

May 2, 2005

**VIA MESSENGER AND  
FILED ONLINE**

U.S. Bankruptcy Court  
100 State Street  
Rochester, New York 14614  
Attn: Karen Tacey

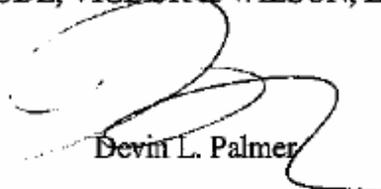
**Re: In re David G. DeLano and Mary Ann DeLano (BK No. 04-20280)  
Designation of Items in the Record on Appeal (filed by Richard Cordero)**

Dear Karen:

As you know we represent the Debtors/Respondents in the above-referenced matter. Please accept this letter as Debtors/Respondents designation (and response to Richard Cordero, as Appellant, designation) of items in the record on appeal pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure. We must first point out, and as the Court is well aware, documents not presented to the bankruptcy court for its determination may not be included in the record on appeal (*see e.g., In re Green*, 252 B.R. 769 (Bankr. 8<sup>th</sup> Cir. 2000)). Judging from the assortment of letters and other miscellaneous documents relating to the general bankruptcy of the debtors as designated by Appellant, we have serious reservations regarding not only the legal but factual relevance of these documents. We also object to the Appellant's argumentative description and use of emphasis within this normally neutral designation of the record. That said, we feel the plethora of documents submitted by Appellant does include the necessary items in the record. However, Appellant has failed to include the four exhibits attached to the April 4, 2005 Decision and Order of Judgment Ninfo. Those exhibits, clearly part of the record as an attachment to the decision appealed by Mr. Cordero, are enclosed hereto (and attached under Document No.: 90 of the online Docket). We thank the Court for its courtesy and attention to this matter.

Very truly yours,

BOYLAN, BROWN,  
CODE, VIGDOR & WILSON, LLP

  
Devin L. Palmer

DLP/sjd  
Enclosure  
Cc. Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In Re:

B01-20692

PREMIER VAN LINES, INC.,

Debtor.

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JAMES PFUNTNER,

Plaintiff,

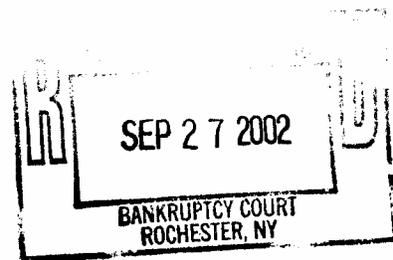
-vs-

Adversary Proceeding  
Case No.: 02-\_\_\_\_\_

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

Defendants.

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

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

1. The filing of this Complaint commences an Adversary Proceeding pursuant to  
Federal Rules of Bankruptcy Procedure 7001.

Pfuntner/1772-B.DDM

Add:712

DeLanos' designation: Complaint in *Pfuntner v. Gordon et al.*, filed on 9/27/03 in Bkr. Ct.

2. Heretofore the above-named Debtor filed a Petition for relief pursuant to the provisions of Chapter 11 of the Bankruptcy Code. An Order for relief was entered.

3. Thereafter, the case was converted to a case under the provisions of Chapter 7 of the Bankruptcy Code. Plaintiff is a creditor of the above-named Debtor and the estate. Plaintiff's the holder of both Chapter 11 and Chapter 7 administrative expense claims arising out of a lease between Plaintiff and Debtor in respect to 2140 Sackett Road, Avon, New York (the "Property").

4. Kenneth Gordon is made a party hereto in his capacity as the duly appointed Trustee in bankruptcy in the above-captioned case.

5. M&T Bank is a national banking association with its principal place of business in the Western District of New York.

6. Richard Cordero, upon information and belief, resides in the Borough of Brooklyn located in the Eastern District of New York.

7. Rochester Americans Hockey Club, Inc. is a New York corporation with a principal place of business at 100 Exchange Boulevard, Rochester, New York in the Western District of New York.

8. Upon information and belief, the Trustee through the bankruptcy estate, M&T Bank, Richard Cordero, Rochester Americans Hockey Club, Inc. and possibly others have, or claim to have, interests in or own property of the estate or in the possession of the estate consisting of three over-the-road trailers, two over-the-road tractors, a straight truck, shipping containers and storage boxes, the contents, if any, of the shipping containers, and miscellaneous scrap, all located in or on the Property.

9. This Court has jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2).

10. Venue is properly place in this Court in which the above-captioned case is pending pursuant to 28 U.S.C. 1409.

#### **STATEMENT OF RELEVANT FACTS**

11. Plaintiff repeats paragraphs 1 through 9, inclusive, as if set forth at length.

12. Before the filing of the Debtor's Petition in reorganization, Plaintiff and Debtor entered into a lease providing for monthly rent of \$2,170 in respect to the Property.

13. The Debtor occupied the Property and stored shipping containers and storage boxes inside the warehouse. The Debtor parked or stored numerous trucks and trailers, as well as items that the Plaintiff now considers to be junk on the Property outside the warehouse.

14. Debtor defaulted in making monthly payments before the filing of its Petition.

15. After the filing of the Petition, Debtor made one payment of \$2,170 to Plaintiff and then defaulted in further payments.

16. From the time of the filing of the Debtor's Petition through August 2002, the Debtor had shipping containers and storage boxes stored inside the Plaintiff's warehouse and five trailers, two tractors, a straight truck, and miscellaneous items parked outside of the warehouse on the Property.

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

18. Upon information and belief, the Trustee's Notice of Sale disclosed that certain of the other trailers would also be sold at the Trustee's scheduled auction.

19. In August 2002, M&T Bank, which claimed it held a security interest in Debtor's storage equipment, upon information and belief, sold certain of the shipping containers stored in Plaintiff's warehouse to a Rochester moving company, which moving company removed the shipping containers, leaving four open-sided storage boxes and four sealed shipping containers.

20. Except for the property specified above as having been removed, the balance of the Debtor's property remains on and in the Property.

21. Upon information and belief, at various times during the summer of 2002, Cordero made numerous demands upon M&T Bank for access to what he claims to be property in which he has an ownership interest and which is stored in the warehouse. Plaintiff notes that the name "Cordero" appears on the outside of one of the shipping containers.

22. Rochester Americans Hockey Club, Inc. claims that it owns certain personal property which the Debtor stored for it in Plaintiff's warehouse.

23. Plaintiff has been advised by Rochester American Hockey Club, Inc. that it has paid rent to the Debtor by checks, which checks were cashed by the Debtor. Plaintiff notes that a shipping container has the hockey club's name on the outside.

24. Plaintiff does not know and has never had access to the contents of any of the shipping containers and has no knowledge of who has a claim in or may claim the contents of any of the shipping containers.

25. M&T Bank continues to assert a security interest in the shipping containers and storage boxes. The Plaintiff does not know whether Defendant Cordero has paid any storage

charge to anyone since the beginning of the Debtor's case or the amount that is due to the Debtor.

26. Upon information and belief, Rochester Americans Hockey Club, Inc. has neglected to pay all of the sums due to the Debtor and Trustee, the amount of which Plaintiff has no knowledge.

27. Heretofore Plaintiff, by his attorneys, requested M&T Bank and the Trustee to agree upon and arrange for the payment of the fair use and value of the Property until the Debtor's property had been removed. The Trustee and M&T Bank have neglected, or have declined, to pay for the fair use and occupancy of the premises in any measure.

28. Plaintiff has no means to determine the ownership, or interests in the property left in or on the Property.

29. Plaintiff has demanded \$2,170 per month as compensation for the use and occupancy of the premises in that the fair and reasonable storage charge for motor vehicles of the nature and description of those owned by the Debtor runs between \$20 and \$50 per vehicle per day depending upon the length of the vehicle. Thus, \$2,170, the stipulated rent, is smaller than the storage charge for each lot or parcel of the Debtor's property and third-party property stored by the Debtor, if charged by the item.

30. Plaintiff believes that he cannot protect himself from possible conflicting and, multiple claims in the Debtor's property in the contents of the shipping containers because he has no means of determining the ownership of the contents of the shipping containers.

## STATEMENT OF CLAIMS

31. The Court should determine the ownership and interests in the Debtor's property located on the Property or stored by the Debtor on the Property.

32. The Court should determine and decree that Plaintiff shall be discharged from any and all liability and be indemnified for defending against adverse claims to the property in issue or any portion thereof together with the reason attorneys fees and other expense for bringing this proceeding. 28 U.S.C. 1335. That the Court determine the fair use and occupancy of the leased premises, determine which of the Defendants are liable for the fair use and occupancy and determine the amount for which each Defendant is liable.

33. To the extent that Plaintiff is entitled to a Chapter 11 administrative expense, that the Trustee be directed to pay such Chapter 11 administrative expense, along with all other Chapter 11 administrative expenses pursuant to Bankruptcy Code §503.

34. To the extent that the Trustee is liable for storage charges after the conversion of the case to Chapter 7, that the Court direct that such storage charges be allowed as an administrative expense of this superseding Chapter 7 case and paid with other Chapter 7 administrative expenses.

35. That the Court vacate the stay of actions to permit Plaintiff to evict the Debtor and those claiming under the Debtor from the premises, to remove the goods left in the Property by third parties, and to collect from those responsible for the fair use and occupancy such sums as a state court may allow therefor.

36. That this Court direct the Trustee to forthwith abandon such property as he does not intend to administer and give Plaintiff notice of the effected of such abandoned property.

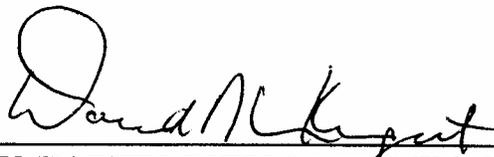
37. That in respect to such property stored by the Debtor on account of its customers, that the Court direct the Trustee to make reasonable efforts to identify those who have an interest in or a claim upon property not belonging to one of the Defendants and if owners or interest holders in such property cannot be identified, that the Trustee treat the property as abandoned property under the New York Abandoned Property Law.

38. That this Court determine the extent of any lien that Plaintiff may have pursuant to the New York Lien Law §§180 through 200 and declare and fix such liens upon the property and give Plaintiff leave to enforce such liens as the Court may find.

39. In the event that the Court determines that Plaintiff had a lien upon the stored motor vehicles, that the Court direct that after a prorata share of the proceeds of sale at the Trustee's auction, that the Trustee forthwith pay the unpaid balance of such lien to Plaintiff before any other use is made of such money.

WHEREFORE, Plaintiff requests the Court grant the leave set forth above, the costs and disbursements of this action, reasonable attorneys' fees for Plaintiff bringing this action, money judgments or administrative expense claims against the estate and each of the other Defendants for such portion of the fair use and occupancy of the leased premises as to the Court seems just and proper, together with interest, and for such other and further relief as to the Court seems just and proper.

DATED: Rochester, New York  
September 20, 2002



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

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**ORDER**

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner") commenced an adversary proceeding against Kenneth W. Gordon, Esq., as trustee ("Gordon"), Richard Cordero ("Cordero"), Rochester Americans Hockey Club, Inc. ("Rochester Hockey") and M&T Bank ("M&T") (the "Adversary Proceeding"); and

**WHEREAS**, the Adversary Proceeding sought to have the Court determine: (1) the rights of the various parties, if any, in property (the "Stored Property") which Premier Van Lines, Inc. (the "Debtor") had stored, pursuant to a lease (the "Lease") with Pfuntner at his property at 2140 Sacket Road, Avon, New York ("Sacket Road"); (2) that Pfuntner had no liability, or that he should otherwise be indemnified for any adverse claims to the Stored Property; (3) that the unpaid monthly rental due under the Lease, or reasonable storage charges for the Stored Property, be paid by the Debtor to Pfuntner as Chapter 11 and 7 administrative expenses; (4) that the Court vacate the automatic stay so as to permit Pfuntner to: (a) evict the Debtor and those claiming under the Debtor from Sacket Road in New York State Court; (b) remove the goods left at Sacket Road by the third parties; and (c) collect from those responsible such fair use and occupancy fees as may be determined by a New York State Court; and (5) various other requests for relief; and

**WHEREAS**, in this non-core proceeding, in November 2002, Cordero filed an Answer and Counterclaim, and Crossclaims against David Palmer ("Palmer"), the principal shareholder of the Debtor, Gordon, Pfuntner, David Dworkin ("Dworkin"), the owner or manager of the Jefferson-Henrietta Warehouse formerly utilized by the Debtor, and David Delano ("Delano"), an officer of M&T Bank, which held a security interest in the personal property assets of the Debtor; and

**WHEREAS**, on December 23, 2002, this Court granted Gordon's Motion to Dismiss Cordero's Crossclaims against him, which was appealed to and affirmed by the United States District Court for the Western District of New York (the "District Court"), and is now

on appeal to the United States Court of Appeals for the Second Circuit; and

**WHEREAS**, on February 4, 2003, for various reasons, including that Cordero had failed to provide satisfactory evidence that would demonstrate that he had incurred damages of \$14,000.00, the Bankruptcy Court recommended to the District Court in this non-core matter that the default judgment requested by Cordero not be entered against Palmer; and

**WHEREAS**, in March 2003, the District Court determined that it was not appropriate to enter a default judgment in favor of Cordero and against Palmer, and referred Cordero's request for a default judgment back to the Bankruptcy Court for a determination of damages; and

**WHEREAS**, a trip by Cordero to Sacket Road did not result in: (1) a satisfactory inspection of all of the property stored by the Debtor at Sacket Road, including the property of Cordero that was at one time stored with the Debtor; (2) the ability of Cordero to fully determine whether there was any damage to his stored property, and, if there was, whether any of the various entities that had stored his property for him over approximately the last ten years might be responsible for any such damage, and if so, which entities; (3) Cordero's ability to remove his stored property; and (4) this matter being satisfactorily resolved by all of the interested parties; and

**WHEREAS**, as a result of: (1) Pfuntner and his representatives having failed to take the necessary steps for Cordero to accomplish at least the first three of the items set forth in the preceding paragraph; and (2) the Court advising Cordero that it would

entertain a motion for reasonable reimbursement in connection with his trip to Sacket Road, in June 2003, Cordero filed a motion for sanctions and compensation to be paid by Pfuntner and his attorney (the "Sanction Motion"); and

**WHEREAS**, the Sanction Motion included: (1) a request for compensation for Cordero at the rate of \$250.00 per hour for the hours he spent on various matters involved in the Adversary Proceeding, including preparing and researching the Sanction Motion; and (2) the reimbursement of undocumented travel expenses, for a total request of \$36,075.00; and

**WHEREAS**, in connection with the Sanction Motion, Cordero's only justification for requesting compensation for his time at \$250.00 per hour is that Pfuntner advised him that this was the amount he paid his attorney, however, there is no proof of that in the record, and there is no other justification in the record for compensating a *pro se* litigant at that rate, so that the compensation issue and the undocumented expenses will be the subject of inquiry at the upcoming hearings; and

**WHEREAS**, the Court, in recently reviewing Cordero's renewed motion for a default judgment against Palmer, has focused on the Affidavit of Service of the Crossclaim, which does not indicate that Palmer was properly personally served by mail in accordance with the Federal Rules of Civil Procedure, so that this service issue will be the subject of inquiry at the upcoming hearings; and

**WHEREAS**, although the Court has allowed Cordero to appear by telephone in connection with a number of pretrial proceedings and motions in this Adversary Proceeding, in the Court's opinion few of

those telephone appearances have resulted in an accurate and comprehensive record; and

**WHEREAS**, the Court believes that setting this Adversary Proceeding down for discrete hearing dates in October and November, when the Court will not have any other matters before it and Cordero can appear in person, will: (1) afford the interested parties a sufficient amount of time to meet and negotiate to determine whether this matter, which should be able to be settled, can be settled without the need for further hearings and proceedings; (2) complete any discovery which they believe may be required; (3) afford Cordero, who has represented himself *pro se* in this Adversary Proceeding, the opportunity to consult with an attorney: (a) to discuss substantive legal, factual and other relevant matters involved in the Adversary Proceeding; and (b) to advise him how to properly prepare and present evidence at the upcoming hearings should Cordero continue to elect not to be represented by counsel; (4) afford the parties sufficient time to finally complete an inspection of the Stored Property at Sacket Road, and attempt to assess: (a) the ownership of the Property; (b) any damages to the Property; and (c) whether any parties to the Adversary Proceeding are responsible for any such damage; and (5) afford the Court the opportunity to focus more fully on this non-core Adversary Proceeding so that at the discreet hearings it can make the necessary findings, conclusions and rulings, based upon a full and complete record, that will finalize the matter; and, therefore,

For the above reasons, and in order to: (1) ensure that there is a full and complete record created in this Adversary Proceeding; and (2) ensure that the Court can effectively manage the numerous issues that have been raised and assist the parties in concluding

the matter, this matter, and all related hearings, motions and proceedings, are set down for a discrete hearing at 9:30 a.m. in the Rochester Courtroom on October 16, 2003, at which time the Court will address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward, and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court, and if necessary for further hearings on November 14, 2003 at 9:30 a.m. in the Rochester Courtroom.

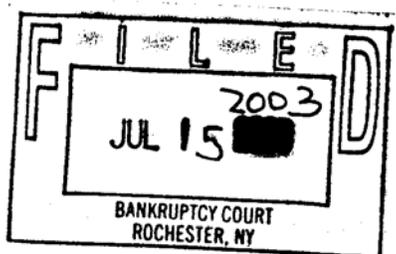
SO ORDERED.

DATED: July 15, 2003



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



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**ORDER DISPOSING OF CAUSES OF  
ACTION**

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner"), as plaintiff, filed an Interpleader Complaint to determine certain rights in property and for other relief, a copy of which is attached, (the "Complaint"); and

Order Disposing of Causes of Action (con't)

**WHEREAS**, on October 16, 2003, after the Court overruled the objection of Richard Cordero ("Cordero"), a defendant and third-party plaintiff, to the holding of any hearings on the claims set forth in the Complaint; and

**WHEREAS**, after having heard Cordero, David D. MacKnight, Esq., on behalf of James Pfuntner, Karl S. Essler, Esq., on behalf of David Dworkin and Jefferson Henrietta Associates, and Michael J. Beyma, Esq., on behalf of M&T Bank and David Delano, and after due deliberation, it is hereby

**ORDERED**, that:

1. In connection with the claims set forth in Paragraph 31 of the Complaint, the Court determines that the property set forth at Paragraph 8 (the "Property") of the Complaint, which is or has been stored by Premier Van Lines, Inc. (the "Debtor") at 2140 Sacket Road, Avon, New York ("Sacket Road"), is owned by the Debtor, except for the contents of any property stored for customers in the storage boxes or containers, including two (2) containers which are identified with Cordero's name, because:

A. the Chapter 7 Trustee, Kenneth W. Gordon (the "Trustee"), pursuant to a September 26, 2002 Notice, abandoned any interest in the Property, as confirmed by his October 9, 2002 Answer to the Complaint; and

B. M&T Bank ("M&T"), which had a perfected security interest in the Property, in its Answer to the Adversary Proceeding filed on November 6, 2002, released and abandoned any security

**Order Disposing of Causes of Action (con't)**

interest it had in the Property and indicated that it claimed no interest in the Property;

2. The Court determined that any property contained within the two storage containers marked with the name of the defendant and third-party plaintiff, Cordero, is owned by Cordero;

3. In connection with the fair use and occupancy claims set forth in Paragraphs 32 and 35 of the Complaint, Pfuntner has waived any right to fair use and occupancy charges from the Debtor, Cordero or any other defendant in connection with the Property;

4. In connection with the claims set forth in Paragraphs 33 and 34 of the Complaint, Pfuntner has waived any right to an allowance of an administrative claim for unpaid storage charges due from the Debtor, either in the Chapter 11 or Chapter 7 case;

5. In connection with the remaining claim set forth in Paragraph 35 of the Complaint, the Court finds that there is no stay under Section 362, or any stay is hereby terminated with regard to eviction actions against:

A. the Debtor, because the Trustee abandoned the estate's interest in all of the Property and Pfuntner has otherwise met his burden under Section 362(d) to show that there is cause for any stay under Section 362 to be terminated, however, the Court finds that there is no stay; and

B. Cordero, since there is no stay under Section 362 or otherwise in the bankruptcy case which would prevent the eviction of Cordero and/or his stored property located at Sacket Road in a proper State Court proceeding;

6. In connection with the claim set forth in Paragraph 36 of the Complaint, Pfuntner has confirmed that the Trustee has abandoned the estate's interest in any of the Property;

7. In connection with the claim set forth at Paragraph 37 of the Complaint, Pfuntner has confirmed that in his opinion the

Order Disposing of Causes of Action (con't)

Trustee has made every reasonable effort to identify the owners of any property stored by the Debtor at Sacket Road;

8. In connection with the claim set forth at Paragraph 38 of the Complaint, with respect to whether Pfuntner has any lien on any of the Property or its contents stored by customers, including Cordero, Pfuntner has withdrawn that claim;

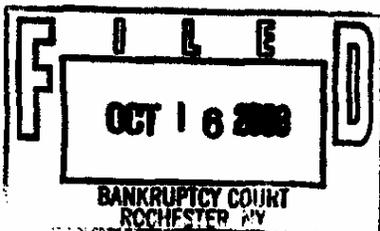
9. In connection with the claim set forth at Paragraph 39 of the Complaint, Pfuntner has withdrawn any claim with respect to the stored vehicle;

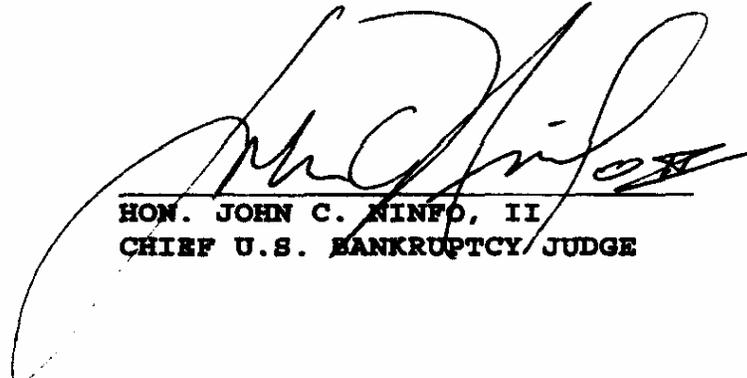
10. In connection with the claim set forth at Paragraph 32 of the Complaint, that the Court determine and decree that Pfuntner is discharged from any and all liability to Cordero, that claim shall be tried in connection with the trial of Cordero's counterclaims, cross-claims, third-party claims and related motions and proceedings in this Adversary Proceeding, however, in the interest of judicial economy, nothing in this Order shall prevent the State Court from hearing this claim and, if appropriate, granting this requested relief to Pfuntner in connection with the aforesaid eviction proceedings;

11. In connection with the claim set forth at Paragraph 32 of the Complaint for Pfuntner to recover reasonable attorney's fees and other expenses, that claim shall be tried in connection with the trial of Cordero's counterclaims, cross-claims, third-party claims and related motions and proceedings in this Adversary Proceeding.

SO ORDERED.

DATED: October 16, 2003



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

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

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RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**ORDER DENYING RECUSAL AND REMOVAL**  
**MOTIONS and OBJECTION OF RICHARD CORDERO**  
**TO PROCEEDING WITH ANY HEARINGS AND A**  
**TRIAL ON OCTOBER 16, 2003**

WHEREAS, on August 11, 2003, Richard Cordero ("Cordero") filed a Notice of Motion and a Motion for the Honorable John C. Ninfo, II to recuse himself from this Adversary Proceeding pursuant to 28

Order denying Recusal and Removal Motions (con't)

U.S.C. § 455(a) (the "Recusal Motion") and to remove this Adversary Proceeding to the District Court for the Northern District of New York pursuant to 28 U.S.C. § 1412 (the "Removal Motion"); and

**WHEREAS**, the Recusal and Removal Motions having been heard by the Court on October 16, 2003; and

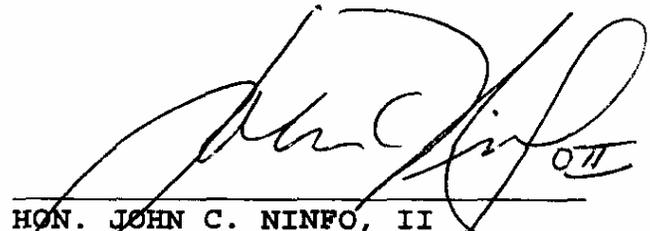
**WHEREAS**, Cordero also objected at the hearing (the "Objection") to the Court proceeding with any hearings or a trial as directed by its July 15, 2003 Order, a copy of which is attached;

**WHEREAS**, after hearing Cordero, David D. MacKnight, Esq., on behalf of James Pfuntner, Karl S. Essler, Esq., on behalf of David Dworkin and Jefferson Henrietta Associates, and Michael J. Beyma, Esq., on behalf of M&T Bank and David Delano, and after due deliberation, it is hereby

**ORDERED**, that the Recusal and Removal Motions are both in all respects denied and the Objection is in all respects overruled for the reasons placed on the record by the Court at the October 16, 2003 hearing, which are as set forth on the attached written decision but as they may have been slightly modified when read into the record.

**SO ORDERED.**

**DATED: October 16, 2003**

  
HON. JOHN C. NINFO, II

**CORDERO ORAL DECISION**

**OCTOBER 16, 2003**

The motions of Dr. Richard Cordero pursuant to 28 U.S.C. § 455(a) for me to recuse myself from this Adversary Proceeding and pursuant to 28 U.S.C. § 1412 to remove the Adversary Proceeding to the District Court for the Northern District of New York are both denied for the following reasons:

1. With regard to the recusal motion, I do not believe that any reasonable person, fully familiar with the facts and circumstances of this Adversary Proceeding, and the related pleadings, proceedings and correspondences, including any statements and decisions made by me, would or could question my impartiality or believe that I was biased against or prejudiced towards Dr. Cordero. Although Dr. Cordero may believe that I am biased against him, based upon various decisions and statements I have made in connection with this Adversary Proceeding, whether orally or in writing, I do not believe that a reasonable person would conclude that any of them demonstrate any actual bias, prejudice or impartiality, or even the appearance of such.

2. With regard to the dismissal of Dr. Cordero's counterclaims against the Chapter 7 Trustee of Premier Van Lines, Kenneth W. Gordon:

A. I properly referred Dr. Cordero's written complaint concerning Trustee Gordon's administration of the Debtor's estate to the Office of the United States Trustee which, I informed Dr. Cordero, has been charged by Congress with the administration of the bankruptcy system and specifically the oversight of panel trustees. It is the Court's role only to decide controversies in connection with the administration of an estate, not to oversee its administration. As I have stated, Congress has given that responsibility to the Office of the United States Trustee.

