

**The Salient Facts of The *DeLano* Case**

(as of 21sep10)

**Will the students find them on their own and interpret them the same way?**

(*D:#* & footnote references are to [Judicial-Discipline-Reform.org/Follow\\_money/DeLano\\_docs.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf); these are *bookmarks* on the left)

*DeLano* is a federal bankruptcy case. Part of a case cluster, it reveals fraud that is so egregious as to betray overconfidence born of a long standing practice<sup>1</sup>: Coordinated wrongdoing evolved into a bankruptcy fraud scheme.<sup>2</sup> It was commenced by the DeLano couple filing a bankruptcy petition with Schedules A-J and a Statement of Financial Affairs on January 27, 2004. (04-20280, WBNY<sup>3</sup>) Mr. DeLano, however, was a most unlikely bankruptcy candidate. At filing time he was a 39-year veteran of the banking and financing industry and continued to be employed by M&T Bank precisely as a bankruptcy officer. He and his wife, a Xerox technician, were not even insolvent, for they declared \$263,456 in assets v. \$185,462 in liabilities (*D:29*); and also:

1. that they had in cash and on account only \$535 (*D:31*), although they also declared that their monthly excess income was \$1,940 (*D:45*); and in the FA Statement (*D:47*) and their 1040 IRS forms (*D:186*) that they had earned \$291,470 in just the three years prior to their filing;
2. that their only real property was their home (*D:30*), bought in 1975 (*D:342*) and appraised in November 2003 at \$98,500<sup>4</sup>, as to which their mortgage was still \$77,084 and their equity only \$21,416 (*D:30*)...after making mortgage payments for 30 years! and receiving during that period at least \$382,187 through a string of eight mortgages<sup>5</sup>. (*D:341*) Mind-boggling!
3. that they owed \$98,092 –spread thinly over 18 credit cards (*D:38*)- while they valued their household goods at only \$2,810 (*D:31*), less than 1% of their earnings in the previous three years. Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their working lives of more than 30 years.
4. Theirs is one of the trustee's 3,907 *open* cases and their lawyer's 525 before the same judge.

These facts show that this was a scheming bankruptcy system insider offloading 78% of his and his wife's debts (*D:59*) in preparation for traveling light into a golden retirement. They felt confident that they could make such incongruous, implausible, and suspicious declarations in the petition and that neither the co-schemers would discharge their duty nor the creditors exercise their right to require that bankrupts prove their petition's good faith by providing supporting documents. Moreover, they had spread their debts thinly enough among their 20 institutional creditors (*D:38*) to ensure that the latter would find a write-off more cost-effective than litigation to challenge their petition. So they assumed that the sole individual creditor, who in addition lives hundreds of miles from the court, would not be able to afford to challenge their good faith either. But he did after analyzing their petition, filed by them under penalty of perjury, and showing that the DeLano 'bankrupts' had committed bankruptcy fraud through concealment of assets.

The Creditor requested that the DeLanos produce documents<sup>6</sup> as reasonably required from any bankrupt as their bank account statements. Yet the trustee, whose role is to protect the creditors, tried to prevent the Creditor from even meeting with the DeLanos. After the latter denied *every single document* requested by the Creditor, he moved for production orders. Despite his discovery rights and their duty to determine whether bankrupts have concealed assets, the *bankruptcy* and *district judges* denied him *every single document*. So did the *circuit judges*, even *then CA2 Judge Sotomayor*, the presiding judge, who also needed the documents to find the facts to which to apply the law. They denied him and themselves due process of law. To eliminate him, *they* disallowed his claim in a *sham evidentiary hearing*. Revealing how incriminating the documents are, to oppose their production the DeLanos, with the trustee's recommendation and the bankruptcy judge's approval, were allowed to pay their lawyers \$27,953 in legal fees<sup>7</sup>...though they had declared that they had only \$535. To date \$673,657<sup>8</sup> is still unaccounted for. Where did it go<sup>9</sup>? How many of the trustee's 3,907 cases have unaccounted for assets? For whose benefit?<sup>2</sup>

<sup>1</sup>§XIII <sup>2</sup>§III <sup>3</sup>§V. <sup>4</sup>§X <sup>5</sup>§§I.B & VIII <sup>6</sup>Cf. §XII <sup>7</sup>§XI <sup>8</sup>§I.B <sup>9</sup>§II

**Coordinated Denial by Bankruptcy System Insiders and Courts  
Running a Bankruptcy Fraud Scheme**

**of discovery rights under FRBkrP 7026 and 7034 & FRCP 26 and 34 and  
the consequent intentional denial of due process of law**

How many people benefit from keeping the whereabouts of <\$673,657 unknown?

	<b>Officers and Courts that disregarded or denied Creditor's right to have the DeLano Debtors produce financial documents or testimony to account for their income and mortgage proceeds of at least \$673,657</b>	<b>DeLano, 04-20280, WBNY, &amp; 05-6190, WDNY Requests for, and denials of, production of document to verify the Debtors inherently incongruous, implausible, and suspicious bankruptcy petition (US:2442§A)</b>
1.	Chapter 13 Trustee George Reiber	D:63, 94¶80a, d; 112, 124, 147, 161, 283, 298, 302, 311, 461, 492; Add:683
2.	Assistant U.S. Trustee Kathleen Dunivin Smith	D:94¶80a, f; 307, 470, 471, 474, 492; Add:685
3.	U.S. Trustee for Region 2 Deirdre A. Martini	D:94¶80g; 104, 137, 141, 158, 307, 330, 492, Add:682
4.	Christopher K. Werner, Esq., Debtors' attorney	D:94¶80b, 159, 287, 310, 473
5.	Bankruptcy Judge John C. Ninfo, II, WBNY	D:75, 136¶d, 199¶31 207, 208, 217, 243¶34a, 246, 278¶1, 323¶30a 327; Tr:188/2-189/22
6.	District Judge David G. Larimer, WDNY	Add:845, 885¶15d, 907, 951, 977, 1031; Pst:1307, 1418; Add:1022; SApp:1504

<b>Document requests by Creditor Dr. Richard Cordero and denials by CA2</b>				
	<b>Requests</b> in <i>DeLano</i> , 06-4780, CA2		<b>Denials</b>	
	page #	date	page #	date
7.	CA:1606	December 19, 06	SApp:1623	January 24, 07
8.	CA:1618	January 18, 07	SApp:1634	February 1, 07
9.	CA:1637	February 15, 07	SApp:1678	March 5, 07
10.	CA:1777	March 17, 07	CA:2180	February 7, 08
11.	CA:1932	June 14, 07	CA:2180	February 7, 08
12.	CA:1975¶59a	July 18, 07	CA:2182	February 7, 08
13.	CA:2081¶c.1	August 29, 07	CA:2181	February 7, 08
14.	CA:2126¶e	November 8, 07	CA:2180	February 7, 08
15.	CA:2140¶e	November 27, 07	CA:2180	February 7, 08
16.	CA:2165¶33e	December 26, 07	CA:2180	February 7, 08
17.	CA:2179	January 3, 08	CA:2180	February 7, 08
18.	CA:2205¶25c	March 14, 08	CA:2209	May 9, 08

# Dr. Richard Cordero

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

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September 29, 2004

Christopher K. Werner, Esq.  
Boylan, Brown, Code, Vigdor & Wilson, LLP  
2400 Chase Square  
Rochester, NY 14604

Premier, **docket no. 03-5023**

faxed to (585) 232-3528

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Mr. Werner,

**Without prejudice** to my motion of September 9, in the Court of Appeals for the Second Circuit to quash the order of Judge John C. Ninfo, II, of August 30, requiring me to take discovery of Mr. David DeLano as part of the proceedings to determine your motion of July 19, 2004, to disallow my claim against the DeLanos; **without prejudice** to my motion of August 17, in opposition to your July 19 motion to disallow my claim; and **without prejudice** to my motion of August 20, for sanctions on, and compensation from, you and your law firm for violation of FRBkrP Rule 9011(b), but mindful of the requirements of Judge Ninfo's August 30 order, I am hereby requesting discovery as follows.

As to the sanctions and compensation motion, which I indicated that I would notice for October 6, 2004, please also note the following. Judge Ninfo stated in his August 30 order that all proceedings in the DeLano case are suspended until the final determination of your motion to disallow my claim, thereby confirming what he said at the August 25 hearing that until that motion has been determined he will not act upon any motion or other paper that I file. Therefore, I give notice hereby that I will submit that motion, not now, but rather when it can be acted upon, particularly if the time comes when it can be decided by another judge who is not biased against me and has due regard for the law, the rules, and the facts.

## **A. Scope of discovery and notice and opportunity for production**

1. In determining the scope of discovery, I rely on FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), which provides that

Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

2. This description of the broad scope of discovery is enhanced by the Advisory Committee Explanatory Statement on the mechanics of discovery that:

A showing of good cause is no longer required for discovery of documents and things and entry upon land (Rule 34).

