal construction of rules of discovery and evidence aimed at furnishing ample information to decision-makers so that they can reach just and fair decisions. By adopting this attitude they would show their endorsement of J. Brandeis‟ dictum, “Sunshine is the best disinfectant”. It is most effective when the largest number of documents and other sources of evidence cast the brightest light on the case at hand so that its facts of lawful and unlawful conduct can be seen

distinctly and told apart. To discern the presence in *DeLano* and *Pfuntner* of not only the infectious corruptor of fraud on the court as well as fraud by the court, this Court and its justices should apply the principle „When in doubt, disclose". The stay will prevent fraud from contaminating the pending proceedings in *Pfuntner*; the production order will allow the diagnosis of the gravity of the infection by fraud.

66. By ordering the stay and the production of documents, the Court would discharge its duty to safeguard the integrity of judicial process and prevent fraud from further corrupting due process and produce yet more injustice. None of the justices has the authority to pardon its judicial buddies; the Court itself is not entitled to abuse its power to exonerate them from the consequences of their participation in a bankruptcy fraud scheme or, for that matter, in any other form of individual or coordinated wrongdoing. If the Court still asserts that nobody is above the law, it should be seen giving effect to that principle by meeting out to its own "Equal Justice Under Law".

IV. RELIEF REQUESTED

67. Therefore, Dr. Cordero respectfully requests that Circuit Justice Ruth Bader Ginsburg:

    a. stay CA2's order dismissing *DeLano* (CA:2180);

    b. stay all proceedings in *Pfuntner* in Bankruptcy and District Courts revived by the dismissal of *DeLano*;

    c. issue the document production order proposed below;

    d. stay the filing of the petition for a writ of certiorari, due next August 6, until 90 days after the order of production of documents has been complied with and Dr. Cordero has received a copy of all those documents that he can use to write the petition;

    e. in view of the nearness of such due date, inform Dr. Cordero as soon as possible whether such stay of the filing has issued and, if it has not, extend the date of the filing for 45 days

from the date of such notification;

f. in consideration of:

1) the enormous cost for litigating *DeLano* and *Pfuntner* already incurred by Dr. Cordero;

2) the acceptance of 8½" x 11" paper for printing an application such as this;

3) the goal expressed in FRBkrP 1001 and FRCivP 1 that procedural rules "should be construed and administered to secure the…inexpensive determination of every action and proceeding" having been heralded by this Court as one of "the touchstones of federal procedure", *Brown Show Co. v. United States*, 370 U.S. 294, 306, 82 S.Ct. 1502, 1513, 8 L.Ed. 2d 510 (1962);

4) those "simple" Rules serving as reminders that form should not be exalted over substance, *Hall v. Sullivan*, 229 F.R.D. 501, 504 (D.Md. 2005);

5) the privacy concerns protecting the information required for filing a motion to file *in forma pauperis*;

6) the record in *DeLano* running to more than 2,200 pages;

cause leave to be granted for

i) the petition for certiorari and, if granted, the merits brief, to be printed on 8½" x 11" paper in 10 copies; and

ii) the record to be printed in 8½" x 11" paper in 5 copies, accompanied by 10 copies on CDs.

g. in light of the facts surrounding, and the arguments supporting, this application for injunctive relief and a stay, grant Dr. Cordero any other relief that is proper and just.

Dated: June 30, 2008

Dr. Richard Cordero, Esq.

59 Crescent St., Brooklyn, NY 11208 Dr. Richard Cordero, Esq. tel. (718) 827-9521

Materials accompanying this application

1. Proposed document production order, below and also downloadable through http://Judicial-Discipline-Reform.org/SCt_chambers/doc_order_30jun8.pdf

2. Exhibits: a) selected documents printed on paper and bound in a separate volume;

   b) complete record in *DeLano* in the three lower courts, burned on the accompanying CD

Certificate of Service

***In re Dr. Richard Cordero v. David and Mary Ann DeLano*, dkt. no. 06-4780-bk, CA2**

I, Dr. Richard Cordero, Esq., certify that I mailed or e-mailed to the parties listed below a copy of my in-chamber application for injunctive relief and a stay to Supreme Court Justice Ruth Bader Ginsburg.

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1220 U.S. Courthouse
100 State Street
Rochester, NY 14614
tel. (585) 613-4200

The Clerk of Court
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Ms. Mary Dianetti
Bankruptcy Court Reporter
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tel. (585)586-6392

Dated: June 30, 2008
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero, Esq.

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

Blank

Case no.