B. In a report made back to the Court by Kathleen Schmitt of the Office of the U.S. Trustee, she indicated after reviewing the matter that there was no improper administration of

the Debtor's estate. As I have acknowledged to Dr. Cordero in the past, a different Chapter 7 trustee may have voluntarily gone more out of his way and been more proactive than Mr. Gordon was in attempting to locate and assist Dr. Cordero in getting his stored property back, if Dr. Cordero had fully cooperated with him. However, Mr. Gordon's failure to be so voluntarily proactive does not constitute improper administration, as confirmed by the Office of the U.S. Trustee. In deciding the Motion to Dismiss Dr. Cordero's Counterclaim against Mr. Gordon, my review of the pleadings presented and the opinion of Ms. Schmitt resulted in my granting the Motion to Dismiss to the extent that it alleged improper administration.

C. Furthermore, after reading the correspondence in question, and considering all of the facts and circumstances presented, I did not find that anything contained in Mr. Gordon's correspondence to Dr. Cordero was defamatory as a matter of fact or law, and I granted the Motion to Dismiss to that it alleged defamatory statements.

D. Dr. Cordero failed to file a timely Notice of Appeal of the Court's decision to grant Mr. Gordon's Motion to Dismiss Dr. Cordero's Counterclaims, and also failed to timely file a Motion to Extend the Time to File an Appeal of that decision. Those are simple and undisputable facts as confirmed by the Court's docket and an examination of the receipts by the Clerk's Office of the relevant pleadings.

E. It is irrelevant that Mr. Gordon incorrectly assumed that any of Dr. Cordero's pleadings in connection with the Appeal were timely filed based upon when he received a copy or when they were dated. Trustee Gordon later admitted that he never actually checked the Court's records to determine when any of the relevant pleadings were filed, but simply assumed that one or more was timely filed. His incorrect assertion with regard to the those pleadings could not cure the fact that they were not timely filed.

F. This Court's denial of Dr. Cordero's Motion to Extend the Time to File a Notice of Appeal of the decision to dismiss his counterclaims against Mr. Gordon has been affirmed by the District Court and is now on appeal to the United States Court of Appeals for the Second Circuit.

G. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

3. With respect to my recommendation to the District Court that a Default Judgement not be entered against David Palmer, a third-party defendant in one of Dr. Cordero's counterclaims in the Adversary Proceeding, and my subsequent concern regarding improper service:

A. Dr. Cordero's counterclaim against David Palmer is a non-core proceeding, so that I can only make recommendations for any disposition to the District Court.

B. Dr. Cordero at Paragraph 3 of his Recusal Motion admits that he never served David Palmer, but only served "David Stilwell, Esq." (the attorney's name is actually Raymond Stilwell), who he alleges was Palmer's attorney of record. To this Court's knowledge, Mr. Stilwell never agreed to accept service for Mr. Palmer in this Adversary Proceeding, and he never made a general appearance for Mr. Palmer. Mr. Stilwell represented the corporate debtor in the Chapter 11 and 7 cases, not Mr. Palmer. It would have been a conflict of interest for him to have represented both. He may have been the attorney of record for the corporate debtor but he was not the attorney of record for Mr. Palmer. (See Attorney Stilwell's February 11, 2003 letter)

C. In the initial stages of this Adversary Proceeding, I believed that once there was a full and complete inspection of the property stored at Mr. Pfunter's Avon warehouse that most, if not all, of the issues in controversy would be resolved, or could easily be decided at trial,

and that the inspection would demonstrate whether there was any damage or loss to Dr. Cordero's stored property.

D. When Dr. Cordero prior to the inspection of the Avon warehouse stored property applied for a Default Judgment against Palmer, the Court suggested that he wait until the inspection to determine if in fact there was any loss or damage to his property that either Premier Van Lines or Mr. Palmer, individually, might be responsible for.

E. When Dr. Cordero refused to wait to complete the inspection, and insisted that his Default Judgment request be processed, I recommended to the District Court that the Default Judgment not be entered because Dr. Cordero had not demonstrated that there was any actual damage or loss to his stored property that either Premier Van Lines or David Palmer, individually, was responsible for.

F. District Judge David Larimer agreed with my recommendation.

G. It seems that Dr. Cordero does not understand that just because a party may default, the Court is not required to enter relief against that defaulting party if the plaintiff or moving party has not demonstrated a fundamental right to relief.

H. After the failed inspection of the stored property at the Avon warehouse, when it appeared that this Adversary Proceeding and all related matters would most likely have to be fully litigated, since none of the parties were negotiating or moving towards a settlement, I encouraged Dr. Cordero to refile his Motion for a Default Judgment against David Palmer. This was not as an indication that I would grant the Motion, since the failed inspection of the stored property did not result in the development of sufficient facts, circumstances and evidence to demonstrate a fundamental right to a default judgment, since there was no evidence that David Palmer was individually responsible for any loss or damage, or that there was any real loss or damage, but was an attempt by me to move matters towards decision, or in the case of a the default judgment motion,

a recommendation to the District Court. I felt that in connection with any renewed motion for a default judgment perhaps Dr. Cordero would now first take the steps necessary to determine whether his stored property was lost, stolen or damaged.

I. In connection with Dr. Cordero's renewed Motion for Default Judgment, when it became doubtful that any of the issues in this Adversary Proceeding involving Dr. Cordero were going to be settled, the Court focused on all aspects of the request for a default judgment, and specifically on the issue of proper service. At the return date of the renewed motion, I advised Dr. Cordero that since we were going to have to have a hearing on damages, as directed by Judge Larimer, we would also address the matter of adequate service for purposes of any recommendation to the District Court.

J. Although Dr. Cordero continues to be under the impression that he is able to obtain a default judgment against a party for whatever amount he requests, since what he requests is a sum certain, even without demonstrating a fundamental right to relief, and that he has somehow been ambushed by the issue of service, it is Dr. Cordero who continues to be determined, notwithstanding my recommendation to him that he seek legal counsel, to represent himself in these proceedings, which has resulted in his interpreting many of the above facts, circumstances, decisions and statements as he has.

K. Although some courts would find that improper service, and a resulting lack of jurisdiction, are matters for a motion to dismiss in connection with the enforcement of a default judgment, I believe that I must raise the service issue in connection with any further recommendation I make to the District Court on this non-core issue.

L. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced

towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

4. With regard to the failed inspection at the Avon warehouse:

A. As previously stated, I was of the opinion that once there was a full and complete inspection of the property stored at the Avon warehouse that the parties could easily resolve most, if not all, of the issues in controversy, and that the Court could then conduct whatever hearings would be necessary to decide any remaining issues or make its recommendation to the District Court on non-core matters.

B. It was never my intention to become involved in the actual inspection, but only to attempt to facilitate an inspection, since it did not appear that the parties were fully cooperating with each other, nor were they attempting to negotiate a resolution of the issues presented.

C. Admittedly and unfortunately, many of the concerns that Dr. Cordero had expressed prior to traveling to Rochester to make the inspection came true because of what appeared to be a lack of attention paid to the details of the inspection by Mr. Pfuntner and/or his attorney, Mr. MacKnight. It was for that reason that I indicated to Dr. Cordero that he should bring a sanction motion to allow the Court, after it heard all of the facts and circumstances of why the inspection process broke down, to consider whether Pfuntner should be required to compensate Dr. Cordero to some degree for the costs and expenses he incurred in connection with the failed inspection.

D. Dr. Cordero's Motion for Sanctions asking for in excess of \$30,000.00 was inappropriate in that it did not even provide details and receipts as to any actual out-of-pocket expenses, and it requested compensation at \$250.00 an hour for his time in preparing the motion, without any showing that the time spent was reasonable or necessary. Had Dr. Cordero retained an

attorney, he would have known that a 100 page plus motion was not reasonable or necessary, especially if he expected to be compensated for it.

E. As inappropriate as the request was, I did not deny it outright, but indicated that the matter would be set down for a hearing at which the Court would hear evidence with respect to:

i. Mr. Pfunter's and Mr. MacKnight's reasons for not taking the necessary steps to insure that the inspection could and would be fully completed; and

ii. Any actual out-of-pocket expenses and other damages that Dr. Cordero may have suffered in connection with the failed inspection.

F. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

5. With regard to the scheduling of discrete hearing dates for the trial of this Adversary Proceeding and any and all related motions and other proceedings:

A. In the wake of the failed inspection of the stored property at the Avon warehouse, when it became more and more clear that the parties were not working towards a resolution of any of the issues in this Adversary Proceeding, nor even cooperating with each other, I determined that it was time to start to have evidentiary hearings and to decide causes of action, motions and related issues, issue by issue, in concentrated blocks of time, so that decisions and recommendations could be made as efficiently as possible. Therefore, I:

i. Set the matters down for discrete hearings, which for Dr. Cordero's information are not secret hearings, but separate hearings where there are no other matters on the Court's docket so that the Court can give its full attention to the matters.

ii. Set the initial hearings and trials down for October and November, in order to afford the parties an opportunity to complete any required discovery, attempt one last time to settle any of the issues presented, and to afford Dr. Cordero time to consult with an attorney and obtain legal representation, if he chose to (Dr. Cordero has chosen not be represented by counsel, notwithstanding the Court's recommendation.)

iii. Indicated to Dr. Cordero that I would not allow him to appear telephonically. Although the Court often allows attorneys and litigants to appear telephonically, it is usually in connection with fairly routine motions and arguments or as follow-ups where the attorney or party resides out-of-town but has previously appeared in connection with the matter, or where there is also local counsel for the party that the attorney appearing telephonically represents. It has been my experience that all of Dr. Cordero's motions are relatively complex because of the extent of his arguments, and that it is difficult for me and the court reporter to hear Dr. Cordero telephonically, because he does have an accent and he tends not to listen to and talks over the Court. I believe that anyone who had been in Court and listened to Dr. Cordero appearing by telephone would agree that it was ineffective, and could fully understand why his presence for any further hearings would be required.

B. Because practice in Bankruptcy Court in Rochester has, like in most bankruptcy courts have, become regional, we generally start our hearings and trials at 9:30 a.m., rather than at an earlier time as many courts do. By starting at 9:30 a.m., attorneys from the Southern Tier, Buffalo and Syracuse can easily travel to Court that morning, and even attorneys from other cities such as New York, Boston and Washington can get early flights from those cities and be in Court by 9:30.

C. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced

towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

D. With respect to Dr. Cordero's allegations that I advised him that he had provide proof beyond a reasonable doubt to meet his burden on any of his motions or counterclaims, that is simply untrue. I advised him that he needed to present evidence to meet his burden of proof and in explaining that concept used criminal cases as an example of burden of proof since from television and the newspapers most individuals are familiar with criminal trials and a prosecutor's burden. Again, Dr. Cordero has elected not to be represented by counsel which has resulted in more than one of his misunderstandings. His misunderstandings do not result in bias, prejudice or impartiality or the appearance of such.

6. With regard to Dr. Cordero's allegations that any of the acts of any of the clerks of the Bankruptcy or District Court in the Western District of New York, Rochester Division, or Judge Larimer or myself or the Court's contract reporter, indicate a pattern of non-coincidental, intentional and coordinated acts from which a reasonable person can infer that they are biased against and prejudiced towards Dr. Cordero, I disagree wholeheartedly. I believe, as I have stated above, that any reasonable person fully familiar with all of the facts, circumstances, events, proceedings, statements, correspondence and decisions made by the clerks and judicial officers of this district in connection with this Adversary Proceeding do not indicate any bias, prejudice or impartiality towards Dr. Cordero, but indicate that all of such clerks and judicial officers and reporters have proceeded properly and in a reasonable manner.

7. With respect to the Motion for Removal to the District Court for the Northern District of New York, such removal would not be in the best interests of or serve the convenience of the parties, would not serve the interest of judicial economy, or otherwise be in the interests of justice. What would be in the best interests of the parties is for this Court to begin its hearings and trials of

the various issues presented in this Adversary Proceeding so that it can decide the core issues and make any necessary recommendations for the determination of the non-core issues by the District Court, which is what we will begin to do after a short recess, at least as to the Plaintiff's claims in the Adversary Proceeding. In connection with these hearings and trial, I am overruling Dr. Cordero's objections to the hearings and trial, except we will discuss his demand for a jury trial in connection with his counterclaims and cross-claims after we try the Plaintiff's claim. I have explained the concept of discrete hearings; the Court's July 15, 2003 Order scheduled the hearings and trial for October so that Dr. Cordero could do any discovery he felt was necessary and appropriate; I have explained that Dr. Cordero would not have a burden of proof of beyond a reasonable doubt in connection with any of his counterclaims; and there is no basis to not have the Court's contract reporter perform her duties in connection with today's hearings and trial.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

DECISION & ORDER  
FINDING A WAIVER  
OF A TRIAL BY JURY

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RICHARD CORDERO,

Third-Party Plaintiff,

vs.

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

Third-party Defendants.

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**BACKGROUND**

On October 16, 2003, the Court began the trial and related hearings in this Adversary Proceeding, as set forth in its July 15, 2003 Order, supplemented by an August 14, 2003 letter (the "October 16 Hearings").

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At the October 16 Hearings, Richard Cordero ("Cordero") asserted that he had a right to a trial by jury of the non-core claims: (1) of the Plaintiff, James Pfuntner ("Pfuntner"), against him; and (2) he had set forth in his cross-claims, counterclaims and third-party claims against Pfuntner, David Palmer ("Palmer"), David Dworkin ("Dworkin"), David Delano ("Delano") and Jefferson Henrietta Associates ("Associates") (collectively, the "Cordero Claims").

During the October 16 Hearing, I advised the parties, including Cordero, that I believed that Cordero may have waived any such right to a trial by jury, because he had failed to comply with the provisions of Rule 38(b) of the Federal Rules of Civil Procedure ("Rule 38"), as made applicable by Rule 9015 of the Rules of Bankruptcy Procedure. I further advised the parties that they should be prepared to argue Cordero's right to a trial by jury and possible waiver after a lunch recess.

At oral argument, Cordero: (1) acknowledged that he had not included a demand for a trial by jury in his November 6, 2002 Answer to Pfuntner's Complaint; (2) acknowledged that he had not included a demand for a trial by jury in his November 18, 2002 third-party complaint and cross-claim or in his November 25, 2002 Amended Answer with Cross-Claim; (3) acknowledged that no other party to the Adversary Proceeding had filed or served a written demand for or consented to a trial by jury of any issue in the Adversary Proceeding; (4) acknowledged that his first written request for a trial by jury was contained in his September 12, 2003 Mandamus Petition to the United States Court of Appeals for the Second Circuit (the "Second Circuit"), which he had renewed in an October 15, 2003 Addendum to his Motion for a Default Judgment

against Palmer filed with this Court; (5) acknowledged that the last responsive pleading filed in connection with the Cordero Claims was the answer of Dworkin filed with the Court on December 30, 2002, but then asserted that, within the meaning and intent of Rule 38(b)(1), since Palmer had defaulted and not answered, and even though Cordero had filed two separate motions for the entry of a default judgment against Palmer, Palmer might at sometime in the future serve an answer, so that the time-frame set forth in Rule 38(b), ten (10) days after the service of the last pleading directed to such issue, had not yet run; (6) asserted that the same ten (10) day time-frame had not yet run because the Bankruptcy Court might require the filing of further pleadings in connection with the Cordero Claims or Pfuntner's remaining claims against him; (7) asserted that, as set forth in Rule 38(a), his right to a trial by jury was inviolate, and, notwithstanding the specific provisions of Rule 38(b) and Rule 38(d), it could not be deemed to be waived; (8) asserted that he had not demanded a trial by jury of any relevant issues prior to September 2003 because it wasn't until that time that he was certain that U.S. Bankruptcy Judge John C. Ninfo, II was biased against him, prejudiced toward him, and unable to be impartial in deciding or making recommendations to the District Court in connection with the issues involving Cordero in the Adversary Proceeding, so he then realized that he needed a trial by jury to insure an impartial result; (9) asserted that the Court should find that his failure to comply with the provisions of Rule 38(b) was harmless error, within the meaning and intent of Rule 9005 of the Rules of Bankruptcy Procedure; and (10) asserted that because his failure to comply with the provisions of Rule 38(b) was the result of excusable neglect, in accordance with Rule

9006 of the Rules of Bankruptcy Procedure, the Court should enlarge the ten (10) day period provided for by Rule 38(b) and allow his demand for a trial by jury to be effective.

At oral argument: (1) the attorney for Delano asserted that there was no excusable neglect that would warrant the Court exercising its discretion to extend the time for Cordero to make a written demand for a trial by jury, and that because Cordero had not removed his stored property from Pfuntner's Avon warehouse in fourteen months, he was not acting in good faith in connection with the Adversary Proceeding; and (2) the attorney for Dworkin and Associates asserted that: (a) Dworkin's December 30, 2002 Answer was the pleading from which the ten (10) day period provided for in Rule 38(b) must be measured, especially in view of the fact that Cordero had consistently asserted that Palmer was in default and could not timely interpose an Answer; and (b) the excusable neglect standard under Rule 9006 was never intended to be applicable to a failure to make a timely demand for a trial by jury, and, in fact, there had been no excusable neglect because Cordero, by his own admission, never intended to demand a trial by jury before the expiration of the time-frame provided for by Rule 38(b).

#### DISCUSSION

I find that Cordero has waived his right to a trial by jury of any issue in connection with the Cordero Claims and in connection with any remaining claims that Pfuntner may have against Cordero, and, further, I otherwise decline to exercise my discretion under Rule 39(b) of the Federal Rules of Civil Procedure ("Rule 39") to

order a trial by jury of any such issues, for the following reasons:

1. as set forth in an Order Disposing of Causes of Action, dated October 16, 2003 and entered on October 17, 2003, a copy of which is attached, the only remaining claims of Pfuntner in the Adversary Proceeding (the "Remaining Pfuntner Claims") are the non-core claims set forth in Paragraph 32 of his Complaint, that:

A. the Court determine and decree that Pfuntner is discharged from any and all liability to Cordero; and

B. Pfuntner, in his Interpleader action, recover reasonable attorney's fees and other expenses from the defendants, including Cordero;

2. in accordance with an October 16, 2003 Order Denying Recusal and Removal Motions and Objection of Cordero to proceeding with a trial and any hearings, a copy of which is attached, the Court has:

A. denied Cordero's Recusal Motion;

B. denied Cordero's Removal Motion, that requested that the Adversary Proceeding be removed to the United States District Court for the Northern District of New York; and

C. overruled his various objections to proceeding with a trial and hearings in this Court;

3. Cordero did not include a request for a trial by jury in any of the Cordero Claims when they were filed and served;

4. the Answer Dworkin filed and served on December 30, 2002 was the last pleading addressed to either Pfuntner's Complaint or the Cordero Claims, and, under Rule 38(b), January 9, 2003, ten (10) days after the service of that Answer, was the last date that Cordero could serve a written demand on the parties for a trial by

jury of any of the issues in the Adversary Proceeding, including those set forth in the Cordero Claims;

5. Cordero did not serve any of the parties or the Court with a written demand for a trial by jury on or before January 9, 2003, so that pursuant to Rule 38(d), he has waived a trial by jury of all issues in the Adversary Proceeding, including those set forth in the Cordero Claims;

6. The right to a trial by jury in civil cases is limited by the requirements and provisions of Rules 38(b) and 38(d);

7. Cordero's failure to comply with the requirements of Rule 38(b) is not a harmless error as contemplated under Rule 9005, and that failure, whether he terms it as an omission or otherwise, does affect the substantial rights of the parties;

8. Cordero's failure to comply with the requirements of Rule 38(b) was not the result of excusable neglect, within the meaning and intent of Rule 9006(b)(2), or any cases that have decided issues of excusable neglect, including *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al.*, 507 U.S. 380 (1993) ("Pioneer"), because:

A. by his own admission, Cordero never intended to demand a trial by jury within the time-frame established by Rule 38(b), he simply changed his mind at a later date when he decided that he then wanted a trial by jury;

B. Because Cordero never intended to request a trial by jury within the time-frame established by Rule 38(b), there was no neglect, since there was no failure through carelessness or because of inadvertence, mistake or miscalculation as required by Rule 9006(b) and *Pioneer*; and

C. there is otherwise no basis for me to exercise my discretion in connection with Rule 9006(b) where:

i. the other parties do not wish a trial by jury;  
ii. Cordero has already caused: (a) the other parties to this Adversary Proceeding to expend an inordinate amount of time and expense in connection with these non-core issues; and (b) the Court and the Clerk's Office to expend an inordinate amount of time, while he has made no attempt to negotiate a settlement of these issues; and

iii. it would be unfair to the other parties to burden them with the additional time and costs associated with litigating these issues in a trial by jury where: (a) the issues are not complex and involve property stored ten years ago with an approximate value then of \$14,000.00, and possibly some minor associated costs and expenses; (b) there is no evidence to date that such property has been either lost or substantially damaged; and (c) there is no evidence to date that any of the Cordero Claims defendants are individually responsible or liable for any possible loss or damage if proved;

9. for the reasons set forth in the preceding subparagraph, I also decline to exercise any discretion under Rule 39(b) to order any of the Remaining Pfuntner Claims or the Cordero Claims to be tried by a jury.

#### CONCLUSION

Cordero has waived a trial by jury of any of the issues remaining in this Adversary Proceeding, including issues set forth in the Cordero Claims. Cordero's requests that the Court extend

BK. NO. 01-20692

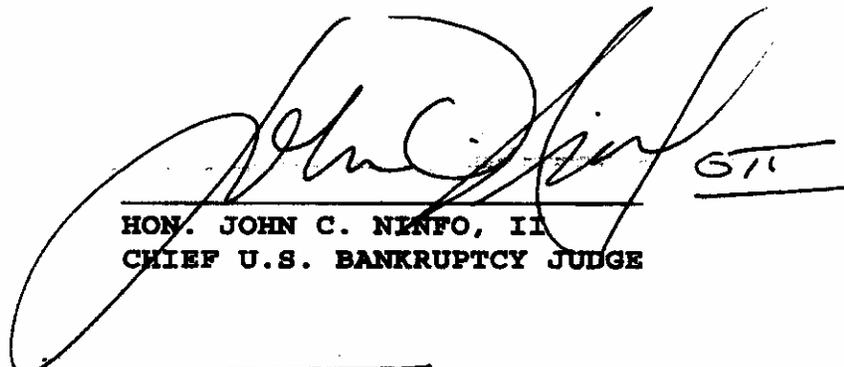
AP. NO. 02-2230

his time to serve a demand for a trial by jury pursuant to Rule 9006, and to find his failure to be harmless error under Rule 9005, are denied. This Court declines to exercise any discretion under Rule 39 to otherwise order a trial by jury of the remaining issues in this Adversary Proceeding.

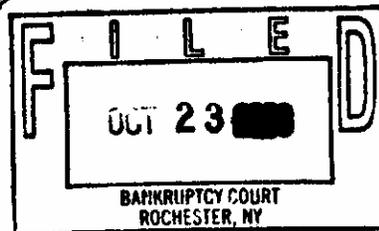
By separate Order, being simultaneously signed with this Decision & Order, a copy of which is attached, the Court has provided for the future prosecution of the remaining issues in this Adversary Proceeding.

SO ORDERED.

DATED: October 23, 2003



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



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

CASE NO. 01-20692

Debtor.

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

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RICHARD CORDERO,

Third-party Plaintiff,

vs.

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

Third-party Defendants.

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**SCHEDULING ORDER IN CONNECTION WITH THE  
REMAINING CLAIMS OF THE PLAINTIFF, JAMES  
PFUNTNER, AND THE CROSS-CLAIMS,  
COUNTERCLAIMS AND THIRD-PARTY CLAIMS OF THE  
THIRD-PARTY PLAINTIFF, RICHARD CORDERO**

WHEREAS, on October 16, 2003 the Court began the trial and related hearings in this Adversary Proceeding, as set forth in its July 15, 2003 Order, supplemented by an August 14, 2003 letter (the "October 16 Hearings"); and

**WHEREAS**, at the October 16 Hearings the Court signed an Order Denying the Recusal and Removal Motions filed by Richard Cordero ("Cordero") and Overruling his Objections to proceeding with a trial and any hearings, a copy of which is attached; and

**WHEREAS**, on October 16, 2003 the Court also signed an Order Disposing of Causes of Action (the "Pfundner Order"), a copy of which is attached, which resolved all of the claims of James Pfuntner ("Pfundner") with the exception of his claims as set forth in Paragraph 32 of his Complaint that: (1) the Court determine and decree that he was discharged from any and all liability to Cordero; and (2) he recover reasonable attorney's fees and expenses in connection with his interpleader action (collectively, the "Remaining Pfuntner Claims"); and

**WHEREAS**, as a result, the only claims to be determined in this Adversary Proceeding are the non-core: (1) Remaining Pfuntner Claims; (2) counterclaims, cross-claims and third-party claims of Cordero (collectively, the "Cordero Claims"); and (3) any related motions and proceedings in connection with the Remaining Pfuntner Claims and Cordero Claims; and

**WHEREAS**, at the October 16 Hearing Cordero asserted that he had a right to a trial by jury of the Remaining Pfuntner Claims and the Cordero Claims, and the Court heard oral argument regarding Cordero's request for a trial by jury; and

**WHEREAS**, pursuant to the attached October 23, 2003 Decision & Order, this Court has determined that Cordero waived any right to a trial by jury and otherwise has refused to exercise its discretion to order such a trial by jury; and

**WHEREAS**, at the October 16 Hearing, the Court received the input of the parties in connection with a scheduling order to be entered to govern the prosecution of the remaining matters in this Adversary Proceeding, all of which are non-core matters, and all of which will result in this Court making recommendations to the United States District Court for the Western District of New York after conducting the necessary trial and related hearings;

**WHEREAS**, on December 23, 2002, this Court entered an Order granting the motion by Kenneth W. Gordon ("Gordon") to dismiss Cordero's cross-claims and other claims against him, and on February 18, 2003, the Court entered an Order denying Cordero's motion to extend the time to file a notice of appeal in connection with the dismissal of his claims against Gordon, which was appealed by Cordero; and

**WHEREAS**, the Orders dismissing Cordero's claims against Gordon and denying his motion to extend his time to appeal that Order, were ruled upon by the United States District Court for the Western District of New York (the "District Court"), and are now on appeal to the United States Court of Appeals for the Second Circuit (the "Second Circuit"); and

**WHEREAS**, Cordero has insisted that in connection with the remaining matters in this Adversary Proceeding the parties comply with the provisions of Rule 26(f) of the Rules of Civil Procedure ("Rule 26"), requiring that the parties have a conference and issue a report to the Court, so that the Court can then issue a scheduling order in accordance with Rule 16(b) of the Federal Rules of Civil Procedure ("Rule 16").