3. The documents requested below have already been requested but for the most part not produced in the following documents:
- 1) Dr. Cordero's Objection of March 4, 2004, to Confirmation of the DeLanos' Plan
  - 2) Dr. Cordero's Memorandum of March 30, 2004, ¶¶80.b)
  - 3) Dr. Cordero's letter of April 15, 2004, to Trustee Reiber, ¶¶6, with copy to Att. Werner
  - 4) Trustee George Reiber's letter of April 20, 2004, to Att. Werner
  - 5) Dr. Cordero's letter of April 23, 2004, to Trustee Reiber with copy to Att. Werner
  - 6) Dr. Cordero's letter of May 16, 2004, to Trustee Reiber, ¶¶2&7, with copy to Att. Werner
  - 7) Trustee Reiber's letter of May 18, 2004, to Att. Werner
  - 8) Dr. Cordero's letter of May 23, 2004, to Att. Werner
  - 9) Dr. Cordero's letter of June 8, 2004, to Trustee Reiber with copy to Att. Werner
  - 10) Trustee Reiber's motion to dismiss of June 15, 2004, for the DeLanos' "unreasonable delay" in producing the requested documents
  - 11) Dr. Cordero's requested order for document production in his Statement of July 9, 2004
  - 12) Dr. Cordero's document production order proposed on July 19, at Judge Ninfo's request at the hearing on July 19, 2004
  - 13) Judge Ninfo's order of July 26, 2004
  - 14) Dr. Cordero's motion of August 14, 2004, for docketing, issue of production order, etc.
4. It follows that the DeLanos have had enough notice and opportunity to produce the requested documents. Likewise, these are documents "regarding any matter, not privileged, that is relevant to the claim or defense of any party", such as my claim against both the DeLanos, against Mr. DeLano in particular, and my defense against your motion to disallow my claim. Hence, they are within the scope of Rule 26.

## **B. General remarks**

5. The DeLanos must be presumed, especially in light of Mr. DeLano's career as a bank loan officer for 15 years, to have systematically saved and archived financial documents rather than systematically destroyed or otherwise disposed of them. Indeed, given Mr. DeLano's long professional experience in doing due diligence to request from his borrowing clients documents and analyze those produced and statements made by them, it should be a matter of routine for him to provide the documents and information requested below. As for Mrs. DeLano, whose professional career has been as a specialist in Xerox machines, she can be expected to show a high degree of attention to technical details and accuracy in following a series of steps. Moreover, in providing what is here requested, they can count on Att. Werner's '28 years' experience in this business'. For my part, I will rely on the reasonable presumption of the DeLanos' competence to meet this request and on Att. Werner's duty to comply with the requirement under FRBkrP Rule 9011(b) that

by signing, filing, submitting, or later advocating...[any] paper [he] is certifying that to the best of [his] knowledge, information, and belief,

formed after an inquiry reasonable under the circumstances...the allegations and other factual contentions have evidentiary support.

6. Hence, it is requested that they:

- a. produce within the response period of 30 days and without waiting to receive any documents that they may have to request;
- b. all the documents that they have **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control, and
- c. all the information available to them;
- d. show due diligence in requesting by subpoena from any entities, whether natural persons or institutions, any documents that they may not have so that within the response period they can reasonably expect to receive and produce either the requested documents or reply letters from such entities;
- e. provide the information requested, for the sake of clarity of presentation, complete-ness, and ease of use, in the tabular form in which it is requested, or identify the information by using the column and row identifiers provided in the tables;
- f. mark on the appropriate cells in the tables or indicate using their identifiers whether the documents requested;
- g. have already been produced to either Trustee Reiber (TrR), Dr. Cordero (DrC), or both (R&C) so that their production need not have to be duplicated;
- h. are being produced in reply to this request; or
- i. if they are not being produced, explain why.

### **C. Documents and information requested**

7. The monthly statements of the 18 unsecured institutional creditors listed in Schedule F and the two secured creditors listed in Scheduled D since the dates of account opening or credit extension to date.
8. The current balance of those 20 accounts.
9. It should be noted how few of those statements have been produced despite their having been requested so long ago and so many times since, as shown in ¶3 above. In addition, the period covered by those produced is significantly shorter than the period that the DeLanos themselves invoke in Schedule F, where they state 15 times that their debts trace back to “1990 and prior Credit card purchases”. “Prior”, of course, allows for the possibility that those purchases have been made since 1989 as well as since 1980 or since 1970 or earlier.<sup>1</sup>

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<sup>1</sup> Consequently, the covered period referred to hereinafter is the period during which the DeLanos have accumulated their debts. Thus, it stretches from the opening of any account in question, whether in both or either of their names, to date.

**Table I.** The DeLanos' Creditors in Schedules F (1-19) and D (20-21) and the Statements so far Produced (on given dates) and Not Produced (with cells in blank)

<b>iden.</b>	<b>I.a</b>	<b>I.b</b>	<b>I.c</b>	<b>I.d</b>	<b>I.e</b>	<b>I.f</b>
	<b>Creditors' names (in the order in which they appear in their respective Schedules)</b>	<b>Account numbers</b>	<b>Bill or closing dates covered by statements</b>	<b>Date of cover letter from Att. Werner to Trustee Reiber</b>	<b>Date of receipt by Dr. Cordero</b>	<b>Current balance</b>
1.	AT&T Universal	5398-8090-0311-9990				
2.	Bank of America	4024-0807-6136-1712				
3.	Bank One Cardmember Services	4266-8699-5018-4134	09/13/03 12/12/03	August 5, 04	August 04	
4.	Bank One Cardmember Services	4712-0207-0151-3292	01/17/01 12/17/02	August 13, 04	August 16, 04	
5.	Bank One Cardmember Services	4262-519-982-211	01/12/01 09/12/03  01//12/01 12/10/01	August 5, 04  August 13, 04	August 04  August 16, 04	
6.	Capital One	4388-6413-4765-8994				
7.	Capital One	4862-3621-5719-3502				
8.	Chase	4102-0082-4002-1537	5/10/01 3/11/04	September 9, 04	September 13, 04	
9.	Citi Cards	5457-1500-2197-7384				
10.	Citi Cards	5466-5360-6017-7176				
11.	Discover Card	6011-0020-4000-6645	04/16/01 04/30/04  01/16/01 12/16/03	July 28, 04  September 1, 04	August 04  September 3,04	
12.	Dr. Richard Cordero	n/a				
13.	Fleet Credit Card Service	5487-8900-2018-8012				
14.	HSBC Master Card/Visa	5215-3125-0126-4385				
15.	MBNA America	4313-0228-5801-9530	04/13/01 04/14/04	July 12, 04	July 16, 04	
16.	MBNA America	5329-0315-0992-1928	04/09/01 04/08/04	July 12, 04	July 16, 04	
17.	MBNA America	749-90063-031-903				
18.	Sears Card	34-80074-3-0593 0				

<b>iden.</b>	<b>I.a</b>	<b>I.b</b>	<b>I.c</b>	<b>I.d</b>	<b>I.e</b>	<b>I.f</b>
	<b>Creditors' names (in the order in which they appear in their respective Schedules)</b>	<b>Account numbers</b>	<b>Bill or closing dates covered by statements</b>	<b>Date of cover letter from Att. Werner to Trustee Reiber</b>	<b>Date of receipt by Dr. Cordero</b>	<b>Current balance</b>
<b>19.</b>	Wells Fargo Financial	1772-0544				
<b>20.</b>	Capital One Auto Finance	568 7652				
<b>21.</b>	Genesee Regional Bank					

10. All credit reports issued by Equifax, Experian, TransUnion, or any other similar reports that the DeLanos have received during the covered period aside from those already produced.

**Table II.** Credit Bureau Reports for the DeLanos so far Produced

<b>iden.</b>	<b>II.a</b>	<b>II.b</b>	<b>II.c</b>	<b>II.d</b>
	<b>Credit bureau</b>	<b>Date of issue</b>	<b>Date of cover letter from Att. Werner to Trustee Reiber</b>	<b>Date of receipt by Dr. Cordero</b>
<b>1.</b>	Equifax	April 26, 04 Mr.D <sup>2</sup> May 8, 04 Mrs.M incomplete reports  April 26, 04 Mr.D May 8, 04 Mrs.M  May 8, 04 Mrs.M July 23, 04 Mr.D July 23, 04 Mrs.M	June 14, 04  July 20, 04 July 20, 04  August 5, 04 August 5, 04 August 5, 04	June 04  July 04 July 04  August 04 August 04 August 04
<b>2.</b>	Experian	July 26, 04Mr.D July 26, 04 Mrs.M	August 5, 04 August 5, 04	August 04 August 04
<b>3.</b>	TransUnion	July 26, 04Mr.D July 26, 04 Mrs.M	August 5, 04 August 5, 04	August 04 August 04

11. The monthly statements of each other account or asset, including an interest in either of them, held by the DeLanos, whether opened at a financial institution or a retailer of goods or services, during the covered period, and whether held by both or either of the DeLanos or by entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them.

<sup>2</sup> Mr.D= credit report for Mr. David DeLano; Mrs.M=credit report for Mrs. Mary Ann DeLano.