IN THE

SUPREME COURT OF THE UNITED STATES

Having considered the in-chamber application for injunctive relief and a stay made by Dr. Richard Cordero, Esq., pursuant to 28 U.S.C. §§1651 and 2101 and Rule 23 of the Rules of the Supreme Court of the United States in preparation for a writ of certiorari to the Court of Appeals for the Second Circuit in *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, it is ordered as follows:

A. Persons and entities concerned by this Order

1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), formerly resident at 1262 Shoecraft Road, Webster, NY 14580, and debtors in bankruptcy in
    a. In re David and Mary Ann DeLano, 04-20280, WBNY;
    b. *Cordero v. DeLano*, 05-cv-6190L, WDNY; and
    c. Dr. Richard Cordero v. David and Mary Ann DeLano, 06-4780-bk, CA2, (hereinafter DeLano);
2. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585)427-7225, and any and all members of his staff, including but not limited to, James Weidman, Esq., attorney for Trustee Reiber;
3. Devin L. Palmer, Esq. and Christopher K. Werner, Esq., attorneys for the DeLanos, Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585)232-5300; and any and all members of their law firm;
4. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392;
5. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee,

U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585)263-5812, and any and all members of her staff, including but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker;

6. Ms. Diana G. Adams, U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212)510-0500, and any and all members of their staff;
7. Trustee Kenneth W. Gordon, Gordon & Schall, LLP, 1099 Monroe Ave., Ste. 2, Rochester, NY 14620-1730; tel. (585)244-1070;
8. James Pfuntner, at the address of his attorney, David MacKnight, Esq., or successor, at Lacy, Katzen, Ryen & Mittlemann, LLP, 130 East Main Street, Rochester, NY 14604; tel. (585)454-5650;
9. M&T Bank, 255 East Avenue, Rochester, NY, tel. (800)724-8472;
10. David Palmer, 1829 Middle Road, Rush, NY 14543;
11. David M. Dworkin & Jefferson Henrietta Associates, at the address of their attorney, Karl S. Essler, Esq., Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450, tel. (585) 641-8000; fax (585)641-8080;
12. U.S. Bankruptcy Judge John C. Ninfo, II, and Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585)613-4200, and any and all members of their staff;
13. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, United States District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585) 613-4035, and any and all members of their staff; and
14. Any and all persons or entities that are in possession or know the whereabouts of, or control, the documents or items requested hereinafter.

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

15. Understand a reference to a named person or entity to include any and all members of such person's or entity's staff or firm;
16. Comply with the instructions stated below and complete such compliance within seven days of the issue of this Order unless a different deadline for compliance is stated below;
17. Be held responsible for any non-compliance and subject to the continuing duty to comply with this Order within the day each day after the applicable deadline is missed, under pain of being named the subject of a contempt proceeding under 28 U.S.C. §332(d);
18. Understand 'document' broadly to mean 'an object that holds information or data in any form', whether the form be print, digital, electronic, or otherwise; and the object be any of the following or similar objects:
    a. paper, including any type of graphic or photographic paper, film, and equivalent;
    b. a removable storage device, such as a floppy, CD, DVD, external hard disk, flash, stick, or card memory, electronic memory strip, such as found on plastic cards, and audio or video tape;
    c. fixed storage device, such as an internal hard disk;
    d. an audio or video cassette, such as used in a tape recorder or camcorder.
19. Understand any reference below to a specific type of document to include any other type of document in which the information referred to or derived therefrom, such as through addition, deletion, modification, correction, transformation from one form to another, or rearrangement for inclusion in a database, is available;
20. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document, where 'A or B' shall be understood to mean 'A and B'

where both A and B are available, and 'A and B' shall be understood to mean 'whichever of A or B is available where both are not available:

a. the source or recipient of funds or who made any charge or claim for funds;

b. the time and amount of each such transaction;

c. the description of the goods or service concerned by the transaction;

d. the document closing date;

e. the payment due date;

f. the applicable rates, including but not limited to normal and delinquent rates;

g. the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document;

h. the beneficiary of any payment;

i. the surety, codebtor, or collateral; and

j. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;

21. Certify individually as such person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that such document has not been the subject of any addition, deletion, modification, or correction of any type whatsoever and that it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or certify why such certification cannot be made with respect to any part or the whole of such document and attach such document;

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

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

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

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

think that another person with an adversarial interest would want such production or certificate made or find it of interest in the context of ascertaining whether any person or entity concerned by this Order has committed bankruptcy fraud or any other act punishable under law or there is a bankruptcy fraud scheme involving any such, and/or any other, person or entity; and