**NOW, THEREFORE**, it is **ORDERED** that:

1. Within ninety-five (95) days after any and all appeals of the Gordon Orders to the Second Circuit or the United States Supreme Court have been decided, and no orders have been issued within that time by those courts or the District Court that would result in this Court not having jurisdiction over the remaining claims and matters in this Adversary Proceeding, Cordero shall take the necessary steps to initiate the conference contemplated by Rule 26(f), which may be conducted telephonically, and he shall be charged with preparing and submitting to the Court, as required by Rule 26(f), the report of the conference, along with a proposed scheduling order.

2. If the proposed scheduling order has been consented to by all of the parties, the Court will enter the same.

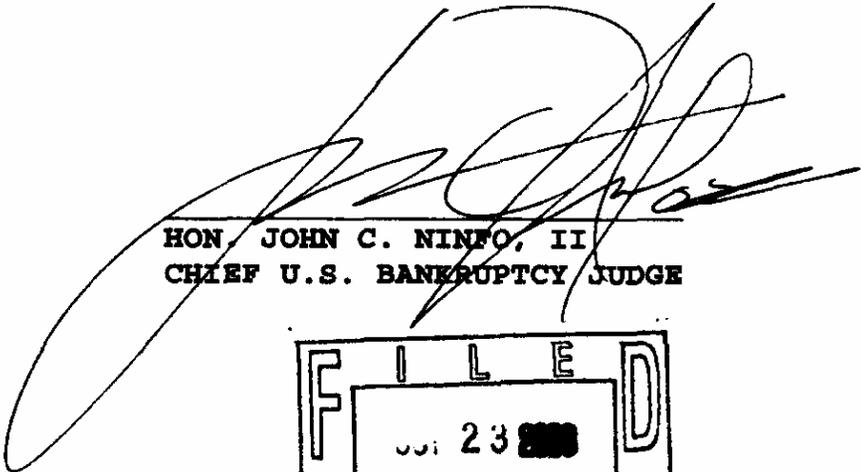
3. In the event that the proposed scheduling order has not been consented to by all of the parties, Cordero shall file it with the Court, as set forth above, and afford any objecting parties ten (10) business days written notice within which they may file written objections to the proposed scheduling order and/or an alternative proposed scheduling order, and thereafter the Court will set a conference to finalize a scheduling order.

4. Nothing in this Order shall prevent any party from conducting voluntary discovery, by interrogatory or deposition.

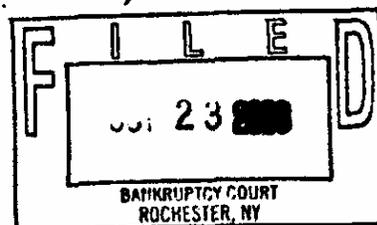
5. Nothing in this Order shall prevent any party from making a motion for summary judgment on any or all of the remaining claims, matters or issues in this Adversary Proceeding.

SO ORDERED.

DATED: October 23, 2003



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



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

---

In Re:  
PREMIER VAN LINES, INC.,

Bankruptcy  
Case No: 01-20692

Debtor

---

JAMES PFUNTNER,

Plaintiff,

-vs-

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

Defendants

---

**CORDERO'S ANSWER  
and  
COUNTERCLAIM**

Adversary Proceeding  
Case No: 02-2230

Dr. Richard Cordero, co-defendant, answers the complaint in the above-captioned adversary proceeding and sets forth his counterclaim as follows:

**ANSWER**

1. The summons is defective under Federal Rules of Bankruptcy Procedure Rule 7004(a), which makes applicable Federal Rules of Civil Procedure Rule 4(a), which provides that, "The summons shall be signed by the clerk, bear the seal of the court..." whereas the summons lacks such seal, having only a date seal. (see the copy attached hereto as exhibit no. 1)
2. Dr. Cordero never requested or knowingly received any service whatsoever from Plaintiff, whether at Plaintiff's warehouse at 2140 Sackett Road, Avon, New York, or anywhere else.
3. Plaintiff never entered into any contract, whether explicit or implicit, with Dr. Cordero, and therefore, lacks privity of contract to sue him or make upon him any claim for payment or compensation on any grounds.

4. On the contrary, Dr. Cordero had every reason to believe that his property was at the warehouse located at 900 Jefferson Road, Rochester, NY, 14623, and owned and/or operated by Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607, (hereinafter the Jefferson-Henrietta warehouse) because representations to that effect were made to him, among others:
  - a) by Mr. David Palmer, the owner of the Debtor, Premier Van Lines;
  - b) by Raymond Stilwell, Esq., attorney for Mr. David Palmer, at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883;
  - c) by Mr. David Dworkin, the manager and/or owner of the Jefferson-Henrietta warehouse, who even billed Dr. Cordero for storing his property in that warehouse;
  - d) by David Delano, Assistant Vice President in Rochester of Manufacturers & Traders Trust Bank (M&T Bank) at 255 East Avenue, Rochester, NY 14604, whose Bank holds a blanket lien against the Debtor's assets, including the storage containers supposedly containing Dr. Cordero's property; and
  - e) by Amber M. Barney, Esq., at Underberg & Kessler, LLP, attorneys for M&T Bank, at 1800 Chase Square, Rochester, NY 14604.
5. When Dr. Cordero was informed that his property was actually not located at the Jefferson-Henrietta warehouse, but rather at the Plaintiff's warehouse in Avon, he contacted the Plaintiff's lawyer, David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604, by letter of August 26, 2002, to let him know that he wanted to remove his property from the Plaintiff's warehouse (see the copy attached hereto).
6. However, the Plaintiff's lawyer not only did not reply to that letter, but also never took or returned any phone calls from Dr. Cordero.
7. Then on September 16, 2002, Dr. Cordero placed his first phone call to the Plaintiff, and told him that he wanted to remove his property from his warehouse. The Plaintiff said that he would talk to his lawyer about it and get back to Dr. Cordero. Plaintiff failed to do so. Dr. Cordero called Plaintiff twice more to let him know that he wanted to remove his

property; again Plaintiff promised to get back to him about it, and on each occasion Plaintiff failed to fulfill his promise.

8. Dr. Cordero wrote to Plaintiff's attorney again on October 7, 2002, (see the copy attached hereto), to let him know again that he wanted to remove his property from the Plaintiff's warehouse and make arrangements to that end. Once again, Plaintiff's attorney did not reply.
9. Likewise, Plaintiff failed to reply to Dr. Cordero's letter of October 17, 2002, (see the copy attached hereto), although he promised to do so upon acknowledging receipt of the letter.
10. Nor did Plaintiff's attorney reply to it, although Dr. Cordero copied him to his October 17 letter to Plaintiff.
11. Plaintiff's and his attorney's failure to even respond to Dr. Cordero's requests for information about his property belies Plaintiff's assertion in paragraph 30 of his Complaint that,

"Plaintiff believes that he cannot protect himself from possible conflicting and, multiple claims in the Debtor's property in the contents of the shipping containers because he has no means of determining the ownership of the contents of the shipping containers."

Plaintiff did have such means, the first one of which was to respond to Dr. Cordero's letters and calls and ask that he show proof of ownership.

12. Plaintiff's reliance on Dr. Cordero's proof of ownership would have been warranted because, contrary to what Plaintiff affirms in paragraph 30 quoted above, there were no multiple claims on Dr. Cordero's property.
13. Far from it, M&T Bank through his attorney Michael Beyma at Underberg & Kessler copied the Plaintiff's attorney to his letter of August 15, 2002, to Dr. Cordero, where he stated that, "M&T Bank claims no lien on your [Dr. Cordero's] assets and M&T Bank consents to the removal of your stored assets;" (see the copy attached hereto).
14. Likewise, the Chapter 7 Trustee, Kenneth Gordon, Esq., copied the Plaintiff's attorney to his letter of September 23, 2002, to Dr. Cordero where he stated that, "I have advised all concerned in this case that you [Dr. Cordero] should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets;" (see the copy attached hereto.)

15. By failing even to reply to Dr. Cordero, let alone give access to his property, Plaintiff deprived Dr. Cordero of his property and did so without any right since Dr. Cordero never asked Plaintiff for warehousing service for his property but did ask him to let him inspect and remove his property.
16. Thereby Plaintiff also unjustifiably further lengthened all the efforts that Dr. Cordero had already made and aggravated the inconvenience and sheer frustration that he had already sustained while searching for the whereabouts of his property.
17. But Plaintiff should not have waited until being contacted by Dr. Cordero or other parties at the latter's instigation. Plaintiff had the duty as well as ample opportunity to mitigate his losses resulting from the default of his lessee, the Debtor in the bankruptcy case, on the lease. To that end, Plaintiff should have exercised the due diligence proper of a reasonable businessman from the moment he realized the repeated non-payment by his lessee.
18. Indeed, in paragraph 14 of the Complaint, Plaintiff states that, "Debtor defaulted in making monthly payment before the filing of its Petition." Moreover, it appears that his lessee, the Debtor, filed for Chapter 11 protection in March 2001. However, it was not until October 2002 when Plaintiff took action to try to recoup his losses on the back of both his lessee's clients and the other defendants in this adversary proceeding.
19. The event that, upon information and belief, appears to have prompted Plaintiff into taking any action is the following: In his search for his property, Dr. Cordero found out that M&T Bank had sold the Debtor's assets stored at Mr. Dworkin's warehouse to Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624.
20. Dr. Cordero also found out from Champion's owner, Mr. Christopher Carter, that contrary to M&T Bank's assertions, his property was not in any of the storage containers picked up at Mr. Dworkin's warehouse. However, among the assets that Mr. Carter picked up were Premier's business files. There Mr. Carter found invoices indicating that in 2000, Premier had stored Dr. Cordero's property in a warehouse in Avon.
21. At Dr. Cordero's instigation, Mr. Carter informed M&T Bank of his find, and the Bank contacted Plaintiff. It appears that only then did Plaintiff see the opportunity to recoup his losses on the backs of the defendants and feel motivated to take any action.

22. Yet, Plaintiff had no right to at his will and as an afterthought turn clients of his own lessee, such as Dr. Cordero, into the surety for the payments that his lessee contracted to pay him under the lease.
23. Plaintiff had already disregarded for at least a year and a half his first remedy, namely to file claims for payments in default in the bankruptcy proceedings, which he apparently failed to do given that neither the Trustee, nor lienholder M&T Bank, nor Mr. Dworkin, nor the Jefferson Henrietta Associates knew that Plaintiff was warehousing lessee's assets and property entrusted to lessee by his clients for storage.
24. Plaintiff's next remedy upon being awakened by some of his lessee's former clients was to give those clients notice and the opportunity to remove their assets and property from his warehouse. But Plaintiff could not force them to have been their clients given that some, such as Dr. Cordero, had neither requested nor wanted any services from Plaintiff. Hence, Plaintiff has no justification for charging or expecting payment from Dr. Cordero. He lost any such justification when, upon realizing his lessee's financial problems, Plaintiff failed to show a reasonable businessman's diligence in order to timely contact and inform Dr. Cordero of the whereabouts of his property and the warehousing service that he, Plaintiff, would begin to offer him in a near future if Dr. Cordero left his property in Plaintiff's warehouse.
25. By doing so nevertheless, Plaintiff failed to mitigate his damages; he must now bear their cost to him and the harm and wrong that he thus did to Dr. Cordero as well as other lessee's clients.

## **STATEMENT OF COUNTERCLAIMS**

26. The jurisdiction of the Court over this Adversary Proceeding and counterclaim is provided by 28 U.S.C. 1334 and 28 U.S.C. 157(b) (2) and (c)(1).
27. Under 28 U.S.C. 1409, the Court is the proper venue for this Adversary Proceeding and counterclaim.
28. All relevant statements in the Answer above are incorporated herein.
29. Plaintiff is in the business of warehousing. He leased storage space to a moving and storage company whom he knew to be in the business of providing storage services for third parties, that is, the company's clients.

30. Thus, either explicitly in the lease or implicitly by entering that type of business relation with a storage company, the Plaintiff warranted that his warehouse and warehousing service were fit and proper for the intended purpose of storing property.
31. Consequently, under that explicit or implicit third-party beneficiary contract, Dr. Cordero claims compensation for any deterioration, loss, or theft of any or all of his property.
32. In any event, if Plaintiff substituted himself for the lessee as the company with which Dr. Cordero contracted to store his property and through which Dr. Cordero insured his property against deterioration, loss, and theft, then Plaintiff also assumed liability for any such insured damage to Dr. Cordero's property.

### **RELIEF**

Therefore, Dr. Cordero respectfully requests that the Court:

33. Grant summary judgment for Dr. Cordero, or in the alternative, dismiss the Complaint against him in all respects;
34. Declare that Plaintiff is barred by laches from asserting any claim against Dr. Cordero;
35. Hold Plaintiff liable for any deterioration, loss, or theft of Dr. Cordero's property;
36. Order Plaintiff to:
- a) compensate Dr. Cordero for denying his right to access, inspect, remove, and enjoy his property;
  - b) pay Dr. Cordero compensation for the deterioration, loss, or theft of his property;
  - c) provide information about the whereabouts and condition of Dr. Cordero's property by answering in writing and detail Dr. Cordero's letter to him and his attorney dated October 17, 2002;
  - d) allow and facilitate access, inspection, and removal of Dr. Cordero's property wherever it may be in Plaintiff's possession or under his control;
37. Award Dr. Cordero any and all costs and expenses, and the reasonable attorney's fees, and any such other and further relief as is just and proper.

*Dr. Richard Cordero*

Dated: November 1, 2002  
Brooklyn, New York

---

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

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

In Re:

PREMIER VAN LINES, INC.,

B01-20692

Debtor.

JAMES PFUNTNER,

Plaintiff,

-vs-

Adversary Proceeding  
Case No.: 02- 2230

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

Defendants.

**SUMMONS IN AN ADVERSARY PROCEEDING**

**YOU ARE SUMMONED** and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint with 35 days.

Address of Clerk: United States Bankruptcy Court  
100 State Street  
Rochester, New York 14614

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney:  
Lacy, Katzen, Ryen & Mittleman, LLP  
David D. MacKnight, Esq.  
130 East Main Street  
Rochester, New York 14604

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

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

PAUL R. WARREN

\_\_\_\_\_  
Clerk of the Bankruptcy Court

10/3/02  
Date

By: \_\_\_\_\_

*Warren Tacy*  
Deputy Clerk

# UNDERBERG & KESSLER LLP

1800 Chase Square  
Rochester, New York 14604

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

1100 Main Place Tower  
Buffalo, New York 14202

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

Writer's Direct Number:

August 15, 2002

Reply to  
Rochester Office

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

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

Dear Mr. Cordero:

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

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

1. M&T Bank has obtained an order to lift the stay and does have the right but not any duty to sell the cabinets of Premier Van Lines. M&T Bank has sold the cabinets but not the contents of storage cabinets located in Rochester. At the present time, M&T Bank does not intend to sell the storage cabinets of Premier Van Lines located at Avon. We understand that the owner of the property and landlord apparently is claiming a self-storage lien against the storage cabinets and you should contact either James Pfuntner or his attorney, David MacKnight, with regard to your contents.
2. The trustee of Premier Van Lines is Kenneth Gordon, Esq. (585-244-1070).
3. With regard to any future storage fees that you may pay, you must deal directly with whoever buys the storage cabinets and/or Mr. Pfuntner.

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

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

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

Dr. Richard Cordero  
August 15, 2002  
Page 2

Very truly yours,



Michael J. Beyma

MJB:ds

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

**Dr. Richard Cordero, Esq.**

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

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

August 26, 2002

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

David MacKnight, Esq. [Lacy & Katzen]  
130 East Main Street  
Rochester, NY 14604

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

Dear Mr. MacKnight,

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

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

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

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

Yours sincerely,

*Dr. Richard Cordero*

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

Gordon & Schaal, LLP  
Attorneys at Law

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

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

September 23, 2002

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

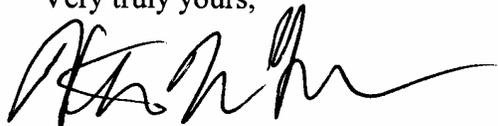
Re: Premier Van Lines, Inc.  
Case No.: 01-20692  
Chapter 7

Dear Mr. Cordero:

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

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

Very truly yours,



Kenneth W. Gordon  
Chapter 7 Trustee

KWG/brs

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

**Dr. Richard Cordero, Esq.**

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

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

October 7, 2002

Please acknowledge receipt at (718) 827-9521.

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

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

Dear Mr. MacKnight,

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

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

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

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

Yours sincerely

*Dr. Richard Cordero*

**Dr. Richard Cordero**

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

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

October 17, 2002

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

**COPY for David MacKnight, Esq.**

Att.: Margie

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

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

Dear Mr. Pfuntner,

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

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

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

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

Yours sincerely

*Dr. Richard Cordero*

cc: David MacKnight, Esq.

# UNDERBERG & KESSLER LLP

1800 Chase Square  
Rochester, New York 14604

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

1100 Main Place Tower  
Buffalo, New York 14202

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

Writer's Direct Number:

August 1, 2002

Reply to  
Rochester Office

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

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

**VIA FEDERAL EXPRESS AND  
VIA FACSIMILE**

Re: Premier Van Lines (Corrected)

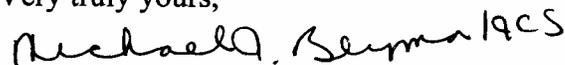
Dear Dr. Cordero:

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

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

We look forward to your written reply.

Very truly yours,



Michael J. Beyma

MJB:jmm

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

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

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In Re:  
PREMIER VAN LINES, INC.,

Chapter 7  
Case No: 01-20692

Debtor

---

JAMES PFUNTER,  
Plaintiff,

-vs-

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

Defendants and cross-defendants

**CORDERO'S  
THIRD PARTY COMPLAINTS  
AND  
CROSSCLAIMS**

Adversary Proceeding  
Case No: 02-2230

RICHARD CORDERO  
Third-party plaintiff

-vs-

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

Third party defendants

---

Dr. Richard Cordero, co-defendant third- and party plaintiff, joins to the above captioned case the following parties as third party-defendants: Mr. David Palmer, Mr. David Dworkin, Jefferson-Henrietta Associates, and Mr. David Delano and brings against them the third-party complaints set forth below. Dr. Cordero also serves co-defendants Kenneth Gordon, Esq. and M&T Bank as cross-defendants and brings against them the following crossclaims:

1. Mr. David Palmer, who owned the Debtor, Premier Van Lines, (hereinafter referred to as Premier) doing business from the warehouse at 900 Jefferson Road, Rochester, NY, 14623, and who represented to Dr. Cordero that his property was stored there, is joined as a third-party defendant.

2. Mr. David Dworkin, owner and/or manager of the warehouse at 900 Jefferson Road, Rochester, NY, 14623, (hereinafter referred to as the Jefferson-Henrietta warehouse), who represented to Dr. Cordero that his property was stored there and billed him therefor, is joined as a third-party defendant.
3. Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607, which is the company that owns or manages the Jefferson-Henrietta warehouse where Dr. Cordero's property was represented to be stored by Mr. Dworkin, its principal or agent, is joined as a third-party defendant.
4. Manufacturers & Traders Trust Bank, at 255 East Avenue, Rochester, NY 14604, (hereinafter referred to as M&T Bank), which holds a blanket lien against the Debtor's assets, including the storage containers supposedly containing Dr. Cordero's property, is served as a cross-defendant.
5. Mr. David Delano, Assistant Vice President at M&T Bank in Rochester, who represented to Dr. Cordero that his property was stored at the Jefferson-Henrietta warehouse, is joined as a third-party defendant.
6. Kenneth Gordon, Esq., the Chapter 7 Trustee, is served as a cross-defendant.
7. The jurisdiction of the Court over this Adversary Proceeding, which relates to Chapter 7 Case No: 01-20692, pending in the U.S. Bankruptcy Court of the Western District of New York, and over the herein stated cross-claims, and third-party complaints is provided by 28 U.S.C. 1334 and 28 U.S.C. 157(b) (2) and (c)(1).
8. Under 28 U.S.C. 1409, the Court is the proper venue for this Adversary Proceeding and cross-claims, and third-party complaint.

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## STATEMENT OF FACTS

9. The parties listed above are the main actors in this almost year-long saga about how principals or agents can bounce forward and kick back a person that lives hundreds of miles away in order to escape responsibility for their own lack of due care and diligence and thereby, with no regard for that person’s property, effort, time, money, and needs, pass on that responsibility to someone else...and the customer?, ‘may he fend for himself!’ Some of the salient bouncings are the following, whose account may not make for a soothing bedtime reading, but the events that they refer to have certainly constituted a nightmarish imbroglio for Dr. Cordero. Enjoy!
  
10. Premier was in the storage business and had received Dr. Cordero’s property for storage.
  
11. Beginning on January 9, 2002, and continuing for more than three months Dr. Cordero communicated with Premier’s owner, Mr. David Palmer, who assured him that his property was safe at the Jefferson-Henrietta warehouse. Yet, Mr. Palmer failed to keep his promise to confirm that in writing. At no time did he mention that Premier was in financial difficulties, let alone in liquidation under Chapter 7. Then he bounced Dr. Cordero to his associate, Mr. David Dworkin, and eventually, even his phone would be disconnected and there would be no way of getting in touch with Mr. Palmer.
  
12. Likewise beginning in January 2002 and continuing for some three months, Dr. Cordero communicated with Mr. Dworkin. He too assured Dr. Cordero that his property was in good condition at the Jefferson-Henrietta warehouse, where Premier rented warehousing space and Mr. Palmer had his office. Just as Mr. Palmer, Mr. Dworkin failed to keep his promise to

state that in a letter and send it to Dr. Cordero. Nor did he mention for months that Premier was in any sort of financial difficulties, let alone that it had gone bankrupt.

13. By contrast, Jefferson Henrietta Associates, Mr. Dworkin's company, sent Dr. Cordero a bill for the storage of his property, including the insurance fee.
14. After Dr. Cordero kept calling Mr. Dworkin and asking him for that written statement of the whereabouts and condition of his property, Mr. Dworkin told him for the first time in April that Premier was in bankruptcy proceedings. By that time all the filing deadlines had passed. What is more, although Premier had filed under Chapter 11 over a year earlier, in March 2001, both Mr. Palmer and Mr. Dworkin kept billing Dr. Cordero for storage for a year thereafter and for months after the conversion of the case to Chapter 7 in December 2001, as if the company were a going concern and without giving notice to Dr. Cordero of any bankruptcy proceedings. Then Mr. Dworkin bounced Dr. Cordero to M&T Bank, a Premier lien holder, without stating the name of any officer in specific.
15. M&T Bank, through Mr. Mike Nowicki in Buffalo and his Vice President Vince Pusateri in Rochester, acknowledged that their Bank held a general lien against Premier's assets, including storage containers, but not against the property of Premier's customers contained in them. Mr. Pusateri referred Dr. Cordero to his Assistant Vice President David Delano, to Trustee Kenneth Gordon, and to Premier's attorney, Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro.
16. Dr. Cordero called Attorney Stilwell, explained the situation, and asked to be put in touch with Mr. Palmer. Attorney Stilwell agreed and said that he would have Mr. Palmer call him and added that if Mr. Palmer did not call him by the end of the week, Dr. Cordero could call back.
17. Mr. Palmer never called, wrote, or otherwise communicated with Dr. Cordero through his attorney or anybody else.
18. Dr. Cordero kept calling Attorney Stilwell, who did not take or return his calls. Eventually he wrote to Dr. Cordero that he could not disclose Mr. Palmer's whereabouts and that, "Premier ceased operations at the end of 2001. Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed

this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about....The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company....”

19. Dr. Cordero had to call Trustee Gordon several times until he first took his call on May 16, 2002. The Trustee said that he did not run Premier’s business; that Mr. Dworkin had taken it over, and told Dr. Cordero to file a proof of claim in the bankruptcy court, whose phone number and case number 01-20692 he gave him. Dr. Cordero requested Trustee Gordon to put in writing the information about the case and the parties that he had already dealt with in his search for his property. The Trustee agreed to do so. Then he bounced Dr. Cordero back to Mr. Dworkin, saying that he would know about Dr. Cordero’s property.
20. Dr. Cordero called the Bankruptcy Court only to learn from Deputy Clerk Karen Tacy that the deadline for filing a proof of claim had already gone by on April 24, 2002, and that Dr. Cordero was not in the mailing matrix.
21. After Trustee Gordon failed to send the promised information and documents, Dr. Cordero had to write to him on May 30, and then follow up with calls, which Trustee Gordon neither took nor returned. It was not until two weeks later that for all communication with Dr. Cordero the Trustee sent him copy of his letter to Mr. Dworkin dated April 16, 2002, and a cover letter to Dr. Cordero simply suggesting “that you retain counsel to investigate what has happened to your property.”
22. Dr. Cordero called Mr. Dworkin, who said that he had received from Trustee Gordon the keys to Mr. Palmer’s office, located in the Jefferson-Henrietta warehouse.
23. Dr. Cordero called M&T Bank Pusateri, who said that he would try to find a list of Premier’s customers, that Mr. Delano was in charge of the Premier case and was working with an appraiser to determine the value of Premier’s assets in order to determine the value of the lien, and that he would have Mr. Delano call Dr. Cordero.
24. Mr. Delano called Dr. Cordero on June 18, 2002, and said that he had called Mr. Dworkin to request a list of all the Premier customers with belongings in the Jefferson-Henrietta warehouse and that Mr. Dworkin had agreed to send it, and that Mr. Dworkin was billing the other Premier customers with belongings in that warehouse. Mr. Delano said that he had seen

crates with the label “Cordero” in the warehouse. He referred Dr. Cordero to M&T Bank’s Attorney Mike Beyma, at Underberg & Kessler, and told Dr. Cordero that he would have his lawyer call him once he had received the documents from Mr. Dworkin.

25. Attorney Amber Barney, at Underberg & Kessler, called Dr. Cordero. She said that the Bank sold at auction storage containers and other assets of Premier to Champion Moving & Storage. Then by letter she bounced Dr. Cordero to Champion at 795 Beehan Road, Rochester, NY 14624.

26. Dr. Cordero called Champion and talked to his manager, Mr. Scott Leonard, who confirmed that Champion had bought Premier’s assets and equipment, including storage containers. He promised to send information thereabout and Champion catalogs. Mr. Leonard never sent anything to Dr. Cordero. He bounced Dr. Cordero to Trustee Gordon.

27. Dr. Cordero called Mr. Delano. He confirmed the sale to Champion of the Premier assets on which M&T Bank had a lien, but that it was still too earlier for Champion to contact Dr. Cordero about his property and that Champion would continue to serve the storage contracts.

28. Dr. Cordero called Champion’s owner, Mr. Christopher Carter, who indicated that he had not received either his property or that of some other Premier customers.

29. Mr. Carter then examined the business files included among the Premier assets and equipment that he had removed from the Jefferson-Henrietta warehouse to Champion’s warehouse. Thereby he discovered that Premier had assets, including storage containers, at Plaintiff’s warehouse located on 2140 Sackett Road, in Avon, NY, and that Dr. Cordero’s property had been stored there some years earlier.