**Table III.** Accounts and Assets Held by the DeLanos  
During the Covered Period but not Listed in their Bankruptcy Petition

<b>iden.</b>	<b>III.a</b>	<b>III.b</b>	<b>III.c</b>	<b>III.d</b>	<b>III.e</b>	<b>III.f</b>	<b>III.g</b>	<b>III.h</b>	<b>III.i</b>
	Types of accounts	Account numbers	Names of account-holder(s)	Names and addresses of the institutions issuing the accounts	Dates of account opening	Balances as of date of replying to this request	If closed, dates of account closing	Titles, Deeds, Other instruments <sup>3</sup>	Account statements <sup>4</sup> since opening date and cancelled checks
<b>1.a</b>	<b>Credit card accounts</b>								
<b>1.b</b>									
<b>2.a</b>	<b>Debit card accounts</b>								
<b>2.b</b>									
<b>3.a</b>	<b>Checking accounts</b>								
<b>3.b</b>									
<b>4.a</b>	<b>Savings accounts</b>								
<b>4.b</b>									
<b>5.a</b>	<b>Brokerage accounts</b>								
<b>5.b</b>									

12. State the name, address, and phone number of the appraiser of the property at 1262 Shoecraft Road, Webster, NY, and produce a copy of the documents referred to in Schedule D concerning:
  - a. the appraisal of such property;
  - b. the mortgage of such property; and
  - c. the auto lien(s).
  
13. The documents supporting the statement that Mr. DeLano made under oath to James Weidman, Esq., attorney for Trustee George Reiber, at the meeting of creditors held on March 8, 2004, to the effect that the DeLanos had incurred most of their credit card debts when Mr. DeLano lost his job and had to take a deep pay cut subsequently; and reiterated by Att. Werner in his Statement to the court of April 16, 2004, that:

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<sup>3</sup> The instruments to be **listed and produced** here are those attesting to an interest in ownership or the right to the enjoyment, whether full or part time, of real estate, mobile homes, caravans, other vehicles, etc., whether in the State of New York or elsewhere.

<sup>4</sup> The statements must have the sections, without redaction, that state the names of the entities from whom purchases of goods or services were made and the amounts and dates of the purchases.

6. As indicated in the Debtors' petition, the Debtors' financial difficulties stem from over ten (10) years ago, relating to a time when Mr. DeLano lost his job at First National Bank and had to take a subsequent position at less than half of his original salary. As a result, the Debtors were unable to keep pace on various credit card obligations which they had incurred in their children's educations [sic] and other living expenses. The Debtors have maintained the minimum payments on those obligations for more than ten (10) years. Less than \$4,000 of Debtors' total obligations relate to any current period.

**Table IV.** Mr. DeLano's Employment History

<b>iden.</b>	<b>IV.a</b>	<b>IV.b</b>	<b>IV.c</b>	<b>IV.d</b>	<b>IV.e</b>	<b>IV.f</b>	<b>IV.g</b>	<b>IV.h</b>	<b>IV.i</b>
	Jobs (by order or place of work)	Periods of employment	Titles of positions and salaries and bonuses	Addresses and phone numbers of the sites worked at and head-quarters	Names of Mr. DeLano's supervisors for each of the three levels above him	Names of Mr. DeLano's subordinates, including secretaries and assistants	Reasons for leaving or losing jobs	Produce job performance evaluations, including any reprimands, admonitions, censures, commendations, and promotions	<b>Pay stubs; Bank statements where pay checks were deposited; And 1040 IRS forms</b>
<b>1.</b>	First job								
<b>2.</b>	Each other job								
<b>3.</b>	First National Bank								
<b>4.</b>	Each other job								
<b>5.</b>	M & T Bank								
<b>6.</b>	Current job								

**Table V.** The DeLanos' Expenses for their Children's Education

<b>iden.</b>	<b>V.a</b>	<b>V.b</b>	<b>V.c</b>	<b>V.d</b>	<b>V.e</b>	<b>V.f</b>	<b>V.g</b>	<b>V.h</b>	<b>V.i</b>	<b>V.j</b>
	Names of the DeLano's children and years of birth	Names and addresses of educational institutions	Academic years	Grades, faculties, or departments where enrolled	Course of study	Cost of tuition	Cost of books	Cost of room and board	Cost of transportation	Produce bills or receipts, and credit card statements with description of charge, or cancelled checks

1.										
2.										
etc.										

**Table VI.** The DeLanos' Loans to their Children

iden.	VI.a	VI.b	VI.c	VI.d	VI.e	VI.f	VI.g	VI.h	VI.i
	Names of children	Dates of loans <b>And</b> amounts of loans	Instruments of loans; or if such instruments <i>never</i> existed <b>Terms</b> of verbal agreements <b>And</b> Acknow- ledgment of receipt of money	Purposes of loans	Names of institutions from which lent money was withdrawn <b>And</b> Copy of both sides of <b>Order</b> of withdrawal, <b>Cancelled</b> check, or <b>Instrument</b> of transfer to child or his or her account	Names of institutions where lent money was deposited	<b>Amounts</b> of installments <b>And</b> <b>Amounts</b> and dates of installment payments actually made	<b>Outstanding</b> balances <b>And</b> <b>Current</b> arrangement for repayment	Documents confirming that money was used for stated purposes, e.g. <b>Title</b> , <b>Deed</b> , <b>Other instruments</b> <sup>5</sup> <b>Or</b> <b>Statement</b> that it was used for what other purpose
1.									
2.									
etc.									

14. State the whereabouts or disposition of the following earnings and produce supporting documents:

**Table VII.** The DeLanos' Earnings for the 2001-03 Years

iden.	VII.a	VII.b	VII.c	VII.d
1.	2001	2002	2003	Total
2.	\$91,229	91,655	108,585	\$291,470
3.	In the 1040 IRS form	In the petition's Statement of Financial Affairs		

15. Copy of all files held by Mr. DeLano or an institution, such as Manufacturers & Traders Trust Bank (M&T Bank), on or relating to:

- a. Mr. David Palmer;

<sup>5</sup> See footnote 3, supra.

- b. any business in which Mr. Palmer or an associate, employer, or relative of his had or has an interest, such as Premier Van Lines, Inc.; and
- c. any personal bankruptcy of Mr. Palmer or of an associate, employer, or relative of his or of a business in which any of them had or has an interest.

**Table VIII.** Mr. DeLanos' Borrowing Clients since January 1, 1999

<b>iden.</b>	<b>VIII.a</b>	<b>VIII.b</b>	<b>VIII.c</b>	<b>VIII.d</b>	<b>VIII.e</b>	<b>VIII.f</b>	<b>VIII.g</b>
	Names, addresses, and phone numbers of clients	Names and addresses of lending institutions	Amounts of borrowing	If voluntary or involuntary bankruptcy filed by or against client: filing date and provision of law invoked	Federal or state courts where filed and case numbers	Amounts owed at filing time	Disposition of cases
<b>1.</b>							
<b>2.</b>							
etc.							

- 16. State whether the DeLanos have any insurance, surety, or indemnifier that may be called upon to pay any judgment against both or either of them and, if so, provide supporting documents.
- 17. Copies of all subpoenas issued in connection with this request and of all replies from the entities to whom they were issued.
- 18. Any other document or information reasonably related to the subject matter of this request or the cases or motions concerning it; if in doubt, produce it or disclose its existence or subject matter.

Sincerely,

*Dr. Richard Cordero*

October 28, 2004

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

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

Dear Mr. Cordero:

As we discussed, we enclose Mr. and Mrs. DeLano's response to your discovery demands contained in your letter dated September 29, 2004 faxed to our office on September 30, 2004.

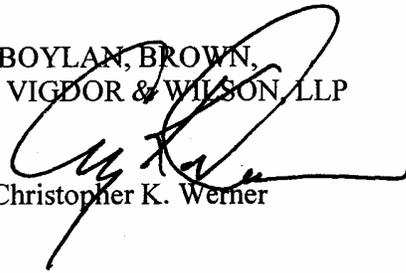
Your impatience for our response seems misplaced – first, as we do not recognize service by fax and only recognize service in accordance with FRCP §6. Further, we note that you delayed your demand to precisely coincide with my first day of absence from the office on a two week vacation of which you were well aware. Lastly, our response is timely under the Federal Rules – even had your demand been properly served.

Nonetheless, we have no intention of impeding discovery and respond accordingly.

We note, however, that your demands are largely irrelevant to your alleged claim and our objection, which is the only active matter before the Court. As indicated, we have not responded to your demands with respect to Mr. and Mrs. DeLano's finances etc. generally, which have no relevance to your claim which supposedly emanates from the Premier Van Lines matter in some fashion.

Contrary to your suggestion, we expect the Court will consider and determine your application to obtain discovery of such items as we have declined.

BOYLAN, BROWN,  
CODE, VIGDOR & WILSON, LLP

  
Christopher K. Werner

CKW/trm  
Enclosure

cc: David G. and Mary Ann DeLano  
Michael Beyma, Esq.  
George M. Reiber, Esq.  
Hon. John C. Ninfo, II

In re:

**DAVID G. DELANO and  
MARY ANN DELANO,**

Debtors.

**RESPONSE TO DISCOVERY  
DEMAND OF RICHARD  
CORDERO – OBJECTION TO  
CLAIM OF RICHARD  
CORDERO**

**Case No. 04-20280**

**DAVID. DELANO and MARY ANN DELANO**, by their attorneys, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in response to Richard Cordero's discovery request dated September 29, 2004, as follows:

1. With respect to Paragraphs A and B (1-6) of Cordero's discovery request, such items do not contain specific discovery requests and, therefore, no response is given. Moreover, all of the correspondence in previous demands or inquiries listed have no relation or relevance to the claim of Cordero against the Debtors, and any demand contained therein is not properly relevant. Therefore, response is declined.