24. File with this Court; Dr. Richard Cordero, Esq., Creditor in *DeLano*, 59 Crescent Street, Brooklyn, NY 11028, tel. (718)827-9521; and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

25. Any person or entity concerned by this Order who with respect to any of the following documents

    i) holds such document (hereinafter holder) shall produce a true and correct copy thereof and a certificate;

    ii) controls or knows the certain or likely whereabouts of any such document (hereinafter identifier)

shall certify what document the identifier controls or knows the whereabouts of, and state such whereabouts and the name and address of the known or likely holder of, such document:

a. the audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman,

shall be produced by Trustee Schmitt or her successor, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and as a PDF file on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

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

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

d. the stenographic, audio, or video tapes and any corresponding transcripts of the other proceedings since 2001, including hearings in the courtroom and meetings in chamber or their equivalent, in *In re DeLano*, 04-20280, *Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, *In re Premier Van Lines*, 01-20692, WBNY, whether the court reporter was Reporter Dianetti or somebody else, and the presiding officer was Judge Ninfo or his delegate, representative, or substitute;

e. the documents that Trustee Reiber obtained in connection with DeLano, regardless of the source, up to the date of compliance with this Order, whether such documents relate generally to the DeLanos' bankruptcy petition or particularly to the investigation of whether they have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;

f. the statement reported in DeLano, 04-20280, WBNY, entry 134, to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' debt repayment plan, of which there shall be produced a copy of the written version, if any, of such statement and a transcription of such statement exactly as read;

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

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

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

      (a) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY 14580; and

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

   3) mortgage documents;

   4) loan documents;

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

   6) prize documents, such as lottery and gambling documents;

   7) service documents, wherever in the world such service was, is being, or may be

received or given; and

8) documents concerning the college expenses of each of the DeLanos' children, Jennifer and Michael, including but not limited to tuition, books, transportation, room and board, and any loan extended or grant made by a government or a private entity or a parent or relative for the purpose of such education, regardless of whose name appears on the documents as the loan borrower or grant recipient;

26. The production of documents within the scope of this Order shall be made pursuant to the following timeframes:

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

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

27. The holder of the original of any document within the scope of this Order shall certify that he or she holds such original and acknowledges the duty under this Order to hold it in a secure place, ensure its chain of custody, and produce it upon order of this Court.

28. The Bankruptcy Clerk shall produce certified copies of the orders in *DeLano*, including the following of:

    a. July 26, 2004, for production of some documents by the DeLanos;

    b. August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner v. Gordon et al.*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim had been finally determined;

    c. November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;

d. December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;

e. April 4, 2005, holding Dr. Cordero not to have a claim against Mr. DeLano and to lack standing to participate in any future proceedings in *DeLano*;

f. August 8, 2005, ordering M&T Bank to pay the Trustee from Mr. DeLano's salary;

g. August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons";

h. November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos' debt repayment plan;

i. November 22, 2005, denying Dr. Cordero's motion to revoke the confirmation of the plan;

j. February 7, 2007, discharging the DeLanos after completion of their plan;

k. June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinment of creditors, the closing of the DeLanos' estate, and the release of their employer from the order to pay the Trustee;

l. Bankruptcy Clerk Warren's notice of January 24, 2007, releasing Mr. DeLanos' employer, M&T Bank, from making further payments to Trustee Reiber.

29. The Bankruptcy Clerk shall produce copies of the following documents referred to in the docket of *In re Premier Van Lines*, 01-20692, WBNY, or connected to that case:

a. Documents entered in the docket:

1) the monthly reports of operation for March through June 2001, entered as entries no. 34, 35, 36, and 47;

2) the reports for the following months;

3) the court order closing that case, which is the last but one docket entry, but bears no number;

4) the court order authorizing the payment of a fee to Trustee Gordon and indicating the amount thereof; which is the last docket entry, but bears no number.

b. Documents that are only mentioned in other documents in that case but not entered themselves anywhere:

1) the court order authorizing payment of fees to Trustee Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;

2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;

3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;

4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;

5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;

6) the Final report and account referred to in entry no. 67 and ordered to be filed in entry no. 62.

_____ _____

Date

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

July 24, 2008

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Richard Cordero
v. David DeLano, et al.
Application No. 08A69

Dear Mr. Cordero:

The application for injunctive relief and a stay in the above-entitled case has been presented to Justice Ginsburg, who on July 24, 2008, denied the application.

Sincerely,

William K. Suter, Clerk

by Danny Bickell

Danny Bickell
Staff Attorney

Blank