30. When Dr. Cordero next phoned Mr. Carter and learned about it, he requested that Mr. Carter write to Mr. Pusateri of M&T Bank to let him know.

31. M&T Bank launched another investigation. It then found out that Premier had stored at Plaintiff’s warehouse assets and storage containers, including some with a label bearing Dr. Cordero’s name and a lot number. The Bank informed Dr. Cordero of the name and address of Plaintiff Pfuntner’ lawyer, Mr. David MacKnight.

32. Dr. Cordero wrote to Mr. MacKnight, who neither wrote back nor took or returned any of his phone calls.

33. Thus, Dr. Cordero had to contact Plaintiff Pfuntner by phone. Plaintiff expressed his wish to be paid for the storage of his property in his warehouse. On three occasions, Dr. Cordero asked and Plaintiff Pfuntner promised to find out and let him know the number of storage containers in which his property was held and the condition of the property. However, on each occasion Plaintiff failed to provide that information.
34. By contrast, Plaintiff Pfuntner said that he would not release his property because the trustee for Premier, Mr. Gordon, could then sue him. On the last occasion that Dr. Cordero asked him to put that in writing, Plaintiff Pfuntner refused and then hung up on Dr. Cordero.
35. Dr. Cordero called Trustee Gordon, who would not take or return any of his calls. In his last call to his office, on Monday, September 23, Dr. Cordero asked to speak with him. His secretary Brenda put him on hold. When she came back, she said that Mr. Gordon was not taking any more calls concerning Premier. Dr. Cordero asked why and she said that Dr. Cordero could write. He told her that he had copied his letter to Mr. Pfuntner's lawyer to the Trustee, but the latter had not given him any feedback on it. Therefore, Dr. Cordero asked whether Mr. Gordon would reply to any letter from him. Brenda said that she was only a secretary following instructions and hung up on him.
36. Trustee Gordon sent Dr. Cordero a letter dated September 23, in which he accused Dr. Cordero of harassing his staff: "Your continual telephone calls to my office and harassment of my staff must stop immediately." He published his accusation by copying that letter to David D. MacKnight, Esq., Michael Beyma, Esq., and Ray Stilwell, Esq. Other people in his and their offices may have read that letter and its accusation of harassment.
37. Trustee Gordon also wrote there that, "I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again."
38. On September 27, 2002, Dr. Cordero wrote to Trustee Gordon to let him know why his letter of September 23, was unjustified in its content as well as unprofessional in its tone, to request an apology, an assurance that the lines of communication would be opened, and copies of

letters concerning him that the Trustee had sent to other parties. Trustee Gordon never replied to Dr. Cordero.

39. Dr. Cordero wrote to Hon. Judge John C. Ninfo, II, on September 27, to complain about Trustee Gordon's refusal to communicate with him about the course of the proceedings, although the importance of being able to do so had increased upon the discovery of other assets of the Debtor. He also applied for a determination of whether Mr. Gordon's performance in this case complied with his duties as trustee and whether he was fit to continue as such.
40. Judge Ninfo referred that application to Assistant United States Trustee Kathleen Dunivin Schmitt.
41. Trustee Gordon wrote to Judge Ninfo on October 1, 2002, and claimed that Dr. Cordero had made more than 20 phone calls to his staff and that because the same message had been repeated to him, he had been belligerent, demanding, and demeaning to the Trustee's staff, and had become very angry at it. The Trustee also portrayed Dr. Cordero as lacking the capacity or good faith to understand the Trustee's role. His own words were these:
  - a) "I have instructed my staff to advise former customers of Premier Van Lines that items stored with Premier Van Lines were not property of the bankruptcy estate, were not to be administered by me and could be accessed by contacting either the landlord from whom Premier Van Lines rented its facilities or the attorney's for M&T Bank who held a lien on the assets of Premier Van Lines. Mr. Cordero was so advised when he contacted my office in the early spring of 2002. In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them. I spoke myself with Mr. Cordero on at least one occasion to reemphasize the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys....Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff. After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero

again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets....I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application.”

42. Trustee Gordon published that letter of October 1, by sending it Judge Ninfo, and copying it to Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq.; David D. MacKnight, Esq.; Michael Beyma, Esq.; Ray Stilwell, Esq.; and Dr. Cordero. Other people in his and their offices may have read that letter.

### **STATEMENT OF CLAIMS**

43. All averments made above are hereby adopted by reference.

#### **A. David Palmer**

44. Regardless of how Mr. Palmer may have benefited from his application for protection under the bankruptcy laws, he did not thereby acquire immunity from all his liability to all people for any harm that he did to any person. This is particularly so with respect to those people, such as Dr. Cordero, to whom he failed to give notice of, and from whom he concealed, the financial difficulties of his company.

45. Moreover, having invoked the jurisdiction of the Court to benefit from the application of the bankruptcy laws, Mr. Palmer remains under that jurisdiction until the final disposition of all matters related to the company and his management of it for whose benefit he made such application.

46. Mr. Palmer intentionally misrepresented the condition of Premier when in his conversations with Dr. Cordero beginning on January 9, 2002, he concealed that his company, not only had financial difficulties, but was already in liquidation under Chapter 7, yet pretended that it was in a position to store safely his property. Thereby Mr. Palmer deprived Dr. Cordero of the opportunity to take action to protect his property.

47. Mr. Palmer intentionally, recklessly, or negligently misrepresented the whereabouts of Dr. Cordero's property when in his conversations with Dr. Cordero beginning on January 9, 2002, he affirmed that his property was in the Jefferson-Henrietta warehouse, when in fact

either none or only some of his property was there, although he was in a position and had the duty to know where it was since he had collected money to store and insure it.

48. Mr. Palmer failed his duty of due care for Dr. Cordero's property when he intentionally, recklessly, or negligently left all or some of it in Plaintiff Pfuntner's warehouse in Avon; failed to pay Plaintiff under the lease with Plaintiff for warehousing it there; and failed to disclose in the bankruptcy filings and proceedings his liability for that property and his asset in the storage containers holding such property and in his right to collect fees for its storage.
49. Mr. Palmer breached his contract with Dr. Cordero for the safe storage of his property in exchange for the monthly storage fee as well as insurance fee for which he billed and received payment from Dr. Cordero.
50. Mr. Palmer committed fraud if he billed and received payment from Dr. Cordero for storage of, and insurance for, Dr. Cordero's property although he had lost or abandoned such property.
51. Mr. Palmer committed insurance fraud if he billed and received payment from Dr. Cordero to insure his property but failed to secure insurance coverage for it, and all the more so if he was in no position to secure such coverage because he had lost or abandoned such property.
52. By proceeding so fraudulently, recklessly, or negligently, Mr. Palmer has caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

### **B. David Dworkin**

53. Mr. Dworkin rented warehousing and office space in his Jefferson-Henrietta warehouse to Premier since June 2001 or thereabouts. He had such close business relations to Mr. Palmer that the latter represented him as his associate to Dr. Cordero and Mr. Dworkin for months did not correct Dr. Cordero when the latter made statements to him to the effect that Mr.

Dworkin and Mr. Palmer were associates or partners. Thus, Mr. Dworkin must have known the financial condition of Premier and Mr. Palmer.

54. Yet, Mr. Dworkin intentionally concealed and misrepresented that condition when in his conversations with Dr. Cordero beginning in January 2002 and his correspondence to him beginning with his letter of March 1, 2002, he concealed that Premier, not only had financial difficulties, but was already in liquidation under Chapter 7, that Mr. Palmer had taken off, and gave the impression that Premier was a going concern capable of storing his property safely.
55. Likewise, Mr. Dworkin fraudulently, recklessly, or negligently misrepresented the condition of Dr. Cordero's property when in his conversations with Dr. Cordero beginning in January 2002, he affirmed that his property was in the Jefferson-Henrietta warehouse and was safe, when in fact either none or only some of his property was there.
56. Thereby Mr. Dworkin fraudulently avoided prompting Dr. Cordero into taking action to protect his property and preserved his opportunity to step into the shoes of Premier to bill Dr. Cordero for the storage of his property.
57. When Mr. Dworkin accepted the transfer from Premier of the right to bill Dr. Cordero for the storage of his property, as stated in his letter of March 1, 2002, and did bill him therefor on the invoice dated March 7, 2002, Mr. Dworkin became the party to a contract for storage with Dr. Cordero.
58. But if no such contract existed, Mr. Dworkin had no right to bill Dr. Cordero and committed fraud by pretending that he had such right.
59. Mr. Dworkin was fraudulent, reckless, or negligent when he caused his company Jefferson Henrietta Associates to issue an invoice dated March 7, 2002, billing Dr. Cordero for storage of, and insurance for, his property, although he later admitted that he never even knew for sure whether Mr. Palmer had ever moved Dr. Cordero's property into the Jefferson-Henrietta warehouse.
60. Mr. Dworkin committed insurance fraud when on the March 7, 2002, invoice he billed Dr. Cordero for insurance coverage for his property although he later admitted in his letter of April 25, 2002, that Jefferson Henrietta Associates was not carrying any insurance on his property.

61. Mr. Dworkin was reckless or negligent when, after assuming from Premier the right to bill Dr. Cordero for the storage of his property and the obligation to exercise due care for it, he failed to inventory the property that he allowed Champion Moving & Storage to remove from his Jefferson-Henrietta warehouse and did not monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.
62. By proceeding so fraudulently, recklessly, or negligently, Mr. Dworkin has breached his storage contract with Dr. Cordero, caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

### **C. Jefferson Henrietta Associates**

63. When Jefferson Henrietta Associates accepted the transfer from Premier of the right to bill Dr. Cordero for the storage of his property, as stated in the letter of March 1, 2002, and did bill him therefor on the invoice dated March 7, 2002, Jefferson Henrietta Associates became the party to a contract for storage with Dr. Cordero.
64. But if no such contract existed, Jefferson Henrietta Associates had no right to bill Dr. Cordero and committed fraud by pretending that it had such right.
65. Jefferson Henrietta Associates was fraudulent, reckless, or negligent when on its March 7, 2002 invoice it billed Dr. Cordero for storage of, and insurance for, his property, without first ascertaining that the property for which it claimed to be providing storage was in fact in its warehouse or despite its reason to believe that it might never have been there.
66. Jefferson Henrietta Associates committed insurance fraud when on the March 7, 2002, invoice it billed Dr. Cordero for insurance coverage for his property although it later admitted in its letter of April 25, 2002, that it was not carrying any insurance on his property.
67. Jefferson Henrietta Associates was reckless or negligent when, after assuming from Premier the right to bill Dr. Cordero for the storage of his property and the obligation to exercise due

care for it, it failed to inventory the property that it allowed Champion Moving & Storage to remove from its Jefferson-Henrietta warehouse and did not monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

68. By proceeding so fraudulently, recklessly, or negligently, Jefferson Henrietta Associates has breached his storage contract with Dr. Cordero, caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

69. Jefferson Henrietta Associates is the employer of Mr. Dworkin and as the principal is liable for the acts of its agent.

#### **D. David Delano**

70. Mr. Delano was reckless or negligent when on June 18, 2002, he stated to Dr. Cordero that he had seen storage containers bearing the label 'Cordero' in the Jefferson-Henrietta warehouse, if he did not actually see any such containers there.

71. Mr. Delano, as the M&T Bank officer in charge of the Premier case, was reckless or negligent when he failed to inventory Premier's assets and equipment on which his Bank held a lien and which were stored in the Jefferson-Henrietta warehouse, although he knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of M&T Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for their removal to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

72. By proceeding so recklessly or negligently, Mr. Delano has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time,

effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

#### **E. M&T Bank**

73. M&T Bank was reckless or negligent when it failed to inventory Premier's assets and equipment on which it held a lien and which were stored in the Jefferson-Henrietta warehouse, although it knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of the Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for the removal of the container and their property to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.
74. By proceeding so recklessly or negligently, M&T Bank has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.
75. M&T Bank is Mr. Delano's employer and as the principal is liable for the acts of its agent.

#### **F. Trustee Kenneth Gordon**

76. Trustee Gordon failed to exercise due diligence in finding out whether Premier had assets elsewhere than at the Jefferson-Henrietta warehouse, even though he had access and control of Premier's business files, and he could have done exactly what Mr. Carter did after removing to Champion's warehouse Premier's assets and equipment, including its business files, that is, examine its files to determine whether Premier had assets, including storage containers, elsewhere. By so doing, Mr. Carter was able to discover that Premier had such

assets at the Plaintiff's warehouse in Avon. This made it possible to find some such containers labeled "Cordero" and presumably containing property of Dr. Cordero.

77. Trustee Gordon recklessly or negligently abandoned Premier's assets and equipment, including storage containers, to third parties, namely, Mr. Dworkin and Jefferson Henrietta Associates, without even making an inventory of what he was abandoning, although he knew that the containers held property of Premier's customers, who had substantial claims on Premier for the property that they had entrusted to it for storage.

78. Trustee Gordon recklessly or negligently handled Premier's liquidation under Chapter 7 when he failed to give those customers notice, not only that Premier was in liquidation, but also that he was abandoning such assets and equipment, including the containers with their property, to Mr. Dworkin and Jefferson Henrietta Associates, then allowing yet another party, namely, M&T Bank, to sell them to still another party, that is, Champion Moving & Storage, which would even physically remove the containers with their property to Champion's warehouse; failed to ask the customers to consent to such removal; and failed to monitor it. Thereby he deprived Premier customers, such as Dr. Cordero, of the opportunity to protect their property and their claims against Premier.

79. Trustee Gordon failed to exercise good judgment and due diligence by failing to recognize and discharge his duty so to notify such Premier customers, who formed a class of claimants whose notification was required for the proper liquidation of Premier's assets. Indeed, professional experience or common sense would have told Trustee Gordon that such Premier customers would want to have their property back or know its whereabouts. Therefore, they had claims on Premier, but would run into difficulty with Premier creditors, including those that had possession or control of Premier's storage containers and equipment stored elsewhere. The correctness of this elemental reasoning is shown by Plaintiff Pfunter's refusal to release to the defendants Premier's assets in his Avon warehouse or even to allow Premier customers, with whom Plaintiff had never entered into any contract, such as Dr. Cordero, to remove their property stored in Premier's storage containers.

80. By proceeding so recklessly or negligently, Trustee Gordon has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful

search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims. What was he thinking!? Is this how a company is liquidated competently under Chapter 7? To end up in this tangle, what need was there for a trustee?

81. Trustee Gordon defamed Dr. Cordero when in the abovementioned letters of September 23 and October 1, 2002, published to, among others, the peers and professionals named above, and in all likelihood their and the Trustee's staff, the Trustee, negligently or with either knowledge that it was false or reckless disregard for the truth, falsely accused him of harassing his staff, demeaning it, becoming very angry at it, behaving unreasonably in his demands of it, and being irrationally stubborn in making more than 20 phone calls to his staff just to be told the same message.
82. This false accusation stated conduct unbecoming of a professional, damaging to the image of a reasonable and well-respected person, and apt to make a person the subject of ridicule. Hence, it cast Dr. Cordero's general character in a false light and impaired his reputation and standing in the community, particularly among his peers, other professionals, and their staff.
83. Trustee Gordon also impugned Dr. Cordero's professional capacity and competency as well as his good faith when, in the above indicated instances, he stated that Dr. Cordero failed or refused to understand the Trustee's limited role and showed poor understanding of it. This impugment was particularly defamatory and uncalled-for given the facts.
84. Indeed, if Trustee Gordon's role were so unambiguously understandable, there should be no reason:
  - a) for Attorney David MacKnight, who represents Plaintiff Pfuntner, to sue him "to determine the obligations and duties of the Trustee..." as Mr. MacKnight stated he would do in his letter to Dr. Cordero of September 19, 2002, with copy to the Trustee;
  - b) for Mr. Pfuntner both to refuse to release Dr. Cordero's property in Premier's storage containers for fear that the Trustee may sue him and to refer Dr. Cordero to the Trustee;

- c) for the Trustee to write to Mr. Dworkin, in whose warehouse Premier had leased storage and office space, in April 2002, four months after the conversion of the case from Chapter 11 to Chapter 7, to let him know what the Trustee would be or not be renting or controlling and how Mr. Dworkin should handle Premier's customers;
- d) for Mr. Dworkin to deem it necessary to refer Dr. Cordero to the trustee for Premier to find out how to proceed with his respect to his property;
- e) for Attorney Raymond Stilwell, who represents Mr. Palmer, to have engaged in conduct that was then objected to by the Trustee, as shown in Mr. Stillwell's letter of May 30, 2002;
- f) for Attorney Michael Beyma, who represents M&T Bank, to have referred Dr. Cordero to the Trustee;
- g) for Attorneys MacKnight and Beyma to feel compelled to copy the Trustee to letters that they wrote to Dr. Cordero;
- h) for M&T Bank Vice President Vince Pusateri and Assistant Vice President David Delano to have referred Dr. Cordero to Trustee Gordon.

85. Is it because Trustee Gordon understands his role as being so limited that he stated in his October 1 letter that he would "soon be issuing a No Distribution Report"?

86. The fact that those parties referred Dr. Cordero to Trustee Gordon shows also that they deemed the Trustee to have information that Dr. Cordero needed to obtain to pursue the search of his property. Thus, the Trustee failed in his duty as such when he enjoined Dr. Cordero not to call his office any more, thereby denying him information and assistance that he had the duty and was in a position to provide to Dr. Cordero.

87. By casting these aspersions on Dr. Cordero's conduct and character, Trustee Gordon intended to make the Hon. John C. Ninfo, II, to whom Dr. Cordero had applied for a review of the Trustee's performance and fitness, as well as Assistant United States Trustee Kathleen Dunivin Schmitt, in whose province remains the supervision of a Chapter 7 trustee, believe that his own conduct was justified so as to obtain a personal benefit, namely, that no action be taken on Dr. Cordero's application. As the Trustee put it in his October 1 letter, "Please accept this

letter as my response to the application made by Richard Cordero dated September 27, 2002 in the above-referenced matter [Premier Van Lines, Inc., Case No.: 01-20692, Chapter 7] in which he seeks my removal as Trustee....Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application."

88. Since Trustee Gordon is both an officer of the court and an appointee under federal law, he knew that such status imposes upon him the duty to be truthful and act in good faith when he makes statements either to the court or the U.S. Trustee. Likewise, ethical considerations applicable to members of the bar and requiring lawyers to conduct themselves with honesty and candor also impose the same duty on him.

89. The peers and professionals and their staff to whom Trustee Gordon published his defamatory statements, aware of the Trustee's status, could reasonably assume that he was properly discharging that duty. Their assumption would have led them to lend even more credence to the Trustee's statements, thereby aggravating the detrimental impact of his statements on Dr. Cordero's reputation and standing.

90. By means of his defamatory statements, Trustee Gordon intended to lead the Judge and the U.S. Trustee to dismiss Dr. Cordero's application as one not to be taken seriously because submitted by just an irascible, verbally abusive man of limited intelligence and little intellectual honesty that had gotten mad because not able or willing to get it however many times he was told while searching for his things: Trustee Gordon could do nothing for him...and neither could the Court nor the U.S. Trustee. This is outrageous!

## **STATEMENT OF RELIEF**

91. All averments made above are hereby adopted by reference.

92. Dr. Cordero respectfully requests that the Court

### **A. All cross-defendants and third-party defendants**

93. Hold the parties joined herein, namely, Mr. Palmer, Mr. Dworkin, Jefferson Henrietta Associates, M&T Bank, Mr. Delano, and Trustee Gordon, jointly and severally liable to Dr.

Cordero for their failure to establish the whereabouts of, and produce, Dr. Cordero's property;

94. Order those parties to establish the whereabouts of, and produce, Dr. Cordero's property;
95. Order those parties jointly and severally to pay compensation to Dr. Cordero for the deterioration, loss, or theft of his property, whose value is estimated at \$14,000 incremented by the capitalized moving, storage, insurance and related fees and taxes that Dr. Cordero has paid since his property went into storage in August 1993;
96. Order the parties jointly and severally to move at their expense and risk Dr. Cordero's property wherever they may find it to an agreed storage place, just as the property of the other Premier customers was moved free of charge to them to another storage place;
97. Hold each of those parties liable for punitive damages to Dr. Cordero for having engaged in fraudulent, reckless, or negligent conduct that for the best part of a year has caused him an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims;
98. Hold the parties jointly and severally liable for any award or prorata share for which Dr. Cordero may be found liable to Plaintiff Pfuntner;

**B. David Palmer, David Dworkin, and Jefferson Henrietta Associates**

99. Hold Mr. Palmer, Mr. Dworkin, and Jefferson Henrietta Associates liable for breach of contract and order them to pay compensation to Dr. Cordero;

**C. Trustee Kenneth Gordon**

100. Hold Trustee Gordon liable for defamation to Dr. Cordero and/or for having cast him in a false light, and order him to pay compensation in the amount of \$100,000;
101. Order Trustee Gordon to pay Dr. Cordero punitive damages for his malicious and outrageous statements, contained in his September 23 and October 1, 2002, letters, to Judge Ninfo,

hearing the case where he was the trustee, and to Assistant U.S. Trustee Schmitt, supervising his performance as trustee, in order to disparage Dr. Cordero and dissuade them from taking any action on Dr. Cordero's application for a review of Trustee Gordon's performance and fitness as trustee;

102. Order Trustee Gordon to issue a retraction of his defamatory and false light statements as well as an apology and publish them to everybody who may have read or otherwise learned of such statements;

103. Hold that Trustee Gordon failed to recognize his duty to provide to Premier customers in general notice and information necessary to protect their property held in Premier's storage containers, and in particular to Dr. Cordero, since he was repeatedly referred to the Trustee by other parties, and order him to pay compensation to Dr. Cordero for not having provided such notice and information;

104. Hold that Trustee Gordon failed in his basic duty of fairness as a fiduciary by having refused to communicate with Dr. Cordero, explicitly enjoining him not to contact his office again, and directing his staff to receive and accept no more telephone calls from Dr. Cordero regarding this subject, although the Trustee provided other parties with information concerning Dr. Cordero, and order him to pay compensation to Dr. Cordero;

105. Order Trustee Gordon to afford Dr. Cordero access to him and his staff and all the information that a competent and responsible trustee would provide to any party in general and to a party similarly situated as Dr. Cordero, including any information that may help in locating and retrieving his property;

106. Hold that Trustee Gordon failed to perform competently as trustee;

107. Hold that Trustee Gordon is not fit to continue as trustee in this case;

108. Award Dr. Cordero reasonable attorney's fees, court costs, and the expense concomitant with litigating this case hundreds of miles from his home, together with such other relief as may seem just and proper.

Dated: November 21, 2002  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

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

March 1, 2002

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

Re: Storage Space Rochester New York

Dear Richard,

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

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

Very truly yours,  
Jefferson Henrietta Associates



David M. Dworkin

DMD/lg

**JEFFERSON HENRIETTA ASSOCIATES**

415 Park Avenue  
Rochester, New York 14607  
585-244-3575

Date: March 7, 2002

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

Re: Storage Rochester, N.Y.

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

CODE

- 1.Storage Rent
- 2.Late Fee
- 3.Insurance

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

April 25, 2002

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

Re: Storage Space Rochester New York

Dear Richard,

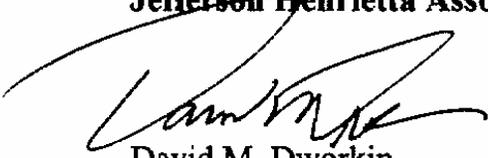
As per our conversation the following shall serve as a recap of our April 22, 2002 telephone conversation. While you indicated to me that you were paying monthly insurance to Premier North American Van Lines our current insurance policy does not provide for such insurance. Accordingly, the following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

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

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

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

Very truly yours,  
**Jefferson Henrietta Associates**



David M. Dworkin

DMD/pb

C

**Gordon & Schaal, LLP**  
**Attorneys at Law**

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

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

April 16, 2002

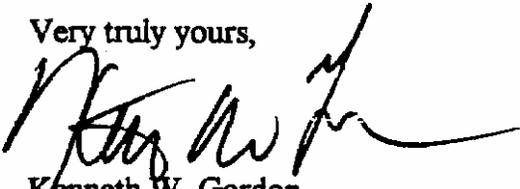
David Dworkin  
415 Park Avenue  
Rochester, New York 14607

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

Dear Mr. Dworkin:

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

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

Very truly yours,  
  
Kenneth W. Gordon

KWG/sem

Gordon & Schaal, LLP  
Attorneys at Law

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

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

June 10, 2002

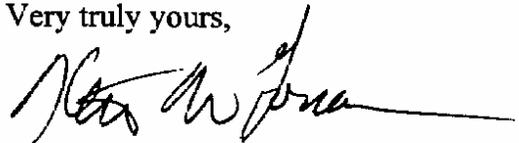
Dr. Richard Cordero, Esq.  
59 Crescent Street  
Brooklyn, New York 11208-1515

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

Dear Dr. Cordero:

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

Very truly yours,



Kenneth W. Gordon  
Chapter 7 Trustee

KWG/sem  
Enclosure

**ADAIR, KAUL, MURPHY, AXELROD & SANTORO, LLP**  
**ATTORNEYS AND COUNSELORS AT LAW**

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

Please reply to:  
 Rochester

May 30, 2002

Dr. Richard Cordero  
 59 Crescent Street  
 Brooklyn, NY 11208

VIA FACSIMILE 718/827-9521

Re: Premier Van Lines, Inc.

Dear Dr. Cordero:

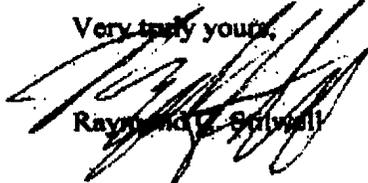
I am in receipt of your May 21 letter and am aware of additional attempts by you to contact this office. While I appreciate your frustration with the way the "system" has failed you in this case, I regret that I am unable to be of either legal or practical assistance to you in trying to solve your problem.

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

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

You have asked me to attend to your inquiries with a sense of professional responsibility. That is exactly what I am doing. I have an obligation to avoid conflicts of interest, which prevent me from offering you any form of legal advice other than to advise you to seek your own independent counsel. I also have an obligation to maintain the confidences of our own client, which precludes me from putting you in direct contact with Mr. Palmer or assisting in your efforts to do so without his consent. Within these bounds, I have provided you with every permissible courtesy, but I cannot permit continued repeated contacts- particularly to our office staff- which are directed at obtaining things from us which we cannot give you.