2. With respect to Paragraph C (7-14) of Cordero's discovery request, all of such demands are not relevant to the claim of Richard Cordero against the Debtors, which is the sole subject of the pending Objection to Claim and, therefore, discovery demand in this regard is declined.

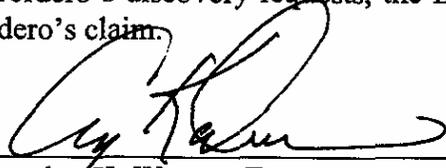
3. With respect to Paragraph C (15) of Cordero's discovery requests, the Debtors hold no documents personally relating to David Palmer, any business associates or Mr. Palmer's personal bankruptcy, or otherwise as requested. Any such documents are held by M&T Bank and Mr. DeLano's involvement with respect to the same is only as an employee of M&T Bank and is not in his personal possession or control.

4. With respect to Paragraph C (16) of Cordero's discovery requests, the Debtors are not aware of any insurance with respect to the alleged claim by Cordero, but do expect that if there is any liability to Cordero, which liability is strongly disputed by all parties, that M&T Bank will satisfy the same, as in all respects, Mr. DeLano acted with respect to Premier Van Lines as an employee of M&T Bank.

5. With respect to Paragraph C (17) of Cordero's discovery requests, there are no subpoenas issued in connection with this request, other than previous subpoenas to the Debtors' creditors pursuant to the Chapter 13 Trustee's request, which are not relevant to Cordero's claim or the Debtors' objection to the same.

6. With respect to Paragraph C (18) of Cordero's discovery requests, the Debtors have no other documents or information relating to Cordero's claim.

Dated: October 28, 2004



---

Christopher K. Werner, Esq.  
Boylan, Brown, Code, Vigdor & Wilson, LLP  
Attorneys for Debtors  
2400 Chase Square  
Rochester, New York 14604  
Telephone: (585) 232-5300

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, dkt. no: 04-20280

**Notice of Motion**  
**To enforce Judge Ninfo's Order of August 30, 2004**  
**For Discovery from David DeLano**  
**And to obtain a declaration**  
**that it does not exempt the Trustee**  
**from his obligations under B.C. §341**

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Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, will move this Court at the U.S. Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on November 17, 2004, or as soon thereafter as he can be heard, to request enforcement of the Court's Order of August 30, 2004, requiring Debtor David DeLano to provide discovery to Dr. Cordero.

In his Response of October 28, 2004, by his attorney, Christopher Werner, Esq., Mr. DeLano declines discovery of all items requested by Dr. Cordero in his request of September 29 either as irrelevant or not in his possession. Thereby Mr. DeLano disregards the Court's Order of August 30, just as he and Mrs. DeLano disobeyed the Court's Order of July 26 for production of documents and ignored Trustee George Reiber's requests for documents and those of Dr. Cordero's, and contravenes the provisions of the Bankruptcy Code, the FRBkrP, and the FRCivP. Such repeated contempt for his legal obligations reveals that his real motive behind his motion to disallow Dr. Cordero's claim is precisely to avoid producing the documents that can reveal whether the bankruptcy petition filed by Mr. DeLano, who for 15 years has been and still is a bank *loan* officer and as such knowledgeable about abusive bankruptcies to avoid repayment of loans to his bank, is itself a vehicle of fraud to avoid payment of claims and conceal assets.

Therefore, Mr. DeLano should be ordered to produce all the documents listed in Dr. Cordero's September 29 request or the motion to disallow Dr. Cordero's claim should be dismissed and this case referred to the U.S. Attorney and the FBI for investigation.

Dated: November 4, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

**COPY for CA2, dkt. no. 03-5023**

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

**Brief in Support of the Motion  
To enforce Judge Ninfo's Order  
of August 30, 2004  
For Discovery from David DeLano**

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Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

**I. A gratuitous implication of bad faith  
is not to be left unanswered**

1. After the Court in Rochester, U.S. Bankruptcy Judge John C. Ninfo, II, presiding, issued its Order of August 30, 2004, and a copy of it was received in New York City by Dr. Cordero, the latter took steps, among others, in connection with it to research and write the following papers:
  - a. Dr. Cordero's motion of September 9, 2004, to quash the order of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to sever a claim from the case on appeal in the Court of Appeals for the Second Circuit, dkt. no. 03-5023, so as to try it in the DeLano bankruptcy case; 21 pages with references to the accompanying 157 pages of exhibits;
  - b. Dr. Cordero's letter of September 22, 2004, to Trustee George Reiber proposing dates to examine the DeLanos under 11 U.S.C. §341 and describing the broad scope of the examination as provided under FRBkrP Rule 2004(b); 2 pages;
  - c. Dr. Cordero's letter of September 29, 2004, to the attorney for the DeLanos, Christopher Werner, Esq., requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9 to quash it in the Court of Appeals; 9 pages setting out the scope of discovery under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure and including 8 tables with many columns setting out in organized fashion the documents and information requested.
2. Thus, Dr. Cordero sent the September 29 discovery request to the attorney for the DeLanos, Christopher Werner, Esq., as soon as he finished working on matters that a) would have rendered legally unnecessary to request discovery from Mr. DeLano, as party to another case, or b) would have allowed Dr. Cordero to obtain discovery through the legal provisions that require the DeLanos, as Debtors, to provide it. He faxed that request to Att. Werner just as he had faxed

other papers to him for months and the Attorney has accepted service of them, for which Dr. Cordero used the fax number stated on the Attorney's letterhead, whereby was created the reasonable presumption that service by fax is accepted.

3. Contrary to Att. Werner's gratuitous assertion in his letter of October 28 to Dr. Cordero, the latter did not 'delay his demand precisely to coincide with Att. Werner's first day of absence from the office on a two week vacation of which he was well aware'. That is not in keeping with the standards of professional behavior that Dr. Cordero has demonstrated in all his dealings in this case in well over half a year.
4. Moreover, Dr. Cordero is also well aware that Att. Werner has a secretary who in his absence forwards any correspondence to the respective principal, in this instance, Mr. DeLano.
5. In addition, Dr. Cordero diligently called Att. Werner on October 14, the second day after the Attorney's return, to alert him to the September 29 request and ask him by when he would reply to it. Not finding Att. Werner in his office, Dr. Cordero recorded a message for him on his voice mail.
6. Since that first call, which was not returned, Dr. Cordero had to call Att. Werner several times and both record messages on his voice mail and leave messages for him with the receptionist of his office, Ms. Patricia Casilo.
7. It was not until Friday, October 22, when Dr. Cordero informed Ms. Casilo that he wanted to speak with the Managing Partner of Att. Werner's Office, Patrick Malgeri, Esq., that Att. Werner returned Dr. Cordero's call within the hour. In their conversation, Att. Werner informed him that Mr. DeLano would not produce the items requested, except for item 15, because 'the other items are not relevant and have nothing to do with Dr. Cordero's claim against him'. As to item 15, Att. Werner stated that the file was so thin that he could fax it to Dr. Cordero, who does not make his fax number available for service.
8. Therefore, by October 22, over 3 weeks after the request was faxed and within a week and a half after Att. Werner's return, Mr. DeLano already knew that he was not going to produce any of the same or similar documents which he had previously decided not to produce, for they had been *requested in 14 previous documents* by Dr. Cordero or, at his instigation, by Trustee Reiber, and even Judge Ninfo himself (see ¶16 below). As to item 15, why did Att. Werner indicate that there were documents in that file that could be faxed only to write in paragraph 3 of Mr. DeLano's Response to Discovery Demand thus?:

3. With respect to Paragraph C (15) of Cordero's discovery requests, the Debtors hold no documents personally relating to David Palmer, any business associates or Mr. Palmer's personal bankruptcy, or otherwise as requested. Any such documents are held by M&T Bank and Mr. DeLano's involvement with respect to the same is only as an employee of M&T Bank and is not in his personal possession or control.

9. Mr. DeLano's Response is one side of one page and two lines long. Yet, it took Att. Werner another week until October 28 to write it and more than two weeks since his arrival from vacation. So, why was it so difficult for Att. Werner to realize that Dr. Cordero, a pro se litigant and a non-local one, should have taken about three and a half weeks to write 32 pages and compile 157 more to prepare three documents each of which was served on him by Dr. Cordero? The question is all the more pertinent since Mr. DeLano needed barely any time,

certainly not 28 days, to produce nothing and simply repeat once more his wholesale denial of document requests.

10. Att. Werner's statement implying bad faith on Dr. Cordero because his September 29 request arrived when Att. Werner was on vacation is indeed gratuitous and contradicted by Att. Werner's own work time requirements. Hence, Att. Werner should withdraw his statement.

## II. A wholesale denial of production of documents contravenes the FRBkrP and the FRCivP

11. In his September 29 request of documents, Dr. Cordero cited and discussed the legal basis for it (see an excerpt from it in subsection A below). By contrast, in his Response, Mr. DeLano denies production wholesale, without offering any legal support, just the lazy allegation that:

2. With respect to Paragraph C (7-14) of Cordero's discovery request, all of such demands are not relevant to the claim of Richard Cordero against the Debtors, which is the sole subject of the pending Objection to Claim and, therefore, discovery demand in this regard is declined.

12. Nor does Mr. DeLano even take cognizance of the fact that discovery is allowed under the Federal Rules not only to establish a claim, but also to set up a defense.
13. In fact, it was the DeLanos' belated and unjustified motion to disallow Dr. Cordero's claim that led to the Order of August 30, which requires Dr. Cordero to take discovery from Mr. DeLano. Hence, Dr. Cordero is entitled to discovery that will allow him to establish, among other things, that the DeLanos' motion is a desperate attempt in contravention of FRBkrP 9011(b) to remove from their January 26 bankruptcy case Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of financial documents that can show the bad faith of their petition in violation of 11 U.S.C. §1325(a)(3) and whether they are engaged in debt underreporting, account unreporting, and concealment of assets.

### A. Scope of discovery and notice and opportunity for production

14. In determining the scope of discovery, Dr. Cordero relies on FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), which provides that

Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

15. This description of the broad scope of discovery is enhanced by the Advisory Committee Explanatory Statement on the mechanics of discovery that:

A showing of good cause is no longer required for discovery of documents and things and entry upon land (Rule 34).

16. The documents requested below have already been requested, but for the most part not produced, in the following documents:
- 1) Dr. Cordero's Objection of March 4, 2004, to Confirmation of the DeLanos' Plan
  - 2) Dr. Cordero's Memorandum of March 30, 2004, ¶80.b)
  - 3) Dr. Cordero's letter of April 15, 2004, to Trustee Reiber, ¶6, with copy to Att. Werner
  - 4) Trustee George Reiber's letter of April 20, 2004, to Att. Werner
  - 5) Dr. Cordero's letter of April 23, 2004, to Trustee Reiber with copy to Att. Werner
  - 6) Dr. Cordero's letter of May 16, 2004, to Trustee Reiber, ¶¶2&7, with copy to Att. Werner
  - 7) Trustee Reiber's letter of May 18, 2004, to Att. Werner
  - 8) Dr. Cordero's letter of May 23, 2004, to Att. Werner
  - 9) Dr. Cordero's letter of June 8, 2004, to Trustee Reiber with copy to Att. Werner
  - 10) Trustee Reiber's motion to dismiss of June 15, 2004, for the DeLanos' "unreasonable delay" in producing the requested documents
  - 11) Dr. Cordero's requested order for document production in his Statement of July 9, 2004
  - 12) Dr. Cordero's document production order proposed on July 19, at Judge Ninfo's request at the hearing on July 19, 2004
  - 13) Judge Ninfo's order of July 26, 2004
  - 14) Dr. Cordero's motion of August 14, 2004, for docketing, issue of production order, etc.
17. It follows that the DeLanos have had enough notice and opportunity to produce the requested documents. Likewise, these are documents "regarding any matter, not privileged, that is relevant to the claim or defense of any party", such as Dr. Cordero's claim against both the DeLanos, against Mr. DeLano in particular, and his defense against the motion to disallow his claim. Hence, they are within the scope of Rule 26.

### **III. The §341 examination of the DeLanos is not prohibited by any court order**

18. As a matter of fact, the August 30 Order does not prevent Trustee Reiber from examining the DeLanos under 11 U.S.C. §341, which in any event would have been a contradiction in terms since the Order requires Mr. DeLano to provide discovery to Dr. Cordero.
19. As a matter of law, the court does not have the authority to order the trustee not to hold such examination, in particular, or not to discharge any of his other duties as trustee, in general.
20. It is Congress that imposed on the trustee the duty to hold that examination by providing that:

#### **§341. Meetings of creditors and equity security holders**

- (a) Within a reasonable time after the order for relief in a case

under this title, **the United States trustee shall** convene and preside at a meeting of creditors. (emphasis added)

21. The duty to hold a §341 meeting is imposed by the Legislative Branch of government directly on the United States trustee, who is a member of the Executive Branch. The judge, as a member of the Judicial Branch, cannot roughride his way into those branches to invalidate a mandate from the legislator and prevent a member of the Executive from carrying out his duty. On the contrary, §341(c) expressly provides that

§341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

22. It follows that if Congress forbade the court to attend such meetings, the court lacks authority to prevent them from being held at all. As a matter of fact supporting that reasoning, Congress did not give the court authority to prevent §341 meetings of creditors from taking place.
23. On the contrary, Congress considered such meetings so important for the operation of its bankruptcy mechanism that it imposed the duty to hold them directly on the United States trustee, not just on a panel or standing trustee. So, if the trustee is allowed to preside over such meetings, it can only be by delegation from the United States trustee. What the court does not have the authority to forbid the principal, that is, the United States trustee, to do, it cannot prevent the latter's agent, such as a Chapter 13 trustee, from doing. The trustee does not take his marching orders from the court. Rather, he follows the United States trustee as she goes about executing an order from Congress.
24. By the same token, a §341 examination is not a court proceeding and consequently, does not fall within the court proceedings suspended by the August 30 Order. Hardly could that examination be encompassed by a suspension that is in itself:
- a. unlawful as unsupported by any provision of law since none was cited therefor;
  - b. contrary to §1325(a)(3) requiring the Court to determine whether the repayment plan has been proposed "by any means forbidden by law";
  - c. unjustified in its imposition on Dr. Cordero of the burden to proof his claim despite its presumption of validity under Rule 3001(f); and
  - d. inimical to the other 20 creditors of the DeLanos, who have an interest in the case moving forward so they can start receiving payment of their debts.
25. Instead, a §341 examination is a specific means for the trustee to fulfill his general duty under 11 U.S.C. §§1302(b)(1) and 704(4), which require the trustee "to investigate the financial affairs of the debtor". Additionally, §§1302(b)(1) and 704(7) require the trustee to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Those duties do not depend on any grant of authority from the court. They are imposed on the trustee by the law of Congress, which provided as follows:

§704. Duties of trustee

The trustee **shall**- (emphasis added)

26. The trustee does not have the option to investigate at the will of the court; he has the duty to investigate and do so specifically at the request of a party in interest, which Dr. Cordero certainly is.

27. Consequently, it was unlawful for Trustee Reiber not to conduct personally the §341 meeting of creditors in the DeLano case on March 8, 2004, when he instead appointed his attorney, James Weidman, Esq., to conduct it in violation of C.F.R. §58.6(a)(10).
28. What is more, it was not only unlawful, but also highly suspicious, for Att. Weidman to ask Dr. Cordero at that meeting how much he knew about the DeLanos having committed fraud and when he did not reveal anything, to prevent him from examining the DeLanos although he had asked only two questions! The suspicion was only heightened by the fact that Dr. Cordero was the only creditor present so that there was more than ample time for him to keep asking questions in order to do precisely what the purpose of the meeting is, namely, to examine the debtors under oath. Yet, Trustee Reiber ratified in open court and for the record that very same day and has ever since defended Att. Weidman's unlawful termination of the meeting.
29. To compound that disregard for his duty, Trustee Reiber has decided not to hold the adjourned §341 examination of the DeLanos on the allegation that the August 30 Order prevents him from so doing, as stated in his letters to Dr. Cordero of October 1 and 13 and November 2. In light of the above considerations, that decision is a thinly veiled excuse to avoid exposing himself to the same risk that his attorney felt he must avoid, that is, the risk of having the DeLanos' answer questions under oath from a creditor. But...
  - a. What could Trustee Reiber and Att. Weidman fear that the DeLanos might say?
  - b. Why would Trustee Reiber not want to find out how an insider of the lending industry, such a Mr. DeLano, could possibly have gone bankrupt without even having consolidated his debt of \$98,092 on 18 credit cards?
  - c. What holds Trustee Reiber back from finding out the whereabouts of the \$291,470 that the DeLanos declared on their 1040 IRS forms to have earned in just the 2001-03 fiscal years while declaring in their petition only \$535 in hand and on account?!

#### **IV. Request for relief**

30. Therefore, Dr. Cordero respectfully requests that the Court:
  - a. order Mr. David DeLano to comply with the rules of discovery as well as the Court's own August 30 Order and produce the documents requested in the September 29 request; otherwise, that the DeLanos' motion to disallow Dr. Cordero's claim be dismissed; if not,...
  - b. extend the deadline of December 15 by 45 days after Mr. DeLano actually produces all the documents requested, an extension necessary for Dr. Cordero to be able to examine the documents and prepare to depose Mr. DeLano and then double-check the information provided;
  - c. declare that the August 30 Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos;
  - d. refer this case under 18 U.S.C. 3057(a) to United States Attorney General John Ashcroft for appointment of investigators that are neither friends of nor acquainted with the DeLanos, Trustee Reiber, or the Office of the U.S. Trustee in Rochester or the Office of the Region 2 Trustee in New York City so that such investigators may determine with all impartiality, zealously, and exhaustively whether there has been fraud in connection with

the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

- e. allow Dr. Cordero to present his arguments by phone and that the Court not cut off the phone connection to him until after it declares the hearing concluded and that thereafter no other oral communication between the Court and a party be allowed on this case until the next scheduled event for all the parties, including Dr. Cordero.

## CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated November 4, 2004, to enforce the Order of August 30, 2004, for discovery from David DeLano:

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November 4, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

In re:

**DAVID G. DELANO and  
MARY ANN DELANO,**

Debtors.