Very truly yours,

  
 Raymond C. Stilwell

RCS\

Buffalo Office: The Law Center, 17 Beresford Court, Williamsville, NY 14221 • Phone (716)634-8307 • Fax (716)638-0716

# UNDERBERG & KESSLER LLP

1800 Chase Square  
Rochester, New York 14604

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

1100 Main Place Tower  
Buffalo, New York 14202

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

Writer's Direct Number:

August 28, 2002

Reply to  
Rochester Office

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

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

Dear Dr. Cordero:

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

Very truly yours,



Michael J. Beyma

MJB:ds

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

# Lacy, Katzen, Ryen & Mittleman, LLP

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

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

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

HERBERT W. LACY  
(1920 - 1989)

September 19, 2002

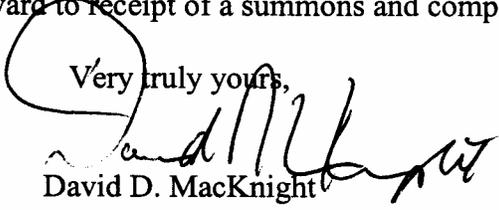
Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, New York 11208-1515

Re: Stored Property

Dear Dr. Cordero:

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

Very truly yours,

  
David D. MacKnight

DDM/cc  
Cc: Trustee  
Michael Beyma, Esq.

Gordon & Schaal, LLP  
Attorneys at Law

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

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

September 23, 2002

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

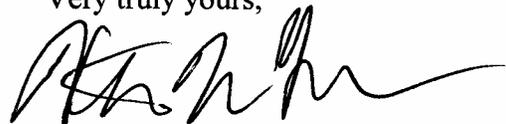
Re: Premier Van Lines, Inc.  
Case No.: 01-20692  
Chapter 7

Dear Mr. Cordero:

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

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

Very truly yours,



Kenneth W. Gordon  
Chapter 7 Trustee

KWG/brs

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

Gordon & Schaal, LLP  
Attorneys at Law

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

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

October 1, 2002

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

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

Dear Judge Ninfo:

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

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

Hon. John C. Ninfo, II  
October 1, 2002  
page 2

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

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

Respectfully submitted,



Kenneth W. Gordon  
Chapter 7 Trustee

KWG/brs  
Enclosure

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



**U.S. Department of Justice**

*Office of the United States Trustee  
Western District of New York*

100 State Street, Suite 609  
Rochester, New York

(585) 263-5706  
FAX (585) 263-5862

October 8, 2002

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

Re: Premier Van Lines

Dear Dr. Cordero:

I am writing to you in response to your letter to the Court dated September 27, 2002, concerning the chapter 7 trustee, Mr. Kenneth Gordon, in the above referenced case. The United States Trustee Program is a component of the Department of Justice that supervises the administration of bankruptcy cases and trustees.

As part of our investigation into this matter, we have contacted Mr. Gordon for response. Our office will contact you as information is received and reviewed.

The concerns raised in your letter are appreciated. The United States Trustee encourages active involvement by parties to promote efficient and appropriate case administration.

Please let me know if I may be of further assistance.

Very truly yours,

Kathleen Dunivin Schmitt  
Assistant United States Trustee

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

DR. RICHARD CORDERO,

Appellant,

ORDER

05-MC-6008L  
05-CV-6190L

v.

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

---

Dr. Richard Cordero's motion for reconsideration of this Court's denial of his motion to proceed *in forma pauperis* (Dkt. #3 in 05-MC-6008L) is denied.

The motion filed by Dr. Cordero, styled as "Objection to Scheduling Order and Request For Its Urgent Rescission" (Dkt. # 3 in 05-CV-6190L) is granted in part. Appellant may have until June 13, 2005, within which to file and serve his brief. In all other respects, the motion is denied.

IT IS SO ORDERED.



---

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
May 3, 2005.

UNITED STATES BANKRUPTCY COURT  
Western District of New York  
100 State Street  
Rochester, NY 14614  
[www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)

In Re:

David G. DeLano  
Mary Ann DeLano

SSN/Tax ID: xxx-xx-3894  
xxx-xx-0517

Debtor(s)

Case No.: 2-04-20280-JCN  
Chapter: 13

**TO: Rodney C. Early, Clerk, U.S. District Court for the Western District of New York**

**NOTE: Only Documents not available electronically via the court's electronic filing system are being transmitted in the paper format and are attached.**

Transmitted herewith is:

- Notice of Appeal filed by  
Interlocutory  Yes  No
- Motion for Leave to Appeal filed by  
Interlocutory  Yes  No
- Cross Appeal filed by  
Interlocutory  Yes  No
- Perfected Record consisting of:  
 Entire Record  
 Statement of Issues and Designated items of Appellant(s)  
 Statement of Issues and Designated items of Appellee(s)  
 Transcript(s)  
 Filing Fee Paid  
 Application to proceed in forma pauperis filed  
 Other: Letter and supporting documents filed by Appellee.
- Unperfected Record due to following missing documents:  
 Entire Record  
 Statement of Issues and/or Designated items of Appellant(s)  
 Statement of Issues and/or Designated items of Appellee(s)  
 Transcript(s)  
 Filing Fee Paid  
 Application to proceed in forma pauperis filed  
 Other:
- Non-core matter  
 Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law  
 Responses/Objections filed by:  
 Proposed Order  
 Proposed Judgment
- Motion for Withdrawal of Reference pursuant to 28 U.S.C. '157(d)  
 Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law  
 Responses/Objections filed by:
- Report and Recommendations of Bankruptcy Judge and any objections thereto for disposition of the following specified matter:  
 Motion for Abstention pursuant to Bankruptcy Rule 5011(b)  
 Motion for remand pursuant to Bankruptcy Rule 9027(e)
- Documents Transmitted in paper format:

- 1.
- 2.
- 3.
- 4.

Other: Please note that the Appellee paper filed a copy of Appellant's Designation of Items.

Please send a confirmatory email to the sender with the civil case number and judge assignment. Thank you!

Dated: May 3, 2005

Paul R. Warren  
Clerk, U.S. Bankruptcy Court

By: K. Tacy  
Deputy Clerk

**Form dctrans**  
Doc 117

612 S. Lincoln Road  
East Rochester, N.Y. 14445  
May 3, 2005

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

Dear Dr. Cordero:

In response to your letter dated April 18, 2005, please be informed that the estimated cost of the transcript of the proceedings held on March 1, 2005, in the matter of David and Mary Ann DeLano, docket No. 04-20280 is \$600.00 to \$650.00. Please understand this is an estimate only.

The information you requested regarding how many packs of paper and the number of folds was given to you after the hearing was completed. Also, the transcript can be provided on a disk and printed paper.

Very truly yours,

  
Mary Dianetti

Bankruptcy Court Reporter

**Dr. Richard Cordero**

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

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

COPY for docket 05cv6190L, WDNY

May 10, 2005

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

Dear Ms. Dianetti,

Thank you for your letter of May 3, indicating that you estimate at between \$600 and \$650 the cost of the transcript of your stenographic recording of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280.

You added the caveat "Please understand this is an estimate only". Since you already stated that it can fluctuate between \$600 and \$650, I would appreciate your letting me know by how much more your estimate can fluctuate.

This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording. I trust you will have no problem in providing me with this information this time.

Please let me know also on what type of disk, i.e. floppy disk or CD, the transcript can be provided (in addition to the paper copy) and whether it can be provided in Microsoft Word, Adobe PDF Acrobat, or both.

yours sincerely,

*Dr. Richard Cordero*

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

---

Dr. Richard Cordero  
Appellant and creditor

**MOTION  
FOR COMPLIANCE WITH FRBkrP 8007  
IN THE SCHEDULING OF APPELLANT'S BRIEF**

v.

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano  
Respondents and debtors in bankruptcy

---

Dr. Richard Cordero, appellant and creditor, states under penalty of perjury the following:

1. Dr. Cordero sent under FRBkrP 8006 his Designation of Items in the Record and Statement of Issues on Appeal to the Bankruptcy Court. The latter filed it last April 21 and on that same day it transmitted the record to the District Court. That transmittal was not in keeping with FRBkrP 8007(b) providing that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel."
2. It is quite obvious that the record could not possibly have been complete on the very day that it was filed since the 10 days for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal", as provided under FRBkrP 8006, had not even started to run.
3. Likewise, contact with the court reporter for preparation of the transcript had only been initiated so that the transcript had not been even started, let alone delivered for the appellant to take into consideration when writing his brief on appeal. What is more, FRBkrP 8007(a) provides that:

If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

4. Consequently, there is no telling when the transcript will be ready and delivered to the clerk, let alone to Appellant for him to take it into consideration in writing his brief. Hence, the clerk of the bankruptcy clerk erred in transmitting an incomplete record to the district court. By the same token, the district court did not receive a “record [that] is complete for purposes of appeal”, as required under FRBkrP 8007(b). As a result, it did not obtain and still does not have jurisdiction over the case to issue a scheduling order because it received an incomplete record in contravention of the rules of procedure.
5. Hence, even after Appellant requested on May 2 that the scheduling order of April 22 be rescinded, the District Court still as a matter of fact did not have a complete record and as a matter of law lacked jurisdiction to require that Appellant file his appeal brief by June 13.
6. There is no justification for all the waste of time and effort as well as enormous aggravation that is being caused Appellant by requiring that he research, write, and file his brief by June 13 although not only he has not received the transcript, but also nobody knows when the reporter will complete and file her transcript and deliver a copy to Appellant. This means that if the transcript were delivered before the date now set for him to file his brief, he would have to scramble to read the transcript’s hundreds of pages and then rework his whole brief to take them into consideration. Worse yet, if the transcript were delivered after that filing date and before the District Court’s decision, he would have to move for leave to amend his brief and, if granted, write another brief, not to mention the legal research that he may have to undertake in either case. But if the transcript were not filed and the clerk had to notify the bankruptcy judge thereof under FRBkrP 8007(a), the outcome cannot possibly be known in advance, not to mention that the circumstances of such transcript non-filing could give rise to a host of new issues. And what happens if the transcript is delivered after the District Court issues its decision?! No legal basis

exits for putting on Appellant the onus of coping with all this uncertainty.

7. Therefore, Dr. Cordero respectfully requests that the District Court:

a. Rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court;

b. Undertake such rescission and notify Dr. Cordero of it on an urgency basis so as not to allow any more irreparable harm to him.

8. This request has been faxed to the District Court at (585)613-4035 upon agreement between Dr. Cordero and District Court Clerk Peggy Ghysel in consideration of the urgency of the matter.

Dated: May 16, 2005  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

DR. RICHARD CORDERO,

Appellant,

ORDER

05-CV-6190L

v.

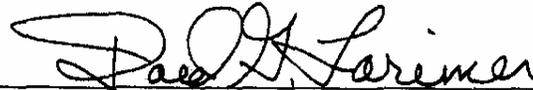
DAVID DE LANO and MARY ANN DE LANO,

Respondents.

---

Appellant requested additional time within which to file and serve his brief. That request is granted, in part. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court.

IT IS SO ORDERED.



---

DAVID G. LARIMER

United States District Judge

Dated: Rochester, New York  
May 17, 2005.

612 South Lincoln Road  
East Rochester, N. Y. 14445

May 19, 2005

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

Dear Dr. Cordero:

In response to your letter dated May 10, 2005, this is to inform you I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it.

Also, as I mentioned in my previous letter, the transcript can be provided to you in paper form and/or floppy disk in PDF form.

As I previously stated, you were provided with the number of packs of stenographic paper and number of folds used for the hearing following the conclusion of that hearing on March 1, 2005, therefore, I trust you already have that information.

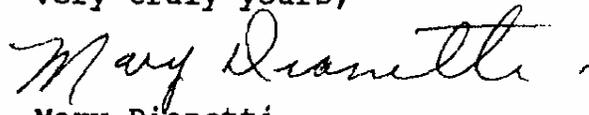
continued

I have not as yet received a formal request from you indicating that you would like me to prepare the transcript and the terms of payment for such. Should you make a formal request for a transcript, I will transmit the endorsed request to the clerk of the court with a copy to you in accordance with the federal Rules of Bankruptcy Procedure.

By copy of this letter I am notifying the Court of my correspondence to you regarding this matter.

Please advise me if you would like me to prepare the transcript. Awaiting your response, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Mary Dianetti".

Mary Dianetti

Bankruptcy Court Reporter

CC: Clerk, U.S. Bankruptcy Court  
Western District of New York

**Dr. Richard Cordero**

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

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

COPY for docket 05cv6190L, WDNY

May 26, 2005

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

Re: transcript of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280

Dear Ms. Dianetti,

I am in receipt of your letter of 19 instant. Therein you indicate that:

I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it.

A single digit estimate is a price quotation that alerts the client to the risk that the final price may go up from the quoted dollar amount and to the enticing possibility that it may go down, but it does not indicate how much that amount can move in either direction. The purpose of a fork estimate is to eliminate this uncertainty by setting upper and lower limits on the amount to be billed for. The spread between the forks limits "how much [your] estimate can fluctuate".

Your letter of May 3 provided such fork by stating that the price for the above-captioned transcript would be between \$600 and \$650. However, it reintroduced that uncertainty by stating "Please understand that this is an estimate only", meaning that your estimate could fluctuate beyond the limits of the fork. My letter of May 10 only tried to ascertain by how much those limits can be exceeded. Given your professional experience as a court reporter and the fact that you are in possession of the stenographic packs and had to count their folds to arrive at the estimate, you are in a better position than I am to state by how much your estimate can go lower than \$600 or higher than \$650. If you cannot state those limits, the final amount can be anywhere above or below that fork. In practical terms this means that there is no estimate at all. Consequently, I am left to assume all the risk and be liable for whatever final price you bill me for. I hope you will agree that does not sound either fair to me or an acceptable business arrangement.

My concern is only heightened by the fact that although you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript, you have not seen fit to provide me with that count in response to the request in both my letters of April 18 and May 10 that you state such count. The fact that you provided a pack and fold count on March 1 is not a convincing, let alone reassuring, reason for your not providing it now in the context of my ordering the transcript and making a commitment to paying hundreds and hundreds of dollars for it.

Therefore, I respectfully request that you:

1. provide a reliable upper limit for the estimated cost or agree that it will not exceed \$650; and
2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

Sincerely, *Dr. Richard Cordero*

612 South Lincoln Road  
East Rochester, New York 14445

June 13, 2005

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

Dear Dr. Cordero:

In response to your letter dated May 26, 2005, in which you request that I provide a reliable upper limit for the estimated cost or agree the transcript will not exceed \$650.00, please be advised that I agree it will not exceed that amount.

Also, I am listing the number of stenographic packs and the number of folds in each pack and this is the same information that was given to you on the afternoon of the hearing as I had marked each pack with the number of folds within your view and am just giving you those exact numbers at this time.

continued

1st pack - folds numbered 6 - 158 1/2

2nd pack - folds numbered 3 - 181

3rd pack - folds 188 1/2 - folds not numbered

4th pack - folds 99 1/2 - folds not numbered

I trust this is the information you were desirous of having. I might add that the cost of the transcript per page is \$3.30 which may be helpful to you.

Please advise me if you want me to begin the transcript.

Very truly yours,



Mary Dianetti

Mary Dianetti

Bankruptcy Court Reporter

CC: Clerk, U.S. Bankruptcy Court  
Western District of New York

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

---

Dr. Richard Cordero

Appellant

v.

David DeLano and Mary Ann DeLano

Respondents and debtors in bankruptcy

---

**NOTICE  
OF Dr. CORDERO'S EFFORTS  
TO OBTAIN THE TRANSCRIPT**

case no. 05-cv-6190L

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

1. Attached hereto are copies of the letters exchanged between Dr. Cordero and Bankruptcy Court Reporter Mary Dianetti concerning the former's efforts to obtain from the latter a transcript in the above-captioned appeal. Dr. Cordero files them so that for every useful purpose they may form part of the record available in Court and online; and to give notice thereof to the Court and others.

Executed on June 20, 2005

Dr. Richard Cordero

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



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

---

Dr. Richard Cordero  
Appellant

v.

David DeLano and Mary Ann DeLano  
Respondents and debtors in bankruptcy

---

**MOTION  
FOR A STAY IN *PFUTNER* AND  
TO JOIN THE PARTIES IN *PFUNTNER*  
TO THE *DELANO* APPEAL**

case no. 05-cv-6190L

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

1. On April 4, 2005, Bankruptcy Judge John C. Ninfo, II, issued a decision and order (attached hereto) in the bankruptcy case filed by Mr. David DeLano and Mrs. Mary Ann DeLano, docket no. 04-20280 WBNY, granting their motion to disallow Dr. Richard Cordero's claim. Dr. Cordero appealed to the District Court on April 11. At present the record is being completed for purposes of appeal under FRBkrP 8007(b).
2. As shown in Dr. Cordero's Statement attached hereto, in the decision on appeal Judge Ninfo linked inextricably the *DeLano* case to the case before him in which both Mr. DeLano and Dr. Cordero are parties, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230. Indeed, he made findings of fact and reached conclusions of law concerning *Pfuntner* a) before discovery has even started in *Pfuntner* and in contradiction with its record; b) despite his having denied documentary discovery of *Pfuntner*-related matters in the context of the evidentiary hearing of the DeLanos' motion to disallow; and c) with disregard for the admissions against legal interest made by Mr. DeLano at such evidentiary hearing. This constitutes a prejudgment of *Pfuntner* in a decision already entered in the docket, that is, the one on appeal in this Court. It (i) renders moot any discovery in *Pfuntner*; (ii) would turn the trial of that case into an abuse of process aimed at confirming a foregone conclusion, thereby denying due process; and (iii) provides the basis for Judge Ninfo's disqualification for prejudice and bias from both cases.
3. Therefore, Dr. Cordero moves that a) all *Pfuntner* proceedings in Bankruptcy Court be stayed

until the final determination –in any event until after c) below- of the appeal from Judge Ninfo’s April 4 *DeLano* decision, where he will challenge such prejudgment; b) all the other *Pfuntner* parties be formally joined under FRCivP 19(a) or 20(a) to the appeal since as a matter of fact their rights and liabilities have already been prejudged; and c) this motion be heard 30 days after the transcript of the evidentiary hearing in question is available and Dr. Cordero has filed and served his appeal brief on all parties named in the Certificate of Service hereunder.

Executed on June 20, 2005  
59 Crescent Street  
Brooklyn, NY 11208

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

**CERTIFICATE OF SERVICE**

I. *Pfuntner* Parties

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

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

Michael J. Beyma, Esq., for M&T Bank and David  
DeLano  
Underberg & Kessler, LLP  
1800 Chase Square  
Rochester, NY 14604  
tel. (585) 258-2890; fax (585) 258-2821

Karl S. Essler, Esq., for David Dworkin and Jefferson  
Henrietta Associates  
Fix Spindelmann Brovitz & Goldman, P.C.  
295 Woodcliff Drive, Suite 200  
Fairport, NY 14450  
tel. (585) 641-8000; fax (585) 641-8080

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

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
100 State Street, Room 6090  
Rochester, New York 14614  
tel. (585) 263-5812; fax (585) 263-5862

Ms. Deirdre A. Martini  
U.S. Trustee for Region 2  
Office of the United States Trustee  
33 Whitehall Street, 21st Floor  
New York, NY 10004  
tel. (212) 510-0500; fax (212) 668-2255

II. *DeLano* Parties

Christopher K. Werner, Esq.  
Boylan, Brown, Code, Vigdor & Wilson, LLP  
2400 Chase Square  
Rochester, NY 14604  
tel. (585)232-5300; fax (585)232-3528

Trustee George M. Reiber  
South Winton Court  
3136 S. Winton Road  
Rochester, NY 14623  
tel. (585) 427-7225; fax (585)427-7804

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re:

PREMIER VAN LINES, INC.,

Chapter 7  
Case no: 01-20692

Debtor

JAMES PFUNTER,

Plaintiff

Adversary Proceeding  
Case no: 02-2230

-v.-

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

Defendants

STATEMENT  
ON THE COURT'S LINKAGE  
OF THIS AND THE DELANO CASES

RICHARD CORDERO

Third party plaintiff

-v.-

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

Third party defendants

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

1. Mr. David DeLano and Mrs. Mary Ann DeLano filed a bankruptcy petition on January 27, 2004 (docket no. 04-20280, WBNY). In Schedule F therein they named Dr. Richard Cordero among their creditors. The DeLanos filed a motion to disallow his claim on July 22, 2004. An evidentiary hearing was held on March 1, 2005. On April 4, Judge John C. Ninfo, II, issued a decision and order (attached hereto) granting the motion and disallowing the claim. Dr. Cordero appealed to the District Court on April 11. At present the record is being completed for purposes of appeal under FRBkrP 8007(b).

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**I. Judge Ninfo has linked *Pfuntner* and *DeLano* to “move these Cases forward” in tandem and stated that in both cases Dr. Cordero’s interests are the same**

2. Right from the first page of his April 4 decision in the DeLano case, *DeLano*, Judge Ninfo linked that case to this case, *Pfuntner*=Premier AP (Adversary Proceeding), in which both Mr. DeLano and Dr. Cordero are parties, by stating that:

On October 23, 2003, the Court entered a Scheduling Order (the “Premier Scheduling Order”) in the Premier AP in Connection with: (1) the Remaining Claims of the Plaintiff, James Pfuntner (“Pfuntner”); and (2) Cordero’s Cross-Claims, Counterclaims and Third-Party Claims (the “Cordero Premier Claims”)

3. The DeLanos have nowhere and never alleged that their bankruptcy was causally linked to the *Pfuntner* case, let alone that Mr. DeLano or M&T Bank is currently in possession of Dr. Cordero’s stored property.

4. However, Judge Ninfo deems that in both cases the interests of Dr. Cordero are the same and that he should pursue them in each of them. So he states (Exhibit pages 7-8, infra=E:7-8) that:

On the one hand, the Court has consistently attempted to focus Cordero on what it considers to be the critical issues relating to his involvement with these Cases. These issues are the status of Cordero's stored personal property (the "Cordero Property"), his need to take possession and control of the Property in order to assure that there is no damage or further damage to it, his need to determine if there has in fact been any damage to it, and, if there has been damage, the nature and extent of any damage, when the damage occurred and who may have been responsible for it. The Court has tried to focus on these issues so that Cordero could have his "Day in Court" and have these issues tried and determined by the Court. On the other hand, Cordero appears to have had a very different focus; one that is primarily on collateral and tangential issues, form over substance, and the desire to litigate for the sake of litigating without ever addressing these critical issues that would establish the merits, if any, of the alleged Cordero Premier Claims and move these Cases forward.

## **II. Judge Ninfo's criticism of Dr. Cordero for paying attention to "collateral and tangential issues" sidesteps a central issue in every bankruptcy case and at the heart of *DeLano*: fraud**

5. As quoted above (E:7), Judge Ninfo considers that Dr. Cordero should occupy himself, even in the context of *DeLano*, with recovering his stored property, which is an issue in *Pfuntner*, rather than pay attention to other "collateral and tangential issues", which the Judge never names, let alone describes. In so doing, he tries to 'refocus' his attention away from the incriminating evidence presented by Dr. Cordero in *DeLano* showing that the DeLanos committed bankruptcy fraud and have belatedly resorted to the motion to disallow his claim as a subterfuge to eliminate him from the case. Thereby they intend to prevent him from obtaining the financial statements that would prove their concealment of assets, including the \$291,470 that they earned in just the 2001-03 fiscal years. The whereabouts of that money are unknown even today because, with the support of Judge Ninfo, the DeLanos have refused to produce the

documents that could reveal the flow of that money, such as the statements of bank accounts and of credit and debit card accounts. Suspiciously enough, Chapter 13 Trustee George Reiber does not want to ask the DeLanos for those documents even though he is supposed to represent the interests of the creditors and has the duty under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) to investigate the financial affairs of the debtors.

6. Judge Ninfo must know that fraud and one of its most insidious manifestations, concealment of assets, are never “collateral and tangential issues” in a bankruptcy case. Fraud attacks the core of a bankruptcy petition and destroys the right to obtain relief under the Code. So much so that 11 U.S.C. §343 and the Revision Notes and Legislative Reports, 1978 Acts, state that fraud is what the creditors and the trustee are entitled to suspect the debtor of having engaged in so that:

The purpose of the examination is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

7. Fraud is, not collateral, but rather central to Judge Ninfo’s obligation under 11 U.S.C. §1325(a)(3) to determine whether to confirm the debtor’s debt repayment plan by ascertaining that:

(3) the plan has been proposed in good faith and not by any means forbidden by law;

8. Fraud is grounds for revoking under §1330(a) even the order confirming the plan. What is more, fraud is so inimical to bankruptcy relief that this provision gives the right to any party in interest, not just a creditor, to request the court the revocation of its own confirmation order “if such order has been procured by fraud”.

9. Fraud so clearly lies at the core of a bankruptcy case that a judge is dutybound, as are other officers, to report it for investigation under 18 U.S.C. §3057(a), not only when he has hard evidence of it, but also when he has just a reasonable belief that fraud as well as ‘any other violation’ of bankruptcy laws may have been committed.

18 U.S.C. §3057 (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that

an investigation should be had in connection therewith, **shall** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed....[emphasis added]

### **III. The role of a judge is not to focus litigants on what he deems their interests are, but rather to resolve according to law the controversy that they bring before him and pursue along the lines of the legal strategy that they devise**

10. Judge Ninfo has no legal authority to try to “focus Cordero on what it considers to be the critical issues relating to his involvement with these Cases” (E:7) For one thing, it is not within the function of a judge to decide what legal strategy a litigant should adopt or what issues to stress; that is the prerogative of the litigant. Nor is his role to paternalistically or heavy-handedly determine what a litigant’s interests should be and pursue them on his own in spite and to the detriment of the litigant’s own determination and repeated expression of what his interests are. Consequently, in that sense what the judge “considers to be the critical issues relating to [a litigant’s] involvement” in a case is irrelevant. The role of the judge is to apply the law and the rules in a just and fair fashion to the evidence and arguments presented to him by the parties so as to adjudicate what they consider their controversy to be.
11. This is particularly the case now that Judge Ninfo, however inconsistently and only to hold it against Dr. Cordero, has made it a point to use and become solely responsible for using in his April 4 *DeLano* decision the description, in whole or in part 9 times, of Dr. Cordero as a “licensed, registered, and experienced attorney”; by the same token, Judge Ninfo should deem Dr. Cordero to know what he is doing and not try to “focus” him to do what would suit the Judge best.
12. In fact, Dr. Cordero has already explained his legal strategy in writing. Even so, it is quite obvious: If the DeLanos engaged in bankruptcy fraud and Dr. Cordero proves it, the circumstances and extent of such fraud are likely to explain why Dr. Cordero and his property were treated as they were in *Pfuntner*, a case in which Mr. DeLano is a party and fraud taints parties and events. But the Judge has disregarded the issue of fraud common to both cases and its grave impact on the public at large, and has taken upon himself to narrowly “focus” on an

issue of his choosing, in the process impermissibly assuming and commingling the roles of prosecutor against Dr. Cordero, defender of Mr. DeLano, and arbiter running his own local practice unconstrained by the law of Congress and the facts of the cases.