**DEBTORS' STATEMENT IN  
OPPOSITION TO CORDERO  
MOTION REGARDING  
DISCOVERY**

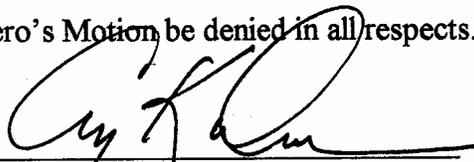
**Case No. 04-20280**

The Debtors, **DAVID G. DELANO** and **MARY ANN DELANO**, by their attorney, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in opposition to the Motion of Richard Cordero dated November 4, 2004, as follows:

1. Mr. Cordero's discovery demand is nothing more than a recitation of the same items that he has been pursuing in Debtors' Chapter 13 proceeding, which is currently held in suspense pending determination of Cordero's Motion.
2. All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtors' finances and have nothing to do with the matter at hand, which is Cordero's claim.
3. The only item demanded which has even a passing relevance to Cordero's claim is paragraph C 15, requesting documents associated in some fashion with David Palmer, who apparently was one of the former principals of Premier Van Lines.
4. As indicated in Debtors' response, such documents, if any exist, are not in Debtors' individual possession, but rather belong to M&T Bank, by whom the Debtor, David G. DeLano, is employed and are not in debtor's individual control other than as employee of M & T Bank.
5. If Mr. Cordero wishes to make a demand and subpoena M&T Bank, he is free to do so as the proper source of such documents.
6. Moreover, such documents will likely bear little relevance to Cordero's claims, as there is no basis for claim against David G. DeLano and, clearly, no claim against Mary Ann DeLano.
7. The Debtors' response to Mr. Cordero's discovery demands were in all respects timely under the federal rules.

**WHEREFORE**, Debtors request that Cordero's Motion be denied in all respects.

Dated: November 9, 2004



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Christopher K. Werner, Esq.  
Boylan, Brown, Code, Vigdor & Wilson, LLP  
Attorneys for Debtors  
2400 Chase Square  
Rochester, New York 14604  
Telephone: (585) 232-5300

TO: U.S. Bankruptcy Court  
George M. Reiber, Chapter 13 Trustee  
David G. and Mary Ann DeLano  
Mr. Richard Cordero

IN RE:

DAVID G. DeLANO and  
MARY ANN DeLANO,

CASE NO. 04-20280  
Chapter 13

Debtors.

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**INTERLOCUTORY ORDER**

**WHEREAS**, on August 30, 2004, the Court entered the attached Interlocutory Order, without the Exhibits attached to that Order (the "August 30, 2004 Interlocutory Order"); and

**WHEREAS**, the terms defined and used in the August 30, 2004 Interlocutory Order shall have the same meaning when used in this Interlocutory Order; and

**WHEREAS**, on November 8, 2004, Cordero filed a November 4, 2004 motion entitled "Notice of Motion to Enforce Judge Ninfo's Order of August 30, 2004, For Discovery from David DeLano and to Obtain a Declaration that it does not exempt the Trustee from his Obligations Under B.C. § 341" (the "Cordero Discovery Motion"); and

**WHEREAS**, the Court has reviewed the Cordero Discovery Motion, and, in its discretion, does not believe that it requires any oral argument to decide the detailed Motion.

It is therefore **ORDERED**, that:

1. The Cordero Discovery Motion is in all respects denied; and

2. The request for relief in Paragraph 30.a. of the Cordero Discovery Motion is denied because: (a) after reading Cordero's September 29, 2004 documentary discovery demand (the "Demand"), Cordero's October 27, 2004 follow-up letter, and the October 28, 2004 Response to the Demand (the "Response"), it appears that DeLano has complied with all of the documentary discovery requests made by Cordero that are relevant to the Claim Objection Proceeding; and (b) the August 30, 2004 Interlocutory Order clearly states that the Court will only hear those matters in the DeLano Case that are related to the Claim Objection Proceeding until the Court has made its final determination in that Proceeding; and

3. The request for relief in Paragraph 30.b. of the Cordero Discovery Motion is denied because 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. Therefore, there is no need for an extension of the discovery deadline set forth in the August 30, 2004 Interlocutory Order; and

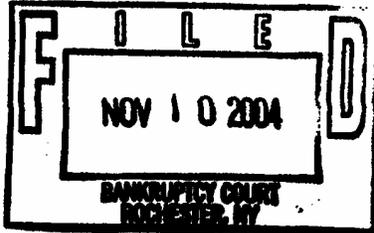
4. The request for relief in Paragraph 30.c. of the Cordero Discovery Motion is denied because the August 30, 2004 Interlocutory Order and the Bankruptcy Code and Rules as they relate to the Order are clear, so the Court is not required to interpret them for Cordero; and

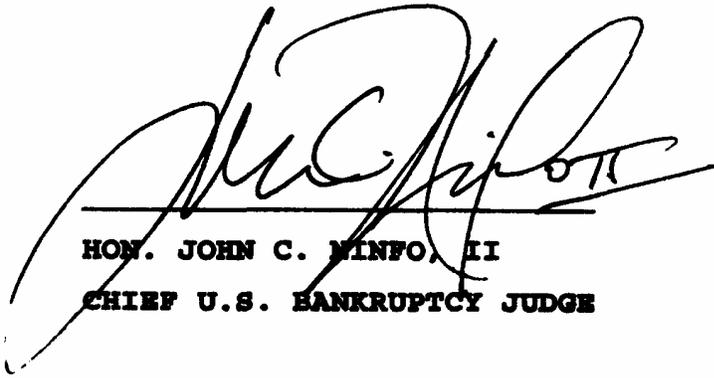
5. The request for relief in Paragraph 30.d. of the Cordero Discovery Motion is denied for the reasons set forth in the August 30, 2004 Interlocutory Order; and

6. The request for relief in Paragraph 30.e. of the Cordero Discovery Motion is moot as a result of the entry of this Interlocutory Order.

SO ORDERED.

DATED: November 10, 2004



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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

DR. RICHARD CORDERO,

Appellant,

DECISION AND ORDER

05-CV-6190L

v.

DAVID DeLANO and MARY ANN DeLANO,

Respondents.

---

Currently pending with the Court are three motions (Dkts. ##9, 10, and 14) filed by appellant, Richard Cordero ("Cordero"), seeking various relief. The respondents/debtors have responded to the motions by Dkts. ## 12 and 16, as has Mr. Pfuntner (who is not a party to this appeal, but who wished to preserve his rights) by Dkt. #15.

As set forth below, Cordero's motions are denied in their entirety.

By motion filed June 23, 2005 (Dkt. #9), Cordero moves for a stay of an Adversary Proceeding, *Pfuntner v. Gordon et al.*, A.P. No. 02-2230, and to join the parties in *Pfuntner* to this appeal since "their rights and liabilities have already been prejudged." Cordero's motion is denied in all respects. There is no basis in law to support such relief.

By motion filed July 18, 2005 (Dkt. #10), Cordero moves for, *inter alia*, a stay of the confirmation hearing and any subsequent order arising therefrom related to the debt repayment plan

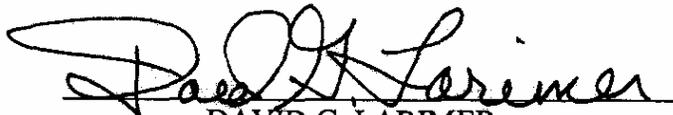
in the underlying Chapter 13 Bankruptcy Case, *In re DeLano*, Case No. 04-20280 (“the DeLano case”). That motion is also denied, as there is no basis to support such relief. In addition, the confirmation hearing has already taken place, and Judge Ninfo has entered an order, dated August 9, 2005, confirming the repayment plan. Moreover, in accordance with Fed. R. Bankr. P. 8005, United States Bankruptcy Judge Ninfo previously denied a stay of the April 4, 2005 Order from which Cordero appeals, because he found that there was little likelihood that Cordero would prevail on the merits of this appeal, there was no public interest involved in the matter, and because the DeLanos and their creditors would be prejudiced by any further delay. The Court sees no reason to disturb Judge Ninfo’s determination.

By Dkt. #10, Cordero also moves for an order withdrawing from the Bankruptcy Court the DeLano case pursuant to 28 U.S.C. § 157(d), an order removing Trustee George Reiber as trustee in the DeLano case pursuant to 11 U.S.C. § 324(a), an order for production of documents, and an order referring the DeLano case to the U.S. Attorney’s Office for investigation pursuant to 18 U.S.C. § 3057(a). These motions are wholly without merit and they are denied in their entirety.

Finally, by motion filed August 31, 2005 (Dkt. #14), Cordero moves to compel the production of documents and for other miscellaneous relief he believes is necessary in order to “safeguard judicial integrity and due process.” That motion, too, is denied in all respects because it completely lacks merit.

Cordero is reminded of this Court's Order entered October 14, 2005, directing him to take the necessary steps to perfect his appeal, and reiterates that the failure to do so could result in dismissal of the appeal.

IT IS SO ORDERED.

  
DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
October 17, 2005

**3. Other relevant orders entered in the case**

- a. Circuit Justice Ginsburg’s grant of July 30, 2008, of Dr. Cordero’s application for extension of time until next October 6 to file the petition for a writ of certiorari ..... US:2310

**4. Table**

<b>Documents requested by Dr. Cordero and denial by CA2</b>				
	<b>Requests</b>		<b>Denials</b>	
	<b>page #</b>	<b>date</b>	<b>page #</b>	<b>date</b>
1.	CA:1606	December 19, 06	SApp:1623	January 24, 07
2.	CA:1618	January 18, 07	SApp:1634	February 1, 07
3.	CA:1637	February 15, 07	SApp:1678	March 5, 07
4.	CA:1777	March 17, 07	CA:2180	February 7, 08
5.	CA:1932	June 14, 07	CA:2180	February 7, 08
6.	CA:1975¶59a	July 18, 07	CA:2182	February 7, 08
7.	CA:2081¶c.1	August 29, 07	CA:2181	February 7, 08
8.	CA:2126¶e	November 8, 07	CA:2180	February 7, 08
9.	CA:2140¶e	November 27, 07	CA:2180	February 7, 08
10.	CA:2165¶33e	December 26, 07	CA:2180	February 7, 08
11.	CA:2179	January 3, 08	CA:2180	February 7, 08
12.	CA:2205¶25c	March 14, 08	CA:2209	May 9, 08

**B. Table of Contents of items in the records of all courts..... US:2365**

- 1. All the items: on the accompanying CD; and
- 2. Select items: in the separate volume filed with Dr. Cordero’s in-chambers application of August 4, 2008, to the Justices for injunctive relief and a stay, referred by Chief Justice Roberts to the Court on September 10 for the Conference on September 29, 2008

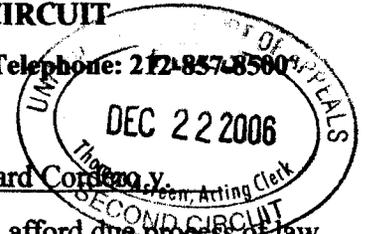
**C. Other relevant material**

Proposed document production order..... infra at the back, bound and in a loose copy

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT



Docket Number(s): 06-4780-bk

In Re: Dr. Richard Cordero, et al.

Motion for: production of documents necessary for the Court to determine this case and afford due process of law

- 1) A key issue presented below and in this appeal is a) whether Bankrupt David DeLano, a 39-year veteran of the banking industry... b) whether they resorted to the artifice of a motion to disallow Creditor-Appellant's claim... c) whether their motion was granted... 2) This Court needs those documents so as to assess the merits of the appeal... 3) Therefore, Appellant respectfully requests that this Court order that a) Bankrupt-Appellees produce within 30 days: i) the statements of all their individual & joint bank, credit, debit, and investment accounts... ii) complete documents relating to all real property... iii) the scheduling order be suspended and reissued after production of all documents.

MOVING PARTY: Dr. Richard Cordero, Creditor-Appellant, 59 Crescent Street, Brooklyn, NY 11208-1515, tel. (718) 827-9521; corderoric@yahoo.com

OPPOSING PARTY: David and Mary Ann DeLano, OPPOSING ATTORNEY: Devin L. Palmer, Esq., Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604, tel. (585)232-5300; fax (585)232-3528

MOVING ATTORNEY: Pro se

Court/Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has consent of opposing counsel: A. been sought? No B. been obtained? Has request for relief been made below? Is oral argument requested? Yes (requests for oral argument will not necessarily be granted) Has argument date of appeal been set? No

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL: Has this relief been previously sought in this Court? Requested return date and explanation of emergency:

Signature of Moving Attorney:

Dr. Richard Cordero

Date: December 19, 2006

Has service been effected? Yes

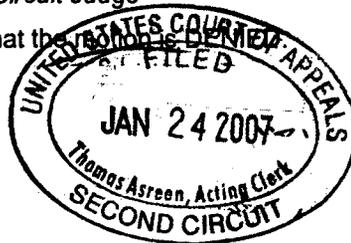
ORDER

Before: Hon. Peter W. Hall, Circuit Judge

IT IS HEREBY ORDERED that the

JAN 24 2007

Date



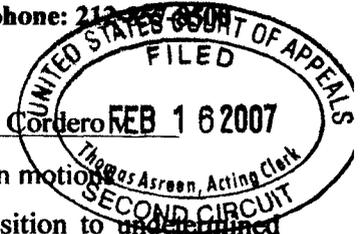
FOR THE COURT: THOMAS W. ASREEN, Acting Clerk by Arthur M. Heller, Motions Staff Attorney

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007 Telephone: 212-424-6500

**ORIGINAL**

**MOTION INFORMATION STATEMENT**



**Docket Number(s):** 06-4780-bk

In Re: Dr. Richard Cordero

**Motion for:** reconsideration and grant of the disregard opposition and document production motion

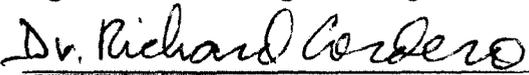
- 1) On December 6, 2006, Appellant-Creditor filed a motion for Appellee-Debtors' opposition to undetermined "issues or documents" to be disregarded. Instead of deciding it, the Court sent it to the panel, thereby depriving Creditor of the knowledge of what, not only the Court, the also Debtors themselves deem to be the "issues or documents" to be considered on this appeal and on which Creditor should write his brief.
- 2) On December 19, 2006, Creditor filed a motion for production of documents necessary for the Court to determine this case and afford due process of law. That motion was denied. Yet those documents can show that the Debtors have concealed assets in the known amount of a least \$673,657, that they practiced fraud on the court and the Creditor, and had it covered up by the courts below denying him every single document that he requested and conducting sham proceedings.
  - a) There is new evidence unwittingly provided by the Debtors that contrary to their declaration that they had only \$535 in cash and on account when they filed their petition, they actually had money to pay their attorneys' fees, not only those last known in the amount of \$27,953, but also to "continue" paying them their fees.
- 3) Appellant respectfully requests that this Court grant the relief requested in the attached motion; including this:
  - a) grant the motion to disregard Debtors' opposition or state what undetermined "issues or documents" it guessed the Debtors were referring to and how and why it took it upon itself to engage in guesswork;
  - b) order Debtors to produce within 30 days: **I**) the statements of all their individual & joint bank, credit, debit, and investment accounts and 1040 IRS filings since 1/1/96 to date; **II**) complete documents relating to all real property anywhere in which they have any interest in their names or in third parties', and to all their mortgages and loans, including those relating to their home bought in 1975;
  - c) suspend the order requiring Creditor's brief by March 5 and reissue its decision on the rest of this motion.

<p><b>MOVING PARTY:</b> Dr. Richard Cordero Creditor-Appellant 59 Crescent Street, Brooklyn, NY 11208-1515 tel. (718) 827-9521; <a href="mailto:corderoric@yahoo.com">corderoric@yahoo.com</a> <b>MOVING ATTORNEY:</b> Pro se</p>	<p><b>OPPOSING PARTY:</b> David and Mary Ann DeLano <b>OPPOSING ATTORNEY:</b> Devin L. Palmer, Esq. Boylan, Brown, Code, Vigdor &amp; Wilson, LLP 2400 Chase Square, Rochester, NY 14604 tel. (585)232-5300; fax (585)232-3528</p>
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**Court-Judge/Agency appealed from:** U.S. District Court, WDNY, U.S. District Judge David G. Larimer

**Has consent of opposing counsel:**  
 A. been sought? No    B. been obtained? \_\_\_\_\_  
 Has request for relief been made below? \_\_\_\_\_  
 Is oral argument requested? Yes  
 (requests for oral argument will not necessarily be granted)  
 Has argument date of appeal been set? No

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:**  
 Has this relief been previously sought in this Court? \_\_\_\_\_  
 Requested return date and explanation of emergency:  
 Appellant-Creditor moved for relief on December 6 & 19. The Court took action on them on February 1.

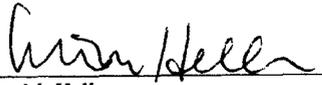
**Signature of Moving Attorney:**  


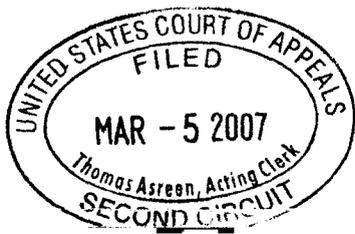
The Court's decisions of these motions will affect decisively what the Creditor is supposed to write his brief on. Creditor requests that the Court immediately suspend the scheduling order, give him actual notice thereof; & reissue it after deciding this motion and documents have been produced

**ORDER**

Before: Hon. Peter W. Hall, *Circuit Judge*

IT IS HEREBY ORDERED that the motion by pro se appellant to reconsider Order (filed 1/24/07) denying motion for production of documents is DENIED.

FOR THE COURT:  
 THOMAS ASREEN, Acting Clerk  
 by   
 Arthur M. Heller  
 Motions Staff Attorney



\_\_\_\_\_  
Date

# MANDATE

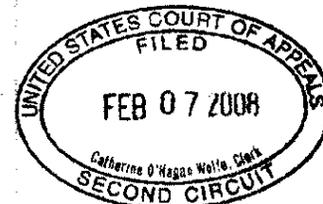
W.D.N.Y.  
03 cv-6190  
Larimer, J.

## United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7<sup>th</sup> day of February, two thousand eight.

Present:

Hon. Sonia Sotomayor,  
Hon. Debra Ann Livingston,  
*Circuit Judges,*  
Hon. Gregory W. Carman,  
*Judge, U.S. Court of International Trade.*



Dr. Richard Cordero,

*Creditor-Appellant,*

v.