13. It is questionable why Judge Ninfo, a bankruptcy judge of all judges, would refer to the efforts of a person, whether a creditor, a party in interest, or a just a member of the public with information, to obtain evidence of bankruptcy fraud by debtors and others as efforts “to focus on collateral and tangential issues”. It is all the more questionable when such debtors include Mr. DeLano, a knowledgeable and still gainfully employed bank officer with 32 years’ experience in handling loaned money, trying to evade paying 78% of their total liabilities of \$185,462 (Summary of Schedules) for a savings of \$144,660 plus compounding interest at the delinquent annual rate of over 25%. How much has that ‘experienced debtor’, Mr. DeLano, learned over his long banking career about wrongdoing that is not collateral but rather central to the local handling of bankruptcies? As a result, must he now be protected from any discovery and liability, not merely to spare a few people tangential inconvenience with so-and-so’s search for his things, but rather to prevent him from talking on the basis of a plea bargain and causing everybody to become the target of a federal criminal investigation?

**IV. Judge Ninfo has inextricably linked discovery in *Pfuntner* and *DeLano* and made findings despite having denied all of Dr. Cordero’s discovery requests, thus prejudging the evidence and rendering moot further discovery**

14. Just as Judge Ninfo has commingled in himself the roles of prosecutor, defender, and arbiter, he has also inextricably linked the two cases. Thus, he has faulted Dr. Cordero (E:17) because:

Cordero [was] afforded sufficient time between the August 2004 Interlocutory Order and December 15, 2004, to do any discovery that he required, including obtaining, voluntarily or through the subpoena process, any and all documents that he deemed to be relevant to the Claim Objection Proceeding from M&T Bank or other parties to the Premier AP, yet he apparently took no steps to: (a) obtain those documents other than to request them from DeLano;

or (b) otherwise conduct discovery of any of the parties in the Premier AP prior to November 8, 2004, when he filed the Cordero Discovery Motion; (2) even after November 10, 2004 when the Court entered the November 2004 Discovery Order denying his Discovery Motion with respect to documents that: (a) were unrelated to the Claim Objection Proceeding; (b) DeLano did not have in his possession and were not his documents, but were the documents of M&T Bank or other parties to the Premier AP, there is no indication that Cordero made any attempt to obtain those documents from M&T Bank or other parties to the Premier AP, or to otherwise conduct discovery of those parties for the three and a half months between the November 2004 Discovery Order and the Trial; (3) Cordero at all times had the ability to obtain the requested documents directly from the parties in the Premier AP other than DeLano; (4) although the August 2004 Interlocutory Order cut off discovery on December 15, 2004, that was between Cordero and DeLano, and, as a licensed, experienced and registered attorney, Cordero knew that nothing in that Order prevented him from obtaining relevant discovery from M&T Bank or other parties to the Premier AP as part of the Premier AP.

15. This shows that Judge Ninfo linked discovery of “parties to the Premier AP as part of the Premier AP” to the proceeding in *DeLano* to determine the DeLanos’ motion to disallow Dr. Cordero’s claim.
16. Nevertheless, Judge Ninfo denied every single document that Dr. Cordero requested. In so doing, the Judge disregarded the scope of discovery under FRBkrP 7026 and FRCivP 26(b)(1), which is so broad that it allows discovery of “any matter, not privileged, that is relevant to the claim **or defense** of any party” (emphasis added).
17. It is evident that a debtor cannot escape discovery by self-servingly alleging, as Mr. DeLano did, that all documents requested are irrelevant to his own motion to disallow the requesting creditor’s claim. This is particularly the case when such documents would have supported the

defense of Dr. Cordero that the motion was a subterfuge to eliminate him from the case before he could obtain documents proving the DeLanos' bankruptcy fraud. Having set such precedent of disregard for the rules of discovery, Judge Ninfo can now be justifiably expected to disregard them again and make a mockery of any discovery in *Pfuntner*.

18. In addition, a) despite the Judge stating that Dr. Cordero did not take discovery of these "parties to the Premier AP"; b) despite the fact that Mr. DeLano did not introduce whether before or at the evidentiary hearing on March 1, 2005, any documents or testimony in the Premier AP, and c) despite the fact that no witness other than Mr. DeLano was heard at that evidentiary hearing, Judge Ninfo has already made findings in that case unsupported by any evidence and without any reference to the record, such as (E:14):

The Court finds that Cordero has no valid Claim against DeLano individually that it could allow in the DeLano Case, by reason of negligence, recklessness or otherwise, for the following reasons: (1) although M&T Bank had a security interest in the assets of [Page 15] Premier, including the containers in which the personal property of a number of its customers was stored, including the Cordero Property, M&T Bank never took possession of or asserted control over the containers at the Avon Storage Facility where the Cordero Property was stored; (2) since M&T Bank never took possession of or asserted control over the containers in which the Cordero Property was stored, neither M&T Bank nor DeLano, as an officer and employee of M&T Bank, had any duty to Cordero with respect to the Cordero Property; the duty to properly store and care for the Cordero Property at all times remained with Premier, or perhaps Pfuntner; (3) Cordero has produced no credible evidence to demonstrate that DeLano was not acting at all times in question within the scope of his employment as an officer and employee of M&T Bank; (4) there is nothing in DeLano's testimony at Trial which indicates that there were not one or more storage containers at the Warehouse that bore Cordero's name, so there is no evidence that

the statements DeLano made to Cordero, in his capacity as an officer and employee of M&T Bank, were not true; (5) at Trial, Cordero indicated that David Dworkin, the landlord of the Warehouse, had also indicated to him that there were one or more containers at the Warehouse that bore Cordero's name; (6) Cordero did not demonstrate at Trial that there is any requirement, under New York State or Federal Law, that imposes upon a secured creditor that sells a storage container, [Page 16] such as those sold by M&T Bank at its private sale, a duty to inventory the contents of the containers or confirm the ownership of the contents and notify the owner of the contents, prior to a private sale of the containers under the Uniform Commercial Code to an otherwise reputable local storage company; (7) any confusion as to where the containers that contained the Cordero Property were actually located was the result of the actions or inactions of Premier, not DeLano, individually or as an officer and employee of M&T Bank, and to the extent that Cordero expended time, energy or funds in attempting to determine the actual location of his stored personal property, that is not the legal responsibility of M&T Bank or DeLano, even if they innocently and mistakenly believed that some or all of the Cordero Property was at the Warehouse; (8) the Court is aware from its involvement in the Premier AP that even when Cordero learned of the actual location of the Cordero Property at the Avon Storage Facility, he did not take immediate steps to: (a) arrange for the Property to be removed; or (b) inspect the Property in order to determine if there had been any damage to it, and if there had been damage, to determine the nature and extent of the damage, when the damage occurred, and who might be responsible for it; (9) Cordero has failed to produce any evidence to demonstrate that there has been any damage to the Cordero Property; and (10) to the extent that there may be any damage to the Cordero [Page

17] Property at the Avon Storage Facility, Cordero produced no evidence at Trial to indicate that DeLano was in any way responsible for such damage, in whole or in part

19. Judge Ninfo has made these outcome-determinative findings without the benefit of discovery in *Pfuntner* and notwithstanding the admissions against legal interest of the only party at an evidentiary hearing in *DeLano*; and even those findings contain gross mistakes of material facts in the *Pfuntner* record, including some as to which the Judge was the actor, which show his blatant disregard for the facts.
20. Likewise, Judge Ninfo has reached conclusions on the merits based only on Dr. Cordero's third-party complaint in *Pfuntner* (E:10)

Having reviewed the relevant portions of the Cordero Premier Claims, the Court made the foregoing statements in the August 2004 Interlocutory Order for the following reasons:

[Page 11] 1. Although paragraphs 70, 71 and 72 of the Cordero Cross- Claims may have been sufficient for basic pleading purposes in the Premier AP, for the purpose of determining the validity and allowability of the Cordero Claim in the DeLano Case, there was nothing in the allegations which demonstrated that: (1) either M&T or DeLano had any legal duty to Cordero with respect to the Cordero Property; (2) DeLano was at any time acting other than as an employee of M&T Bank and within the scope of his employment; (3) M&T Bank or DeLano, as an officer and employee of M&T Bank, ever took possession of or exercised control over the Cordero Property, whether at the former Premier Jefferson-Henrietta Warehouse (the "Warehouse") or at any other location; (4) M&T Bank or DeLano, as an officer and employee of M&T Bank, had any obligation to inventory the contents of the containers at the Warehouse that might contain the stored personal property of third parties, including Cordero; (5) anything that DeLano did, individually or as an officer and employee of M&T Bank, caused the

loss of or damage to some or all of the Cordero Property; or (6)  
there was any loss of or damage to the Cordero Property.

21. Hence, the Judge implicitly acknowledged that a complaint sets forth only “a short and plain statement of the claim showing that the pleader is entitled to relief”, FRCivP 8(a)(2), and that Dr. Cordero’s was sufficient to state a claim against Mr. DeLano in *Pfuntner*. Yet, he has moved straight on to disregard such legally limited purpose of a complaint and hold, inconsistently and without citing any law, rule, or case whatsoever, that the same complaint was not sufficient to state a claim against Mr. DeLano in *DeLano* although the evidentiary standard applicable to Dr. Cordero’s showing was the lowest one of ‘by a preponderance of the evidence’
22. Having already made those findings, Judge Ninfo cannot be reasonably expected to come with an open and neutral mind to the *Pfuntner* trial to render justice to the “other parties to the Premier AP” upon evidence presented in court once discovery has been actually conducted in accordance with the rules. Indeed, he has already conducted the *Pfuntner* trial within the context of the DeLanos’ motion to disallow and its evidentiary hearing, despite having cited no legal authority for such expedient maneuver. Consequently, what would conducting discovery in *Pfuntner* be except an exercise in futility because doomed to be disregarded in favor of a prejudgment already entered in the decision on appeal in *DeLano*?

**V. The DeLanos by their actions show that they concur with Judge Ninfo in the linkage between their case and *Pfuntner***

23. The DeLanos have joined Judge Ninfo in viewing their case and *Pfuntner* inextricably linked. This is in line with the fact that from such linkage they already benefit the most given that Mr. DeLano has already been found not to be liable in *Pfuntner* to Dr. Cordero and, as a result, their motion to disallow his claim against Mr. DeLano was granted by Judge Ninfo. So they stated in their Designation of May 2, 2005, under FRBkrP 8006, of Additional Items to be Included in the Record on Appeal that:

[W]e feel the plethora of documents submitted by Appellant does include the necessary items in the record. However, Appellant has failed to include the four exhibits attached to the April 4, 2005 Decision and Order of Judgment Ninfo [sic]. Those exhibits, clearly

part of the record as an attachment to the decision appealed by Mr. Cordero, are enclosed hereto (and attached under Document No.: 90 of the online Docket).

24. Confirming by their actions their view of this inextricable linkage between the two cases, they gave it physical bonding elements by enclosing with their Designation copies of not only the decisions in *Pfuntner* that Judge Ninfo had attached to his April 4 Decision in *DeLano*, but also others therein and even included a copy of Mr. Pfuntner's complaint. There follows a list of all these documents:

- 1) Judge **Ninfo's Scheduling Order of October 23, 2003**, in Connection with the Remaining **Claims** of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero
- 2) Judge **Ninfo's Decision & Order of October 23, 2003**, Finding a **Waiver** of a Trial by Jury
- 3) Judge **Ninfo's Cordero Oral Decision of October 16, 2003**
- 4) Judge **Ninfo's Order of October 16, 2003, Disposing** of Causes of Action
- 5) Judge **Ninfo's Order and Decision of October 16, 2003, Denying Recusal and Removal** Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003
- 6) Judge **Ninfo's Order of July 15, 2003**, in the Pfuntner Case
- 7) James **Pfuntner's Interpleader Complaint of September 20, 2002**, to Determine Rights in Property of the Debtor and in Property in the Debtor's Possession, to Grant Plaintiff and Compel the Trustee to pay Administrative Expenses or Otherwise Determine the Liability of Those Found to Hold an Interest in the Debtor's Property or Property in Possession of the Debtor for the Use and Occupancy of the Plaintiff's Real Property, and to Vacate the Automatic Stay of Actions

**VI. Discovery in *Pfuntner* can only be meaningfully undertaken after the appeal of Judge Ninfo's *DeLano* decision, including Dr. Cordero's challenge to its prejudgment, has been finally determined**

25. To require that any of the "other parties to the Premier AP" engage in discovery and proceed to

litigate in *Pfuntner* after Judge Ninfo has already made up his mind as to the relative liabilities of the “other parties” and has even entered his judgment in one of two cases which by his own words he has linked inextricably, would a) constitute a denial of due process, b) waste judicial resources because the case would be subject to appeal and bound to be relitigated before an unprejudiced judge; and c) give rise to claims for compensation and punitive damages from any and all persons who inflicted or contributed to inflicting all the concomitant waste of effort, time, and money as well as emotional distress.

26. Therefore, Dr. Cordero will challenge in District Court the prejudgment of *Pfuntner* that constitutes an intrinsic part of the *DeLano* decision on appeal. He will serve on the parties a copy of his brief on appeal when it is filed with the District Court. His Designation of Items in the Record on Appeal is attached hereto. Exhibits are available online through PACER in the District Court docket 05cv6190 and the Bankruptcy Court docket no. 04-20280. A copy can be made available on a CD upon timely request.

Dated: June 18, 2005

*Dr. Richard Cordero*

---

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

## CERTIFICATE OF SERVICE

---

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**Dr. Richard Cordero**

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

59 Crescent Street  
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tel. (718) 827-9521; CorderoRic@yahoo.com

COPY for docket 05cv6091, WDNY

June 25, 2005

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

Re: transcript of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280

Dear Ms. Dianetti,

Thank you for your letter of June 13, whose envelope was postmarked June 15 by the Federal Station in Rochester, the one situated in the Federal Building where the Bankruptcy Court is.

I appreciate your stating the number of stenographic packs and folds in the recording of the above-captioned DeLano evidentiary hearing. I note that you stated that:

Also, I am listing the number of stenographic packs and the number of folds in each pack and this is the same information that was give to you on the afternoon of the hearing as I had marked each pack with the number of folds within your view and am just giving you those exact numbers at this time.

I assume that this does not mean that you are merely copying the information that you gave me on March 1 at the end of the hearing. Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:

[since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript...provide me with that count...Therefore...

2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and that will be translated into the transcript.

I hope that you will realize that the way you have formulated your answer raises concerns, coming as it does after your refusal to provide the requested information in your letters to me of May 3 and 19 despite my express requests in my letters to you of April 18 and May 10 and 26. Yet, your answer makes providing that information appear as easy to do as simply copying it from your records, which conversely makes your refusal to provide it so difficult to understand.

Consequently, to eliminate any margin whatsoever for divergence between my request for information and your answer, I take the latter to mean the following:

1. Upon my initial and subsequent requests for you to state the cost of the transcript based on a count of the stenographic packs and folds of the whole recording of the DeLano evidentiary hearing,
2. you actually counted them a second time; found the number of such packs and folds to coincide exactly with the number of packs and folds that you stated in writing for me at the end of such hearing; and
3. based on that second count you calculated the cost of the transcript at the official and customarily charged rate of \$3.30 per page; arrived at an estimate of between \$600 and \$650; have agreed with me that the final cost will not exceed \$650; and will include in the transcript everything and only that which is contained in those packs and folds.

If my understanding of your answer diverges from either your intended answer or all the facts in any way that you consider to be significant or even insignificant, I formally request that you state such divergence. If you do not do so, I will assume your silence to confirm that my understanding as above stated coincides totally with both your intended answer and with all the facts. This statement of my understanding is as simple as the formulation that you have heard perhaps hundreds of times and that courts all over the nation assume every lay person understands and is in a position to affirm: your confirmation, whether in writing or by silence, is the truth, the whole truth, and nothing but the truth.

Hence, I hereby make your confirmation of my understanding part of the essence of this contract for service between you and me. Similarly, the following conditions are of the essence of this contract and constitute conditions precedent to my obligation to pay you:

1. You will provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing. At my discretion and for the purpose, inter alia, of ascertaining such accuracy and completeness, you will make available, upon my designation, to a government agency or a private entity, all the packs and folds that you used to record the hearing and, if different, also those that you used to prepare the transcript.
2. Upon completion of the transcript, you will simultaneously file one paper copy with the clerk of the bankruptcy court and mail to me by priority mail a paper copy together with an electronic copy on a floppy disk in PDF format and in Microsoft Word, or otherwise in Word Perfect; and you will not make available any copy in any format to any other party, whether a court officer –whether a judicial or clerical officer-, litigant, or any other person, but if you do make a copy available to any of them either before or after filing or mailing it to me, you will let me know immediately and will exempt me from payment and reimburse me any payment already made.
3. You will truthfully state in your certificate accompanying the transcript that up to the time of your receipt of this letter and from then until the moment that the copies of the transcript are filed and mailed to me, you have not discussed with any other party (aside from me), whether a court officer, litigant, or any other person, and none of them has attempted to discuss with you, the content that should form part or that did form part of your stenographic recording of the DeLano evidentiary hearing or of the transcript; but if you have discussed such content or any of them has attempted to discuss it with you, then you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

In consideration for your promise to perform, and your actual performance of, your transcription service as described above and in accordance with applicable law and rules, I promise to pay you upon confirmation thereof up to \$650, by credit card if acceptable to you, and in any event by check.

I trust you realize that what we are trying to do here is exceedingly easy to understand and basic to any contractual agreement: **You give me a good transcript and I pay you good money.**

Sincerely,

*Dr. Richard Cordero*

612 South Lincoln Road  
East Rochester, New York 14445  
July 1, 2005

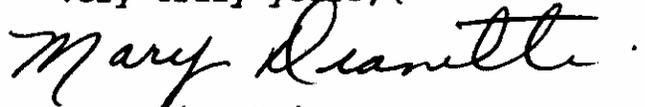
Dr. Richard Cordero  
24 Crescent Street  
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

I am in receipt of your letter of June 25, 2005. Please be advised that I will provide you with (1) a paper copy of the transcript of the hearing held on March 1, 2005, and (2) a PDF copy of that transcript on a CD-ROM, to be sent to you by first-class mail, upon receipt of a money order or certified check in the amount of \$650.00 payable to "Mary Dianetti." The balance of your letter of June 25, 2005 is rejected.

I am providing a copy of this letter, together with yours of June 25, to the U.S. Bankruptcy Court and U.S. District Court so that their file may be complete.

Very truly yours, ,



Mary Dianetti  
Bankruptcy Court Reporter

cc: Clerk, U.S. Bankruptcy Court  
cc: U.S. District Court

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

---

Dr. Richard Cordero

Appellant

v.

David DeLano and Mary Ann DeLano

Respondents and debtors in bankruptcy

---

**NOTICE  
of Dr. CORDERO'S LETTER  
REQUESTING TRANSCRIPT**

case no. 05-cv-6190L

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

Attached hereto is a copy of the letter of June 25, 2005, sent by Dr. Cordero to Bankruptcy Court Reporter Mary Dianetti requesting the transcript of the evidentiary hearing on March 1, 2005, that gave rise to the decision of April 4, 2005, of the Bankruptcy Court, Judge John C. Ninfo, II, presiding, which is the subject of this appeal.

July 3, 2005

*Dr. Richard Cordero*

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

July 7, 2005

George M. Reiber, Esq.  
3136 South Winton Road  
Rochester, New York 14623

**Re: David G. and Mary Ann DeLano, Case No. 04-20280**

Dear Mr. Reiber:

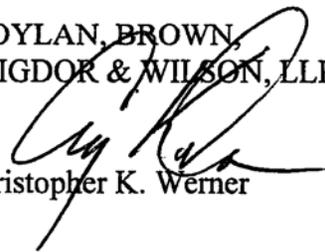
As per our prior correspondence, you have indicated that our application for payment of attorney's fees from the bankruptcy estate could be considered at the currently scheduled July 25, 2005 confirmation hearing at 3:30 p.m. at Bankruptcy Court. As you have suggested, we enclose herewith our statement for fees for the period of April 8, 2004 through the current date, with anticipated time for confirmation and continuation of the pending Cordero appeal. We have also forwarded a copy to Judge Ninfo so that the statement could be before him at the time of confirmation.

If you feel that a formal application for fees is in order, we would be happy to submit the same. However, you have indicated that it is common that such applications are considered by the Court simply as part of confirmation and have proceeded accordingly.

We look forward to the hearing on July 25<sup>th</sup>.

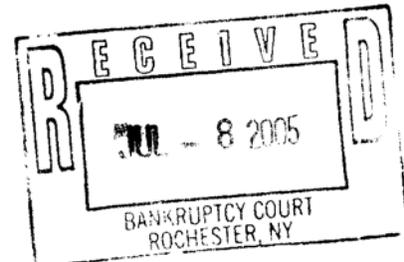
Very truly yours,

BOYLAN, BROWN,  
CODE, VIGDOR & WILSON, LLP

  
Christopher K. Werner

CKW/trm  
Enclosure

cc: Hon. John C. Ninfo, II ✓  
David G. and Mary Ann DeLano





**BOYLAN, BROWN,  
CODE, VIGDOR & WILSON, LLP**

ATTORNEYS AT LAW

2400 Chase Square  
Rochester, NY 14604

June 23, 2005

David G. & Mary Ann DeLano  
1262 Shoecraft Road  
Webster, NY 14580

Invoice# 54731  
Client# 030633  
Billing through 06/23/2005

**030633-00001 Chapter 13**

**PROFESSIONAL SERVICES**

|            |     |   |           |
|------------|-----|---|-----------|
| 04/08/2004 | CKW | Call with client; Correspondence re Cordero objection   | 0.50 hrs. |
| 04/14/2004 | CKW | Receive and review George Reiber's letter re adjourned examination date with Cordero; Call to client; Review Cordero motion (31 pages) and prepare notes for response | 1.30 hrs. |
| 04/15/2004 | CKW | Response to Cordero objection   | 1.00 hrs. |
| 04/16/2004 | CKW | Receive and review additional motion and memo from Cordero; Revise statement in opposition; Call from Bankruptcy Court re application on submission                   | 0.80 hrs. |
| 04/19/2004 | CKW | Receive and review Cordero fax to Reiber of 4/15/04   | 0.30 hrs. |
| 04/22/2004 | CKW | Call to client re document demands in response to 4/20 letter from George Reiber; Correspondence  | 0.40 hrs. |
| 04/26/2004 | CKW | Receive and review Cordero's letter of 4/23; Appear in Bankruptcy Court on adjournment; Review claims register  | 1.60 hrs. |
| 04/28/2004 | CKW | Receive and review Cordero reply to statement in opposition; Receive and review Cordero letter to U.S. Trustee Martini  | 0.50 hrs. |
| 05/05/2004 | CKW | Receive and review credit report and letters to credit card companies   | 0.40 hrs. |
| 05/10/2004 | CKW | Receive and review Cordero letter to D. Martini re list of creditors  | 0.20 hrs. |
| 05/19/2004 | CKW | Receive and review Cordero claim; Call from client re claim objection and status of creditor inquiry  | 0.40 hrs. |
| 06/14/2004 | CKW | Document analysis; Call to claimants; Revise trustee correspondence; Call with Dave DeLano re HSBC authorization  | 2.30 hrs. |
| 06/15/2004 | CKW | Call to Discover and fax document request; Call with client; Receive and response to Trustee motion to dismiss  | 0.30 hrs. |
| 06/16/2004 | CKW | Call re Trustee's Motion to Dismiss/Convert; Review fax to HSBC authorizing release of records  | 0.40 hrs. |
| 06/18/2004 | CKW | Correspondence to credit card companies for statements; Call with Mike Beyma re status of adversary proceeding  | 0.50 hrs. |
| 07/02/2004 | CKW | Calls to HSBC and emails to client and Trustee re copy costs; Call from Kim at HSBC   | 0.50 hrs. |

| 030633     | DeLano, David G. & Mary Ann | Invoice# 54731   | Page 2    |
|------------|-----------------------------|--|-----------|
| 07/07/2004 | CKW                         | Receive and review account statements from 2 MBNA accounts; Copy and forward to Trustee  | 0.50 hrs. |
| 07/09/2004 | CKW                         | Correspondence to Trustee and motion in opposition; Calls to creditors   | 1.70 hrs. |
| 07/12/2004 | CKW                         | Complete correspondence to Reiber; Opposition to Court; Receive and review Cordero opposition to Trustee's Motion  | 0.80 hrs. |
| 07/19/2004 | CKW                         | Prepare Subpoenas for Discover, HSBC, Chase and Bank One (3 accounts); Appear on Trustee's Motion; Prepare Objection to Claim; Email to client to produce credit reports and account statements; Correspondence to Cordero and to client | 4.30 hrs. |
| 07/20/2004 | CKW                         | Receive and review Cordero Order; Revise and prepare correspondence to Cordero and Court; Assemble; Call to client; Complete Objection to Claim  | 1.80 hrs. |
| 07/21/2004 | CKW                         | Call with client re document demands; Call with Mike Beyma - leave message   | 0.30 hrs. |
| 08/16/2004 | CKW                         | Receive and review Cordero 8/15 fax - Motion for Removal and Referral  | 0.20 hrs. |
| 08/19/2004 | CKW                         | Receive and review Cordero Reply to claim objection; Review and organize file and account statements obtained; Dictate response to Reply   | 1.50 hrs. |
| 08/20/2004 | CKW                         | Emails with Trustee re need to appear for 1st Meeting; Review account records  | 0.20 hrs. |
| 08/23/2004 | CKW                         | Receive and review Cordero Motion for sanctions; Appear on Cordero Motion to remove George Reiber; Call to HSBC re status of Subpoena response   | 1.80 hrs. |
| 08/24/2004 | CKW                         | Call with client re results of 8/23 motion   | 0.20 hrs. |
| 08/25/2004 | CKW                         | Appear in Bankruptcy Court on Cordero Claim objection; Call to report to client  | 2.50 hrs. |
| 09/02/2004 | CKW                         | Receive and review Interlocutory Order   | 0.30 hrs. |
| 09/09/2004 | CKW                         | Receive and review Chase account statements and forward same to Trustee and Cordero  | 0.30 hrs. |
| 09/16/2004 | CKW                         | Receive and review Cordero Motion to Second Circuit  | 0.30 hrs. |
| 09/23/2004 | CKW                         | Receive and review Cordero correspondence to Trustee re examination dates  | 0.30 hrs. |
| 09/27/2004 | CKW                         | Correspondence to Trustee  | 0.30 hrs. |
| 09/28/2004 | CKW                         | Receive and review Cordero letter to Second Circuit re discovery; Letter re exam dates   | 0.20 hrs. |
| 10/14/2004 | CKW                         | Receive and review Cordero discovery demands and correspondence to Reiber  | 0.40 hrs. |
| 10/20/2004 | CKW                         | Receive and review Cordero letter to Reiber re letter to Second Circuit  | 0.30 hrs. |
| 10/21/2004 | CKW                         | Call with Dave DeLano re discovery demand and response to Premier Van Liens related questions  | 0.20 hrs. |
| 10/22/2004 | CKW                         | Call with Richard Cordero; Dictate response to discovery demand of 9/29; Review discovery demand re relevance with JEM   | 1.50 hrs. |
| 10/25/2004 | CKW                         | Receive and review Cordero letter to Trustee Schmitt re Trustee's refusal to hold meeting  | 0.20 hrs. |

| 030633     | DeLano, David G. & Mary Ann | Invoice# 54731   | Page 3    |
|------------|-----------------------------|--|-----------|
| 10/27/2004 | CKW                         | Receive and review DeLano fax; Complete discovery response   | 0.30 hrs. |
| 10/28/2004 | CKW                         | Complete and send discovery response; Receive and review 10/27/04 letter from Cordero  | 0.30 hrs. |
| 11/03/2004 | CKW                         | Receive and review Cordero letter to Reiber re 341 meeting   | 0.30 hrs. |
| 11/08/2004 | CKW                         | Receive and review Cordero discovery motion; Dictate response  | 1.10 hrs. |
| 11/09/2004 | CKW                         | Review and revise response to Cordero motion   | 0.40 hrs. |
| 11/10/2004 | CKW                         | Receive and review Court's Interlocutory Order   | 0.30 hrs. |
| 11/12/2004 | CKW                         | Receive and review Cordero Motion to 2nd Circuit   | 0.30 hrs. |
| 11/18/2004 | CKW                         | Receive and review Reiber correspondence re retirement account; Correspondence to Trustee  | 0.40 hrs. |
| 11/19/2004 | CKW                         | Call re retirement supplement per Trustee's letter; Discuss withdrawal of Chapter 13; Status of Cordero objection                              | 0.40 hrs. |
| 12/15/2004 | CKW                         | Appear in bankruptcy callendar call; Email to client; Call to client   | 0.90 hrs. |
| 12/20/2004 | CKW                         | Call with Dave DeLano re March 1 trial date; Review transactions with Cordero  | 0.30 hrs. |
| 12/28/2004 | CKW                         | Email from Trustee re 2/1 or 2/2 meeting; Email to client  | 0.30 hrs. |
| 12/31/2004 | CKW                         | Receive and review letter from Chapter 13 Trustee re adjourned 341 Hearing   | 0.20 hrs. |
| 01/21/2005 | CKW                         | Call to client re receipt of son's mobile home proceeds; Correspondence to Trustee; Discuss anticipated 341 Hearing on 2/1/05 and 3/1/05 trial | 0.60 hrs. |
| 01/24/2005 | CKW                         | Correspondence to Trustee re sale proceeds and best interest test; Receive and review Cordero Petition for Cert.                               | 1.10 hrs. |
| 02/01/2005 | CKW                         | Prepare for adjourned 341; Attend adjourned 341 with Trustee Reiber  | 7.20 hrs. |
| 02/10/2005 | CKW                         | Initial review of abstract and mortgage closing documents  | 0.40 hrs. |
| 02/15/2005 | CKW                         | Email to client re use of cash proceeds of mortgage; Correspondence to Trustee   | 0.40 hrs. |
| 02/22/2005 | CKW                         | Receive and review Cordero motion for Judge Ninfo recusal  | 0.40 hrs. |
| 02/28/2005 | CKW                         | Call to client preliminary to hearing on objection to Cordero claim  | 0.50 hrs. |
| 03/01/2005 | CKW                         | Hearing on Cordero claim objection and preparation   | 6.50 hrs. |
| 03/02/2005 | CKW                         | Repeat review of Cordero docs and claim  | 0.30 hrs. |
| 03/09/2005 | CKW                         | Receive and review March 3, 4 & 5 letters from Cordero; Correspondence to clients and Cordero; Call with client                                | 1.30 hrs. |
| 04/04/2005 | CKW                         | Receive and review Cordero decision; Call to client  | 0.50 hrs. |
| 04/14/2005 | CKW                         | Email to George Reiber re confirmation hearing and fee application; Call with client   | 0.40 hrs. |
| 04/22/2005 | CKW                         | Receive and review record on appeal; Conference with DLP; Receive and review Court notices on appeal   | 1.00 hrs. |
| 04/22/2005 | DLP                         | Extended work conference and personal review of record regarding Appeal filed by Dr. Cordero.  | 1.30 hrs. |
| 05/02/2005 | CKW                         | Review statement re record on appeal of DLP  | 0.40 hrs. |
| 05/02/2005 | DLP                         | Review of file, review of Dr. Cordero's record on Appeal,  | 3.90 hrs. |

|            |     |  |             |
|------------|-----|--|-------------|
|            |     | dictated, revised and finalized our Record. Filed with Court.  |             |
| 05/03/2005 | CKW | Receive and review Cordero motion to reconsider and review order of denial                           | 0.40 hrs.   |
| 05/05/2005 | DLP | Finalized Record on Appeal   | 0.80 hrs.   |
| 05/09/2005 | CKW | Receive and review civil cover sheet on appeal from Cordero  | 0.30 hrs.   |
| 05/10/2005 | CKW | Call with client re: status  | 0.20 hrs.   |
| 05/12/2005 | CKW | Receive and review Cordero letter  | 0.20 hrs.   |
| 05/16/2005 | DLP | Review of filings of Dr. Cordero on appeal.  | 0.50 hrs.   |
| 05/19/2005 | CKW | Receive and review Motion to Strike Order for brief within 20 days and Diannetti letter              | 0.40 hrs.   |
| 05/20/2005 | DLP | Review of further filings by Dr. Cordero   | 0.40 hrs.   |
| 05/31/2005 | CKW | Receive and review Cordero letter to Mary Dianetti, court reporter, re: estimated cost of transcript | 0.20 hrs.   |
| 06/08/2005 | CKW | Email from trustee re: confirmation dates and telephone call to client                               | 0.30 hrs.   |
| 06/09/2005 | CKW | Email to trustee re: 7/25 confirmation hearing and issue of payment of loan proceeds                 | 0.40 hrs.   |
| 06/23/2005 | CKW | (7/25/05 - anticipated) Confirmation hearing   | 1.50 hrs.   |
| 06/23/2005 | CKW | (Estimated) Cordero appeal   | 5.00 hrs.   |
|            |     |  | \$16,294.50 |

**EXPENSES**

|                 |          |
|-----------------|----------|
| Federal Express | 13.84    |
| Copy Charges    | 346.32   |
|                 | \$360.16 |

**BILLING SUMMARY**

|                             |             |
|-----------------------------|-------------|
| Total professional services | \$16,294.50 |
| Total expenses incurred     | \$360.16    |

**TOTAL NEW CHARGES FOR THIS INVOICE** \$16,654.66

**TOTAL BALANCE NOW DUE** \$16,654.66

|                                 |            |
|---------------------------------|------------|
| Trust account beginning balance | \$6,706.66 |
| Trust account remaining balance | \$6,706.66 |



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
2120 U.S. Courthouse  
100 State Street  
Rochester, NY 14614-1387

Dr. Richard Cordero  
Appellant and creditor

**NOTICE OF MOTION and MOTION  
TO STAY CONFIRMATION HEARING and ORDER,  
WITHDRAW CASE PENDING APPEAL,  
REMOVE TRUSTEE AND  
GIVE NOTICE OF ADDITION TO APPEAL**

v.

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano  
Respondents and debtors in bankruptcy

Dr. Richard Cordero, appellant and creditor, affirms under penalty of perjury the following:

|  |            |
|--|------------|
| <b>I. CAUSE FOR THE STAY and FOR REQUESTING IT TO THIS COURT .....</b> | <b>881</b> |
| <b>II. CAUSE FOR REMOVAL OF TRUSTEE REIBER.....</b>                    | <b>882</b> |
| <b>III. CAUSE FOR WITHDRAWAL OF THE DELANO CASE FROM J. NINFO.....</b> | <b>884</b> |
| <b>IV. CONCLUSION and REQUEST FOR RELIEF.....</b>                      | <b>885</b> |

1. Dr. Cordero hereby gives notice of his motion in this Court to stay the confirmation hearing and any confirming order relating to the debt repayment plan that forms part of the Chapter 13 bankruptcy case of David DeLano and Mary Ann DeLano, which according to the docket of that case, no. 04-20280, WBNY, has been called for by Chapter 13 Trustee George Reiber thus:

|            |  |
|------------|--|
| 06/23/2005 | Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s) <a href="#">5</a> CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005) |
|------------|--|

**I. Cause for the stay and for requesting it to this Court**

2. There is every indication that Trustee Reiber will support the confirmation of the plan, as he was ready to do at the hearing on March 8, 2004 and that the bankruptcy court, Judge John C. Ninfo, II, presiding, will confirm it. That result will be contrary to law, detrimental to the interests of

the estate and the creditors, and supportive of a bankruptcy fraud scheme, as shown in the Affidavit, page 6, *infra*. It will also be prejudicial to the determination of the appeal pending before this Court in the above-captioned case from Judge Ninfo's Decision & Order of April 4, 2005.

3. In that Decision, page 19, Judge Ninfo stated that "Cordero indicated that he would appeal the Court's Decision & Order...In view of that anticipated appeal,...the Court hereby denies Cordero any stay of the effectiveness of this Decision & Order pending any appeal that he may take of the Decision & Order". He issued his Decision for the purpose of eliminating Dr. Cordero and his objections to the DeLanos' debt repayment plan from the hearing to confirm such plan. Yet, such confirmation will fail under FRBkrP 8005 to "protect the rights of all parties in interest", for it will be detrimental to the rights of the creditors in having the most of the DeLanos' estate collected and distributed to them. Thus, it would be contrary to every reasonable expectation based on the facts to apply to Judge Ninfo for precisely a stay of such confirmation and the relief requested here. This set of circumstances warrants that the request be made under Rule 8005 to this Court.

## **II. Cause for removal of Trustee Reiber**

4. Title 11 U.S.C. §323(a), made applicable to a Chapter 13 trustee pursuant to §103(a), provides that "The trustee in a case under this title is the representative of the estate" (references with the format §# are to 11 U.S.C. unless otherwise stated). Moreover, §1302(b)(1) makes applicable to the trustee most of the duties set out in §704, which states in the Revision Notes and Legislative Reports, 1978 Acts, that the trustee represents the general unsecured creditors. To carry out his duties and such representation of creditors, the trustee is required under §704(4) to "investigate the financial affairs of the debtor", and under §704(7) to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest".
5. The need for Trustee Reiber to discharge those official duties was rendered only more acute by the special circumstances of this case. Indeed, Mr. DeLano is a 32-year veteran of the banking

industry who is still working for Manufacturers and Traders Bank (M&T) and handles for it precisely bankruptcy cases! Inevitably one must wonder whether he actually failed to handle his own family's financial affairs although he is deemed competent by his Bank to handle those of its clients. One would reasonably expect that the bankruptcy of a financial expert still working as such would, if anything, receive close scrutiny

6. Not from Trustee Reiber. On the contrary, he was ready to submit to Judge Ninfo the DeLanos' debt repayment plan for confirmation on March 8, 2004, without having asked for a single document supporting their petition. What is more, despite Dr. Cordero's repeated requests that the Trustee have the DeLanos produce documents concerning their earnings and mortgages, he has failed to do so. Yet there was not only strong justification for the request, but also suspicious circumstances that made it imperative to investigate the DeLanos.
7. Indeed, they earned \$291,470 in just the 2001-03 fiscal years. That money could go a long way toward covering their liabilities of \$185,462. Inexplicably, Trustee Reiber has refused to ask the DeLanos to account for those earnings. Hence, the whereabouts of well over a quarter million dollars are still unknown...not to mention the DeLanos earnings before or since that period.
8. Such earnings are critically important, for they did not go into their home: The DeLanos took out a mortgage for \$26,000 in 1975 to buy the same home in which they still live; but today, 30 years later, their equity in it is merely \$21,415, while they still owe on it \$77,084 ...despite having taken a string of mortgages for hundreds of thousands of dollars on that home! Yet, Trustee Reiber has failed to investigate such absurd and inherently suspicious money juggling.
9. There can be no doubt that it is in the interest of all the creditors to find out where that money went and bring it back into the estate for distribution among them. Since Trustee Reiber has breached his official duties as a trustee and his fiduciary duties to the creditors, he can no longer pretend to represent either the estate or the creditors. Thus he must be removed under §324.

### III. Cause for withdrawal of the DeLano case from Judge Ninfo

10. Judge Ninfo allowed the DeLanos to submit an untimely motion to disallow Dr. Cordero's claim -which they had listed in their petition- as a subterfuge to eliminate from their case Dr. Cordero and his requests for documents concerning their earnings and mortgages. In preparation to hear that motion at an evidentiary hearing, the Judge stopped every other proceeding -to the detriment of all the creditors' interest in finding the DeLanos' assets- and required Dr. Cordero to take discovery of Mr. DeLano in *Pfuntner* (see Dr. Cordero's motion of June 20, 2005, in this Court and the supporting Statement on the Judge's linkage of both cases...only to deny **every document** that he requested to establish his claim and defend against that process-abusive motion.

11. Then at the evidentiary hearing on March 1, 2005, Mr. DeLano not only corroborated the facts on which Dr. Cordero's claim against him are based, but frankly admitted others to the same effect. Yet the Judge arbitrarily dismissed his testimony as the result of the "confusion" of Mr. DeLano, the 32-year veteran banker testifying to his own handling of an M&T bankrupt client and its harmful effect on Dr. Cordero, and disallowed the latter's claim. What a two-punch sham!

12. Thereby Judge Ninfo further protected the DeLanos from having to produce documents that can reveal their concealment of assets and prove their bankruptcy fraud. By so doing, he failed his duty under §1325(a)(3) to determine whether "the plan has been proposed in good faith and not by means forbidden by law". His confirmation of the plan would only compound his failure to uphold the law, for he has intentionally deprived himself of the documentary evidence necessary to ascertain the DeLanos' estate and satisfy the requirement for plan confirmation of §1325(a)(4):

The value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.

13. Consequently, the case should be withdrawn from the bankruptcy court to this Court under 28 U.S.C. §§157(d).

#### IV. Conclusion and Request for Relief

14. Judge Ninfo's and Trustee Reiber's conduct begs asking whether Mr. DeLano has become so well connected during his 32 year banking career and come to know so many secrets about the handling of bankruptcies that he is receiving special consideration by being spared production of incriminating documents. Or whether he knows that for some reason bankruptcy petitions are not investigated so that just about any, even his, gets confirmed. These questions point to a scheme of circumstances and relations that facilitate bankruptcy fraud. That scheme is prejudicial to the public, who ultimately pays the cost of fraud; allows the abuse of bankruptcy law; and undermines trust in the integrity of the courts. In the interest of justice, the Court should cause an investigation to ascertain the existence of such scheme and answer those questions.

15. Therefore, Dr. Cordero respectfully requests that the District Court:

- a) stay the confirmation hearing of the DeLanos' plan and any confirming order;
- b) withdraw the DeLano case to this Court pending the appeal;
- c) remove Trustee Reiber from the DeLanos' case and recommend the appointment of a trustee based in Albany, NY, unfamiliar with the case; and unrelated and unknown to any of the parties or officers in WDNY, to represent their estate and creditors; conduct a competent investigation of their financial affairs; and employ under §327 a reputable, independent, and certified accounting and title firm based in Albany to produce a comprehensive financial report;
- d) order the DeLanos to produce financial account statements and mortgage documents;
- e) refer the DeLano case under 18 U.S.C. §3057(a) to U.S. A.G. Alberto Gonzales for investigation by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with these cases and unacquainted with any of the parties or officers that may be investigated and thus expressly excluding from participation any staff from such offices in either Rochester or Buffalo;
- f) issue the proposed order;
- g) take cognizance of Dr. Cordero's notice to the Court and the parties of his appeal, to be added to the appeal pending in this Court, from any order confirming the DeLanos' plan.

Dated: July 13, 2005  
59 Crescent St., Brooklyn, NY 11208

*Dr. Richard Cordero*

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
2120 U.S. Courthouse  
100 State Street  
Rochester, NY 14614-1387

Dr. Richard Cordero  
Appellant and creditor

**AFFIDAVIT  
IN SUPPORT OF THE MOTION  
TO STAY CONFIRMATION HEARING and ORDER,  
WITHDRAW CASE PENDING APPEAL, REMOVE TRUSTEE,  
AND GIVE NOTICE OF ADDITION TO APPEAL**

v.

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano  
Respondents and debtors in bankruptcy

---

Dr. Richard Cordero, appellant and creditor, affirms under penalty of perjury the following:

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IV. Judge Ninfo has protected both Trustee Reiber from having to request, and the DeLanos from having to produce, documents that can prove bankruptcy fraud ..... 892

A. Judge Ninfo said in open court that he would issue Dr. Cordero’s written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with “local practice”, Dr. Cordero resubmitted it as a proposed order; he did so, yet the Judge did not issue it and only at Dr. Cordero’s instigation issued an order, which was pro forma and which he allowed the DeLanos to disobey with impunity ..... 895

1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero’s proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, “expressed concerns”, thus protecting the DeLanos from discovery that would show their bankruptcy fraud..... 898

2. Judge Ninfo denied having received the proposed order although Dr. Cordero faxed it to him and his phone bill shows it, and the Judge’s clerks acknowledged that the order was in his chambers, whereby trust in the Judge’s word has been shattered..... 899

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B. In the August 30 order on the motion to disallow Dr. Cordero’s claim against Mr. DeLano, Judge Ninfo required Dr. Cordero to conduct discovery on the claim only to deny in his November 10 order *every* document that he requested, even those that the DeLanos had been required to produce by the order of July 26 but had failed to do so; yet in the decision on appeal here, the Judge held that at the March 1 evidentiary hearing of that motion Dr. Cordero did not introduce documents and failed to prove his claim, whereby the Judge showed that the motion and the hearing were a setup to eliminate him before he could prove the DeLanos’ participation in a bankruptcy fraud scheme..... 901

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VI. Conclusion..... 905

**I. Who the DeLano are and what their bankruptcy petition shows**

1. Mr. David DeLano is far from an average debtor: He has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. At the time of the events in 2002 that gave rise to Dr. Richard Cordero’s claim against him, Mr. DeLano was Assistant Vice President with special responsibilities for dealing with delinquent borrowers and liquidating M&T’s security interests relating to defaulted loans. Thus, he is a member of a class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition rightfully or wrongfully but successfully for bankruptcy relief.
2. For her part, Mrs. Mary Ann DeLano was a specialist in business Xerox machines, and as such a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines.
3. Hence, the DeLanos are professionals with expertise in borrowing, going bankrupt, and learning and applying technical instructions. They must be held to a high standard of responsibility.

Hence, their bankruptcy petition warranted close scrutiny, particularly since it made no sense:

- a) they earned \$291,470 in just the 2001-2003 fiscal years, which to date they have neither wanted nor been required to account for by either Standing Chapter 13 Trustee George Reiber or Judge John C. Ninfo, II, who presides over their case;
- b) but they declared having only \$535 in cash or in bank accounts...with Mr. DeLanos' employer M&T, which may have issued a bank officer and his spouse with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare having 'stuck' M&T with a bankruptcy debt, as they did numerous other credit card issuers;
- c) indeed, they spread over 18 credit cards a whopping debt of \$98,092;
- d) they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;
- e) despite all that borrowing, they declared household goods worth only \$2,910...that's all they pretend to have accumulated throughout their combined worklives!, although they earned over a *100* times that amount, \$291,470, in only the three years of 2001-03...unbelievable!
- f) the combined value of their two cars is \$6,500, on which they owe \$10,285;
- g) they 1) took out a mortgage for \$26,000 in 1975; 2) another for \$7,467 in 1977; 3) still another for \$59,000 in 1988; as well as 4) an overdraft from ONONDAGA Bank for \$59,000 and 5) owed \$59,000 to M&T in 1988; 6) another mortgage for \$29,800 in 1990, 7) even another one for \$46,920 in 1993, and 8) yet another for \$95,000 in 1999, all mortgages to pay the same home in which they live today and on which they now, 30 years later, still owe \$77,084 and have equity of merely \$21,415...mindboggling! and also most suspicious because neither Judge Ninfo, nor Trustee Reiber, nor Assistant U.S. Trustee Kathleen Dunivin Schmitt, nor U.S. Trustee for Region 2 Deirdre A. Martini wants to require them to produce any statements of their bank and debit card accounts (§46 below), which can show the source

and flow of their earnings and other receipts, while they, purportedly bankrupt, can afford and are willing to pay legal fees for over a year's maneuvering to avoid such production!!!!?;

4. So where did their money go?; to a golden retirement pot at the end of their worklife rainbow?

## **II. J. Ninfo condoned the unlawful termination of the examination of the DeLanos after the only creditor present, Dr. Cordero, had asked only two questions**

5. Although the DeLanos' bankruptcy petition triggers common sense questions, Judge Ninfo would have none of them. He excused Trustee Reiber and his attorney, James W. Weidman, Esq., who unlawfully prevented the examination of the DeLanos by Dr. Cordero, the only creditor who showed up at the §341 meeting of creditors held on March 8, 2004.

6. That meeting had the purpose, as provided under §343, of enabling the creditors to meet the "debtor [who] shall appear and submit to examination under oath...". What is more, FRBkrP 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of "any other matter relevant to the case". Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until "the final meeting of creditors".

7. None of the other 20 creditors, all institutional, attended the meeting. This is the normal occurrence at such a meeting, as Veteran Banker DeLano must know and have counted on for the unobjected, smooth sailing of their petition. His reliance thereon is inferred from the distribution of their \$98,092 unsecured credit card debt over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine them.

8. The examination of the DeLanos was not conducted by Trustee Reiber because disregarding the Code -§341(a)-, the rules -FRBkrP 2003(b)(1)-, and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos' debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence

that the DeLanos had committed fraud. Dr. Cordero had to insist that Att. Weidman take notice that he was not accusing them of fraud. To no avail. Att. Weidman alleged that there was no time for such questions and put an end to the examination although there was more than ample time to continue it since Dr. Cordero was only at his second question! By so violating Dr. Cordero's right to examine the DeLanos, Att. Weidman tipped him off to their bankruptcy fraud.

9. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act. Nevertheless, Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition.
10. Likewise, Judge Ninfo excused it. He stated for the record that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the "local practice"; that he should have called 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 until 8 in the evening, particularly when he had a room full of people. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had been cut off by Att. Weidman after just two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Att. Weidman the courtesy of giving him his written objections in advance so that the Attorney could determine how long Dr. Cordero would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Att. Weidman's conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud,

whereby Att. Weidman showed the need to find out how much Dr. Cordero already knew about fraud committed by the DeLanos before exposing them to answering under oath any further questions. Dr. Cordero said that Att. Weidman had put him under examination although he was not the one to be examined at the meeting, but rather the DeLanos were; and added that Att. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers. Disregarding this legal injury, Judge Ninfo defended Att. Weidman and said that Dr. Cordero applied the law too strictly and ignored the local practice...precisely what Dr. Cordero has complained about!

**III. J. Ninfo’s “local practice” consists in the disregard of the law, the rules, and the facts and the application of the law of personal relations among the locals**

12. Judge Ninfo’s “local practice” applies the law of the locals. It is based on personal relations among people that work in the same small federal building and with those who appear before him frequently, who need to be in good terms with him for the sake of their clients and careers since he distributes favorable and unfavorable decisions without regard for legality or the facts; in return, his authority goes unchallenged. Indeed, the frequency of their contacts is so high as to create the propitious circumstances for the conniving development of such “local practice”.

| <b>Party and capacity according to queries ran on PACER (<a href="https://ecf.nywb.uscourts.gov">https://ecf.nywb.uscourts.gov</a>)</b> | <b>Cases before J. Ninfo out of total # of cases</b> | <b>Date of queries</b> |
|---|--|------------------------|
| 1) Trustee Reiber   | 3,909 out of 3,907 <i>open</i> cases!                | April 2, 2004          |
| 2) Christopher K. Werner, Esq., attorney for the DeLanos  | 525 out of 575                                       | Feb. 28, 2005          |
| 3) David MacKnight, Esq., att. for Plaintiff James Pfuntner <sup>1</sup>  | 442 out of 559                                       | June 5, 2005           |

<sup>1</sup> Mr. DeLano was in charge of M&T’s defaulted loan to Mr. David Palmer, owner of moving and storage company Premier Van Lines, Inc., and of liquidating the storage containers that Mr. Palmer had bought with the loan proceeds. Those containers were subject to M&T’s security interest and some held Dr. Cordero’s stored property. Containers labeled with his name were eventually said to have been seen at a warehouse in Avon, Rochester, owned by Mr. James Pfuntner. He commenced the adversary proceeding *Pfuntner v. Trustee Kenneth Gordon et al*, Dr. Cordero’s affidavit of July 11, 2005, for motion to stay, remove trustee, etc

|  |                    |               |
|--|--------------------|---------------|
| 4) Chapter 7 Trustee Kenneth Gordon, Esq., in <i>Pfundtner</i>   | 3,382 out of 3,383 | June 26, 2004 |
| 5) Raymond C. Stilwell, Esq., attorney for David Palmer, owner of moving and storage company Premier Van Lines | 162 out of 291     | June 5, 2005  |
| 6) Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee  | 1,596 out of 1,596 | June 5, 2005  |
|  |                    |               |

13. If the local parties know what is good for them, they take what Judge Ninfo gives them and hope for something as good or better next time, which can be 15 minutes later when they appear in their next case before him. A non-local pro se party, like Dr. Cordero, cannot ascertain Judge Ninfo's unwritten "local practice" and can only appear before him with no other relation than that to the terms of the law, the rules, and the facts. When Non-local Dr. Cordero has tried to confine the Judge's rulings to such legal and factual terms and even dare appeal from his decisions, Judge Ninfo has deemed such efforts a threat to the modus operandi that he has developed with the locals. He has taken action to protect it by ever more blatantly disregarding the rule of law and the facts. In so doing, he has for the last three years caused Dr. Cordero an enormous loss of effort, time, and money and inflicted upon him tremendous emotional distress. What is worse, the engagement of the Judge and his local parties in "local practice" has revealed a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias toward them and against Dr. Cordero. Judge Ninfo's substitution of "local practice" for the rule of Congressional law and the abuse that he has thereby inflicted on Dr. Cordero constitute a denial of due process to him.

**IV. Judge Ninfo has protected both Trustee Reiber from having to request, and the DeLanos from having to produce, documents that can prove bankruptcy fraud**

14. In his Objections of March 4, 2004 to the DeLanos' Debt Repayment Plan, Dr. Cordero

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docket no. 02-2230, WBNY, in which Dr. Cordero is a defendant and third party plaintiff and Mr. DeLano is a third-party defendant. An inspection at that warehouse ordered by Judge Ninfo was conducted on May 19, 2003. The inspection report made at a hearing on May 21, 2003, to the Judge by Dr. Cordero and undisputed by the other parties, who had obtained the inventory list of his stored property, revealed that his property was lost or damaged.

analyzed their January 27 petition. Based on its incongruities (§3 above), he requested therein under §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate them and obtain, if he did not already have them, certain financial documents capable of establishing the petition's good faith. But the Trustee failed to discharge his duty. Dr. Cordero had to repeat the request in writing and in conversations with him and his superiors, Trustees Schmitt and Martini, who refused to replace him with another trustee willing and able to investigate the DeLanos.

15. Actually, Trustee Reiber pretended to be investigating the DeLanos when in fact he was not. Only after Dr. Cordero confronted him with that pretense did he for the first time on April 20, 2004, request from them some documents. This was a pro forma request that fell objectively short of the scope of investigation warranted by their incongruous declarations in their petition. (§17 below) So they got the hint and produced nothing. Dr. Cordero protested and the Trustee simply asked Att. Werner on May 18 for a progress report. However, he would not issue any subpoenas and even stated to Dr. Cordero that he did not know whether he had subpoena power. Yet, he is the trustee in more than 3,907 cases...and never had occasion to issue a subpoena!? Has he been rubberstamping petitions? Even after Dr. Cordero showed that FRBkrP 9016 and FRCivP 45 enable him to issue subpoenas, he would not subpoena documents from the DeLanos.
16. Nor would Trustee Schmitt require, in response to Dr. Cordero's complaint to her, that Trustee Reiber compel document production. Why would both disregard the suspicion raised by the pretension that 32-year Veteran Banking Industry Insider DeLano did not by habit keep financial documents or had the formal or informal connections to obtain them from financial institutions ...or was it because Mr. DeLano was sure that they would not suspect or investigate anything that he knew he could file a petition riddled with incongruous declarations without risking a request for supporting documents, let alone incriminating ones, and that the worst that could happen was what did happen?: Trustee Reiber moved on June 15 to dismiss under §1307(c)(1) "for unreasonable delay which is prejudicial to creditors".

17. When the DeLanos made a token effort at compliance, they produced credit bureau reports with missing pages. Similarly, they produced only one statement of each of only 8 credit cards. Yet, they were supposed to produced 288 statements given that Trustee Reiber's request was for them to produce the monthly statements for the last three years of each of those 8 cards. They failed to comply with even a request that was grossly inadequate because the DeLanos had listed, not 8, but 18 credit cards on which they had piled up a \$98,092 debt. Moreover, therein they claimed **15 times** that their financial troubles had begun with "1990 and prior credit card purchases", thus opening the door for the inquiry to cover such purchases for not just the last 3 years, but at least the last 15 years. In addition, the single statements produced were between 8 and 11 months old!...insufficient to determine their earnings outflow or to identify their assets, but enough to show that the DeLanos keep monthly statements in their possession for a long time.
18. Enough also to show that to a pro forma request, a pro forma reply. Were the DeLanos and Trustee Reiber acting in coordination? This question is justified by the fact that the DeLanos violated their duty under §521(3) and (4) "to surrender to the trustee...any recorded information...", a duty so strong that it remains in force "whether or not immunity is granted under section 344 of this title", *id.* Yet, the Trustee took no action against them, except to postpone their §341 examination, which they understood as a mere pro forma exercise before the confirmation of their debt repayment plan would end the hiccup caused by Dr. Cordero's objections and document requests. Indeed, just as the Trustee cared so little for the initial examination on March 8 that he did not even attend it (¶8 above), he cared so little for the coming one that he did not even review the documents that he had received and that he had pretended he wanted "so that meaningful questions can be asked at said hearing". Hence, he did not even notice that they were missing pages or were old (¶17 above), and that it was utterly implausible for the DeLanos not to be able to submit the recent monthly credit card statements. Instead, he uncritically accepted the DeLanos' excuse that "credit card companies are not cooperating". Nevertheless, the

Trustee refused to request what the DeLanos indisputably had: bank account statements. The facts show that Trustee Reiber never intended to investigate the DeLanos. It was all a sham!

19. Even so, Dr. Cordero analyzed the petition together with those incomplete and suspiciously scanty documents submitted by the DeLanos. He showed, among other things, that they had engaged in bankruptcy fraud, particularly concealment of assets. Thus, in the relief of his written analysis he set forth the text for an order requesting certain documents that could prove their bankruptcy fraud, including checking account statements that would show the flow and whereabouts of \$291,470 earned by them in just the 2001-03 fiscal years and cover substantially their liabilities of \$185,462. Dr. Cordero faxed it to Att. Werner on July 9, 2004, and filed it.

**A. Judge Ninfo said in open court that he would issue Dr. Cordero's written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with "local practice", Dr. Cordero resubmitted it as a proposed order; he did so, yet the Judge did not issue it and only at Dr. Cordero's instigation issued an order, which was pro forma and which he allowed the DeLanos to disobey with impunity**

20. At the hearing on July 19, 2004, of the Trustee's motion to dismiss, Dr. Cordero asked Judge Ninfo to grant the requested order as described in his July 9 Statement. The Judge said that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero offered to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, the Judge decided that Dr. Cordero could do so and gave him his fax number to make it possible for the Judge to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away. Att. Werner, who knew that text too, did not object to any of this.

21. Dr. Cordero reformatted and faxed the proposed order to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was wrong; he was then given the correct one and he refaxed it. Nevertheless, the Judge did not sign it. Instead, he  
Dr. Cordero's affidavit of July 11, 2005, for motion to stay, remove trustee, etc

gave precedence to the untimely objection of Local Party Att. Werner, the one who has appeared before him in at least 525 cases (§12 above). In a letter addressed to the Judge and delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." Judge Ninfo took the hint. Att. Werner's letter was docketed immediately and made available through PACER. By contrast, the Judge failed not only to issue the proposed order, but also to have it docketed, thus violating FRBkrP Rule 7005 and FRCivP Rule 5(e) and showing bias toward Att. Werner and the DeLanos.

22. Nor did he issue any other production order. Yet, by July 21 PACER already contained the minutes of the July 19 hearing, which included the statement in capital letters:

Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

23. What is more, Judge Ninfo disregarded the follow-up letter that Dr. Cordero faxed to him on July 21 with another copy of the proposed order. It pointed out that Dr. Cordero had faxed his July 9 Statement to Att. Werner, who thereby had had 10 days to learn of the breath of the requested order, yet he had failed at the hearing to object to the Judge's decision that Dr. Cordero should reformat it into a proposed order and fax it to him. Since the Attorney stated at the July 19 hearing that he 'has been in this business for 28 years', he had to know his obligation to raise timely objections lest they be deemed waived.

24. But Judge Ninfo did not issue the order. So he made Dr. Cordero waste his time and effort again in preparing and submitting a document that the Judge knew he was not going to act upon. Did he also ask for it to gain leverage over the DeLanos, just as he kept the dismissal motion hanging over their heads? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word justifiably cannot be relied on.

25. Just as Att. Werner did not oppose at the July 19 hearing Dr. Cordero's requested order, whose contents he had known for 10 days, yet upon its being faxed to him in the proposed order format after the hearing he objected to it, so he also did not move to disallow the claim of Dr. Cordero,

whom the Attorney treated as a creditor for six months, yet after the hearing he moved to disallow his claim. After having appeared before Judge Ninfo in some 500 cases at the time, Att. Werner knew of the Judge’s disregard for the law, the rules, and the facts and could count on his relation with him for the Judge to ignore the untimeliness of his objection to the proposed order and his motion to disallow. Or was there coordination? It should be noted that although his motion was dated as of the date of the hearing, it was filed only on July 22, 2004 (cf. ¶21 above).

26. Even as late as July 26, Judge Ninfo had not caused Dr. Cordero’s faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order for docketing.

27. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

|            |                           |   |
|------------|---------------------------|---|
| 07/20/2004 | <a href="#"><u>53</u></a> | Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004) |
|------------|---------------------------|---|

28. When Dr. Cordero clicked on hyperlink 53, only the letter –page 1 of 5- downloaded as an Adobe PDF, but not the order! Why?! This was in clear violation of FRBkrP 5005(a) providing that “The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be **forthwith** transmitted to the clerk” (emphasis added).

29. By contrast, the entry for Att. Werner’s objection to Dr. Cordero’s claim as creditor of the DeLano Debtors, which was filed on July 22, read thus:

|            |                           |  |
|------------|---------------------------|--|
| 07/22/2004 | <a href="#"><u>51</u></a> | Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <u>1</u> Proposed Order # <u>2</u> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004) |
|------------|---------------------------|--|

30. When Dr. Cordero clicked on hyperlinks 51>2, an order proposed by Att. Werner to disallow

Dr. Cordero's claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo's bias toward the DeLanos and against Dr. Cordero.

1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero's proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, "**expressed concerns**", thus protecting the DeLanos from discovery that would show their bankruptcy fraud

31. As late as July 27, 2004, Judge Ninfo had still not caused the docketing, in violation of FRBkrP 5005(a), of Dr. Cordero's letter of July 21 protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him and that the minutes recorded its intended entry. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004. Therein he stated how little it took to deny in effect Dr. Cordero's proposed order:

WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner **expressed concerns** in a July 20, 2004 letter, a copy of which is also attached; (emphasis added)

32. This is an infelicitous hybrid between 'objections to' and 'concerns about'. It is indicative of Judge Ninfo's awareness that due to untimeliness, Att. Werner could not have raised valid objections for the first time after the hearing. Nevertheless, it shows that for the Judge to break faith with his word given in open court, it was sufficient that the debtors' attorney, the one whom he knows so well for having appeared before him in over 500 cases, had "expressed concerns", however untimely. On such "concerns", the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud (§19 above). Evidently, finding the DeLanos' earnings of \$291,470 in just 2001-03 was not one of Judge Ninfo's "concerns".

33. But it is! Under §1325(a)(3), Judge Ninfo has a duty for the public benefit to ascertain whether "the [debtor's debt repayment] plan has been proposed in good faith and not by means forbidden by law". In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

The purpose of the examination [at the §341 meeting of creditors] is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

34. So Judge Ninfo failed in his duty under the Code to examine the DeLanos' petition for fraud and to forthwith transmit documents to the clerk for their docketing, in addition to failing to keep his word. His failures justify asking whether he denied Dr. Cordero's proposed order for document production by the DeLanos because of whatever Att. Werner's "expressed concerns" meant to him or because of his own "concerns": Is he protecting them because in general the relations that he has developed with local parties make him biased toward them, or in particular because Mr. DeLano has during his 32-year-long banking career learned too much about the handling of abusive bankruptcies, even those to avoid loan payment to his employer, M&T, so that the Judge cannot risk finding that he committed bankruptcy fraud lest he disclose what he knows in a plea bargain?
35. There is solid basis for this question. It is in Judge Ninfo's disregard for legal provisions and facts when handling Dr. Cordero's application for default judgment for a sum certain pursuant to FRCivP 55(a) and (b)(1) against Mr. Palmer (fn. under ¶12 above), who had failed to answer Dr. Cordero's summons and complaint or otherwise appear. Does Mr. DeLano know why Judge Ninfo really refused to issue the default judgment or hold Mr. Palmer accountable in any way?

2. Judge Ninfo denied having received the proposed order although Dr. Cordero faxed it to him and his phone bill shows it, and the Judge's clerks acknowledged that the order was in his chambers, whereby trust in the Judge's word has been shattered

36. Still by August 6, neither Dr. Cordero's proposed order of July 19 nor his letter of July 21 had been docketed. On the 6<sup>th</sup> Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
37. On August 9, Mr. Stickle informed Dr. Cordero that upon asking the Judge and Assistant Andrea Siderakis, he had been told that Dr. Cordero's July 21 fax never arrived.

38. That was an untenable explanation for the non-docketing: The fax went through on July 22 and a copy sent to the Judge of Dr. Cordero's telephone bill showed that he did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane as being held in Judge Ninfo's chambers.

39. This was just the latest instance of Judge Ninfo springing on Dr. Cordero a counterfactual statement and docket manipulation, as *Cordero v. Gordon*, dkt. no. 03cv6021L, shows. As a result, the trust in Judge Ninfo's integrity has been shattered and replaced by distrust.

**3. Judge Ninfo had evidence that the DeLanos possessed the requested documents but allowed them not to produce them with impunity**

40. In his July 26 order Judge Ninfo ordered, among other things, that:

The debtors are to produce any documents in their possession, regarding their credit card accounts and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04/.

41. But when the DeLanos' motion to disallow Dr. Cordero's claim was heard on August 25, 2004, those documents had not yet been produced. Dr. Cordero complained about their non-compliance without being contradicted by Att. Werner. Far from holding the DeLanos in contempt, Judge Ninfo did not even order them to produce those credit card statements immediately.

42. However, credit reports that the DeLanos produced on August 5, 2004; showed that of all their scores of credit card accounts 36 had some type of activity in that year, such as billing and paying charges as late as July 2004. The DeLanos must have received monthly statements reflecting such activity. Moreover, at the meeting of creditors held on February 1, 2005, at Trustee Reiber's office, Mr. DeLano admitted for the record that he still uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156. Since the DeLanos were using credit cards and receiving the corresponding statements contemporaneously with the July 26 order to produce those statements by August 11, they had what they were ordered to produce but chose not to and did so with impunity. Hence, Judge Ninfo's order of July 26 had been a

pretense to cover his failure to issue, as agreed at the July 19 hearing, Dr. Cordero's proposed order, which requested the production of an even broader spectrum of documents. The Judge again protected the DeLanos from having to produce documents proving their bankruptcy fraud.

**B. In the August 30 order on the motion to disallow Dr. Cordero's claim against Mr. DeLano, Judge Ninfo required Dr. Cordero to conduct discovery on the claim only to deny in his November 10 order *every* document that he requested, even those that the DeLanos had been required to produce by the order of July 26 but had failed to do so; yet in the decision on appeal here, the Judge held that at the March 1 evidentiary hearing of that motion Dr. Cordero did not introduce documents and failed to prove his claim, whereby the Judge showed that the motion and the hearing were a setup to eliminate him before he could prove the DeLanos' participation in a bankruptcy fraud scheme**

43. Showing his disregard for the law, Judge Ninfo issued his order of August 30 without citing a single authority for **a)** suspending all court proceedings in the DeLanos' case until their motion had been determined, despite the detriment to the other 20 creditors' interest in further proceedings to ascertain whether the DeLanos had committed fraud; **b)** requiring Dr. Cordero to undertake discovery on his claim against Mr. DeLano in preparation for an evidentiary hearing, though that claim was valid in *Pfuntner* and no legal basis was invoked for requiring that it be proved in the DeLanos' case; and **c)** barring consideration of any matter that Dr. Cordero might file if unrelated to the DeLanos' motion to disallow, thus denying him access to judicial process.
44. Far from requiring that the DeLanos cooperate in the discovery, Judge Ninfo gave a most inconsistent excuse for refusing to ask them to produce even a single document:

[A]t this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition;

45. So the DeLanos failed to comply even with Judge Ninfo's pretense of a production order of July 26 ( ¶42 above), after failing to produce the documents requested by Trustee Reiber so that he moved to dismiss, just as they had failed to produce those requested by Dr. Cordero, and the

resulting “insufficient evidence” of bankruptcy fraud is the Judge’s justification for not asking them to produce anything! This is not legal reasoning; this is undisguised protection from incriminating document production.

46. In the same vein, the Judge pretended that the very Trustee that had pretended to have been investigating the DeLanos while not having requested from them even one document (§15 above) and whose attorney prevented Dr. Cordero from examining them at the meeting of creditors (§8 above) was precisely the one “continuing” to investigate them. So little did Trustee Reiber want to investigate them that he invoked the Judge’s suspension of proceedings until the determination of the motion to disallow as his excuse for refusing “to conduct any further proceedings in this matter...until the Court advise[s] me to continue”. Are they pursuing in coordination the same agenda to prevent Dr. Cordero from proving a bankruptcy fraud scheme? (§34 above)
47. In pursuit of that agenda, Judge Ninfo disregarded his duty to ascertain whether the DeLanos had petitioned for bankruptcy relief “by any means forbidden by law”, §1325(a)(3), and proceeded as if “the Debtors are honest but unfortunate debtors who are entitled to bankruptcy discharge, because they have filed a good faith Chapter 13 case”, a prejudgment that he stressed by referring to Dr. Cordero as “an individual, who the Debtors honestly believe is not a creditor” .
48. But how could the Judge know what the Debtors “believe”, let alone that they did so “honestly”, since he had **not yet** heard them testify?! Not even their petition had been submitted to him by the Trustee at a confirmation hearing, which is the one set for next July 25 (cf. §1325(b)(1)). Did he engage in ex parte communication with the DeLanos in violation of FRBkrP 9003? Or did his bias toward them make him jump to the conclusion that they were “honest but unfortunate”, while making him look away from their petition’s incongruous declarations (§3 above) and the fraud questions that they raised, which he ensured went unanswered due to his intentionally caused “insufficient evidence” (§44 above)? How open-minded would he be to reverse himself by finding that, after all, the DeLanos are dishonest bankrupts and Dr. Cordero a creditor holding a valid claim?

49. To comply with that August 30 Order, Dr. Cordero requested documents relating to **a)** his claim against Mr. DeLano in *Pfuntner* and others similar to those listed in his July 19 proposed order. and **b)** his **defense** that the DeLanos' motion to disallow his claim was a subterfuge to eliminate him from the case before he could prove their bankruptcy fraud, particularly concealment of assets.
50. In his Response of October 28, Mr. DeLano denied Dr. Cordero discovery of *every* document, alleging that each was either irrelevant or not in the DeLanos' possession. Such sweeping self-serving allegation is in itself suspect, especially so when advanced by the very debtors that all along refused to produce any documents to the point that Trustee Reiber moved for dismissal (§16 above). Moreover, the scope of discovery under FRBkrP 7026 and FRCivP 26(b)(1) is so broad that it allows discovery of "any matter, not privileged, that is relevant to the claim **or defense** of any party", (emphasis added). Therefore, Dr. Cordero moved on November 4, 2004, to compel Mr. DeLano to comply with Judge Ninfo's August 30 Order by producing the requested documents.
51. Disregarding once more the law and rules by not citing any authority, let alone discussing that analyzed by Dr. Cordero, Judge Ninfo denied him *every* document and merely stated that:
- [I]t appears that DeLano has complied with all of the documentary discovery requests made by Cordero that are relevant to the Claim Objection Proceeding
52. How can the Judge deduct from Mr. DeLano's production of **none** of the documents requested by Dr. Cordero that Mr. DeLano produced "all of the documentary discovery requests"? The question is pertinent since the DeLanos had failed to produce even the documents requested by the Judge's own July 26 Order. Forget reasoning; bias is the motive for his uncritical acceptance of Mr. DeLano's self-serving statement, which the Judge echoes as "DeLano has indicated in the Response that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding" . Why does Judge Ninfo take Mr. DeLano at his word? (cf. §34 above)
53. Through bias or ex parte communication, Judge Ninfo believed Mr. DeLano's counterfactual statements and ordered that "1. The Cordero Discovery Motion is in all respects denied". Why did he

never consider that the DeLanos, who have refused to show the whereabouts of \$291,470 earned in just the 2001-03 fiscal years, have a motive to conceal documents so as to have their plan confirmed and thereby avoid over \$144,000 in debt plus compounding interest at over 25%? Why is Judge Ninfo so confident that even if his appellate peers read his biased decisions, no harm will come to him? At the December 15 hearing, the evidentiary hearing was set for March 1, 2005.

54. After that hearing, Judge Ninfo topped his bias and inconsistency by holding against Dr. Cordero in his April 4 decision that “he did not offer any documents for admission into evidence” so that he failed to prove his claim. What a cheek!, for it was the Judge who denied him *every* document (§51 above). Moreover, he disregarded Mr. DeLano’s admission at the hearing that his role in liquidating the storage containers put him in a position at M&T to obtain those documents. So he was subject under FR CivP 34(a) to Dr. Cordero’s discovery request for documents that are not only “in the possession, [but also] the custody or control of the party upon whom the request is served”. Judge Ninfo and the DeLanos pursued with Trustee Reiber’s support their common agenda of preventing Dr. Cordero from proving their bankruptcy fraud by eliminating him through a motion to disallow and an evidentiary hearing that were nothing but an abuse of process two-punch sham!

**V. The sham character of Judge Ninfo’s evidentiary hearing is confirmed by the charade of a §341 examination through which Trustee Reiber has allowed the DeLanos not to account for hundreds of thousands of mortgage dollars**

55. At Dr. Cordero’s instigation, the §341 examination of the DeLanos took place on February 1, 2005. Despite the obvious need for a title search of their home (§3 above), Trustee Reiber refused to order it and asked merely for some mortgage documents. Again (§18 above), the documents produced were incomplete. Dr. Cordero analyzed them in a letter of February 22 to Trustees Reiber and Schmitt, and requested that they have the DeLanos produce responsive documents.

56. Trustee Reiber asked pro forma for some and to him the DeLanos produced computer printouts, but kept them from Dr. Cordero. Upon the latter’s request, the reason for their not having

initially been served on him became apparent: The printouts were a pretense, for they had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement the U.S. Dept. of Housing and Urban Development. Dr. Cordero's letters analyzing those printouts and their implications have gone unanswered by Trustees Reiber, Schmitt, and Martini, yet Dr. Cordero is still under §704(7) a party in interest entitled to information. Hence, hundreds of thousands of dollars received by the DeLanos over 30 years are unaccounted for because the trustees are evading their duty to ask them for mortgage documents, to the detriment of the estate and over 20 creditors. The examination of the DeLanos had been a charade to appease Dr. Cordero and feign compliance with §341!

## VI. Conclusion

57. The facts show a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct through which Judge Ninfo and Trustee Reiber as well as others have allowed the DeLanos not to produce documents that could prove the DeLanos' bankruptcy fraud, particularly concealment of assets. Thereby they have purposefully avoided the evidence necessary to meet the requirements of §1325(a) to confirm their debt repayment plan. Those facts also point to the existence of a scheme of circumstances and relations that protect rather than investigate and expose a fraudulent bankruptcy petition. That scheme itself must now be the subject of an official investigation. The law at 18 U.S.C. §3057(a), the integrity of the courts, and due process so require. So do practical considerations, for there comes a time when reasonable persons must realize that neither their peer nor acquaintances deserve their support because sticking by them would amount to aiding and abetting their wrongdoing and expose them to be dragged by association down the same disgraceful path of ethical and legal condemnation. This is such a time.

Dated: July 11, 2005  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

## CERTIFICATE OF SERVICE

Dr. Richard Cordero certifies that he served the following parties with a copy of his notice of motion and motion of July 13, 2005, to stay confirmation hearing and order, withdraw case pending appeal, remove trustee, and give notice of addition to appeal, as well as his supporting affidavit of July 11, 2005:

### I. DeLano Parties (05cv6190L)

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Ms. Deirdre A. Martini  
U.S. Trustee for Region 2  
Office of the United States Trustee  
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### II. Pfuntner Parties (02-2230, WBNY)

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Dated: July 13, 2005  
59 Crescent Street  
Brooklyn, NY 11208

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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DR. RICHARD CORDERO,

Appellant,

**ORDER**

05-CV-6190L

v.

DAVID DE LANO and MARY ANN DE LANO,

Respondents.

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Having considered the motion of July 13, 2005, raised by Appellant and his supporting affidavit of July 11, 2005, the Court orders as follows:

- a) The confirmation hearing in Bankruptcy Court in In re David DeLano and Mary Ann DeLano, docket no. 04-20280, and any order confirming the DeLanos' debt repayment plan are stayed.
- b) The DeLano case is withdrawn from the Bankruptcy Court to this Court pursuant to 28 U.S.C. §157(d) pending the above-captioned appeal.
- c) Trustee George Reiber is removed as trustee in the DeLano case pursuant to 11 U.S.C. §324(a).
  - 1) The Court recommends that the successor trustee to be appointed in the DeLano case be an experienced out of district trustee, unfamiliar with any aspect of the case, and unrelated and unknown to any party or officer in it, such as a trustee based in Albany, NY, is likely to be; and that he employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, equally unfamiliar, unrelated and unknown, such as one based in Albany, to produce a comprehensive financial report covering the above-described documents, property, and assets; all the "1990 and prior Credit card purchases" referred to by Respondents in Schedule F of their petition of January 27, 2004; and the in- and out flows of their

earnings since such "purchases".

d) Respondents are ordered to produce the following documents to the Court, Appellant, and the successor trustee when appointed; and to that end are placed under a continuing duty that survives the deadlines stated below:

1) Within two weeks of the date of this order:

(a) copies of the periodic and any special statements, showing all the information relating to charges and payments, of all their (i) checking, savings, investment, retirement, and any other accounts as well as their (ii) credit and debit card accounts, whether any such accounts in (i) or (ii) were or are in either or both of their names or otherwise under their total or partial control, wherever any of them may have been held in the world since January 1, 2000, or from the date of their opening since then, to date;

(b) as to the property, including home and surrounding lot, at 1262 Shoecraft Road, Penfield, NY, copies of all documents, which are to be understood as complete documents with all their parts, regardless of whether any parts are deemed not, related to:

(1) the purchase of such property in 1975 and any and all payments therefor since then to date;

(2) all mortgages taken on such property and any prize or loan of which any part was intended for, or actually used to make, payment on such property;

(3) the use of any part of such mortgages, prize, or loan for any other purpose, whether to purchase, rent, or acquire the right to use or receive, any other real or personal property, including any vehicles, or service, wherever in the world such property was, is, or may be located or such service was, is being, or may be received, regardless of whether any such purchase or payment was or is being made for the benefit of Respondents or anybody else;

2) Within 30 days from the date of this order:

- (a) copies of the periodic and any special statements, showing all the information relating to charges and payments, of all their (a) checking, savings, investment, retirement, and any other accounts as well as their (b) credit and debit card accounts, whether any such accounts in (a) or (b) were or are in either or both of their names or otherwise under their total or partial control, wherever any of them may have been held in the world since January 1, 1989, or from the date of their opening since then, to December 31, 1999;
- 3) The purpose of this production order is to ascertain any and all assets that Respondents are or may have been in possession of, hold, or control, whether directly or indirectly, and that could possibly be made available for distribution to any of their creditors. When in doubt as to whether any document is covered by this Order or when Respondents or their advisers believe that any financial institution officer, court officer, trustee, or creditor would want to examine such document, the Respondents are to produce such document and at any event are to disclose the existence of such asset or document.
- e) The DeLano case is referred for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that it be investigated by U.S. attorneys and FBI agents, such as those from the Dept. of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with this case and *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

IT IS SO ORDERED.

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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
, 2005.

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