06-4780-bk

David DeLano, Mary Ann DeLano,

*Debtors-Appellees.*

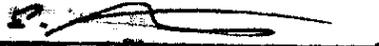
George M. Reiber, as Bankruptcy Trustee, moves to dismiss the appeal as moot. Although Appellant's argument that the Trustee's motion is deficient may be correct, any such deficiencies are minor and, in any event, the appeal is subject to dismissal under this Court's *sua sponte* authority. Upon due consideration, it is hereby ORDERED that the appeal is DISMISSED as equitably moot. See *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 144 (2d Cir. 2005); *In re Chateaugay Corp.*, 988 F.2d 322, 326 (2d Cir. 1993).

FOR THE COURT:

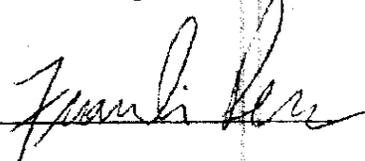
Catherine O'Hagan Wolfe, Clerk

**A TRUE COPY**  
Catherine O'Hagan Wolfe, Clerk

by

  
DEPUTY CLERK

By:



The Honorable Gregory W. Carman, of the United States Court of International Trade,  
sitting by designation.

SAO-LB

ISSUED AS MANDATE: 5/16/08

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

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

July 24, 2008

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

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

Dear Mr. Cordero:

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

Sincerely,

**William K. Suter**, Clerk

by 

Danny Bickell  
Staff Attorney

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

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

October 6, 2008

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

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

Dear Mr. Cordero:

The Court today entered the following order in the above-entitled case:

The application for injunction and stay addressed to The Chief Justice and referred to the Court is denied.

Sincerely,



**William K. Suter, Clerk**

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

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

March 30, 2009

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Re: Richard Cordero  
v. David DeLano, et ux.  
No. 08-8382

Dear Mr. Cordero:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



**William K. Suter, Clerk**

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

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

June 1, 2009

Mr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Re: Richard Cordero  
v. David DeLano, et ux.  
No. 08-8382

Dear Mr. Cordero:

The Court today entered the following order in the above-entitled case:

The petition for rehearing is denied.

Sincerely,



**William K. Suter, Clerk**

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

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

**A. Persons concerned by this order and its execution**

1. Any person or entity, whether a corporation, company, firm, association, unincorporated group, branch of government or subdivision thereof, is concerned by this order (hereinafter concerned person) who:
  - a. has actual knowledge of it;
  - b. would have knowledge of it by proceeding as a reasonable person would acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity.
2. Among the concerned persons are those identified in ¶¶3-18 below:
3. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), formerly resident at 1262 Shoecraft Road, Webster, NY 14580, and debtors in *In re David and Mary Ann DeLano*, 04-20280, WBNY; *Cordero v. DeLano*, 05-cv-6190L, WDNY; *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, and *Dr. Richard Cordero v. David and Mary Ann DeLano*, 08-8382, SCt (hereinafter *DeLano*);  
  
Combined docket: [http://Judicial-Discipline-Reform.org/dockets/11DeLano\\_Bk-SCt\\_28jan9.pdf](http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf)
4. Devin L. Palmer, Esq., [dpalmer@BoylanBrown.com](mailto:dpalmer@BoylanBrown.com), and Christopher K. Werner, Esq.,

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

Docket: [http://Judicial-Discipline-Reform.org/dockets/1Premier\\_01-20692\\_27jan5.pdf](http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf)

5. Michael J. Beyma, Esq., attorney for Mr. DeLano and M&T Bank, 300 Bausch & Lomb Place, Rochester, NY 14604, tel (585)258-2800, fax (585)258-2821; and any and all members of their law firm, including, but not limited to, Paralegal Brenda G. Reed, [breed@underbergkessler.com](mailto:breed@underbergkessler.com); Paralegal Sandy Mattle, and Administrative Assistance Rene Reale, tel. (585)258-2843, [RReale@underbergkessler.com](mailto:RReale@underbergkessler.com); <http://www.underberg-kessler.com>;
6. James Pfunter, at the address of his attorney, David MacKnight, Esq., [dmacknight@lacykatzen.com](mailto:dmacknight@lacykatzen.com), or successor, at Lacy, Katzen, Ryen & Mittlemann, LLP, 130 East Main St., Rochester, NY 14604; tel. (585)454-5650, fax (585)269-3077, plaintiff in *Pfunter v. Trustee Gordon et al.*, 02-2230, WBNY (hereinafter *Pfunter*); <http://www.lacykatzen.com/>;  
Combined docket: [http://Judicial-Discipline-Reform.org/dockets/6Pfunter\\_Bkr-SCt\\_28mar5.pdf](http://Judicial-Discipline-Reform.org/dockets/6Pfunter_Bkr-SCt_28mar5.pdf)
7. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585)263-5812, fax (585) 263-5862, and any and all members of her staff, including, but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker; <http://www.usdoj.gov/ust/r02/rochester.htm>;
8. Ms. Diana G. Adams, U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, tel. (212)510-0500, fax (212) 668-2255; and any and all members of their staff; <http://www.usdoj.gov/ust/r02/>;
9. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585)427-7225, fax (585)427-7804, and any and all members of his staff, including, but

not limited to, James Weidman, Esq., attorney for Trustee Reiber; [trustee13@roch13.com](mailto:trustee13@roch13.com);

10. Trustee Kenneth W. Gordon, Gordon & Schall, LLP, 1099 Monroe Ave., Ste. 2, Rochester, NY 14620-1730; tel. (585)244-1070, and any and all members of his staff;
11. M&T Bank, 255 East Avenue, Rochester, NY, tel. (800)724-8472, 585-546-0501, fax: 585-546-0550, (585)546-7584; <http://www.mandtbank.com/>;
12. David Palmer, 1829 Middle Road, Rush, NY 14543, and his company, Premier Van Lines, debtor in *In re Premier Van Lines*, 01-20692, WBNY (hereinafter Mr. Palmer/Premier and *Premier*);
13. David M. Dworkin & Jefferson Henrietta Associates, at the address of their attorney, Karl S. Essler, Esq., Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450, tel. (585) 641-8000; fax (585)641-8080; [kessler@fixspin.com](mailto:kessler@fixspin.com);
14. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392;
15. Ms. Melissa L. Frieday, Contracting Officer for court reporters, US. Bankruptcy Court, WDNY, Olympic Towers, 300 Pearl Street, Suite 250, Buffalo, NY 14242, tel. (716) 362-3200, fax (716)551-5103;
16. Bankruptcy Judge John C. Ninfo, II, WBNY, and Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585)613-4200, and any and all members of their staff, including, but not limited to, Andrea Siderakis, Assistant to Judge Ninfo, courtroom tel. (585)613-4281, fax (585)613-4299; Deputy Clerk in Charge Todd M. Stickle, tel. (585)613-4223, fax (585)613-4242; Case Administrators Karen S. Tacy and Paula Finucane; <http://www.nywb.uscourts.gov/>;
17. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, U.S. District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585) 613-4035, and any and all members of their staff; <http://www.nywd.uscourts.gov/mambo/>; and

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

## **B. Duties of a concerned person**

22. A concerned person shall:
  - a. understand a reference to a named concerned person to include any and all members of such person's staff or membership;

- b. comply with the instructions stated herein and complete such compliance within seven days of the issue of this order unless a different deadline for compliance is stated in ¶24 below;
- c. be held responsible for any non-compliance and subject to the continuing duty to comply with this order within the day each day after the applicable deadline is missed, under pain of being named the subject of a contempt proceeding.

23. A concerned person shall provide upon request of, and volunteer to, an executor information:

- a. that such person has concerning a document herein identified, including, but not limited to, its author, existence, nature, condition, use, actual or likely whereabouts, person in possession of or who controls it;
- b. without passing judgment on the degree of relevance or lack thereof for the order in recognition of the fact that the relevance of a piece of information may only become apparent in the broader context of information already gathered or to be gathered by an executor; and
- c. in application of the principle “If in doubt, communicate the information to an executor”.

24. A concerned person shall with respect to a document herein identified provide information about it, produce it, and issue a certificate, as defined in ¶28 below,

- a. whenever a reasonable person would who is:
  - 1) acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity, and
  - 2) applying the principle “If in doubt, produce the document to an executor”, and
- b. believes that at least one part of such document is a document herein identified;
- c. has doubts as to whether any or no part of the document is herein identified; or
- d. believes that another person with an adversarial interest would want such information,

production, or certificate or find it of interest to the end of ascertaining whether an individual or entity:

- 1) is a holder or an identifier, as defined in ¶25; or
- 2) has committed, covered up, or tolerated an offense, including, but not limited to, bankruptcy fraud, concealment of assets, destruction of documents, money laundering, perjury, and bribery.

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

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

26. A holder or identifier shall certify that he or she holds such original and acknowledges the duty under this order to hold it in a secure place, ensure its chain of custody, and produce it upon order of an executor.

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

- a. The time and amount of each such transaction;
- b. the rates, including but not limited to normal and delinquent rates, applied to the transaction;
- c. the opening and closing dates of the transactions reported in the document, such as a statement of account;
- d. the description of the goods or service concerned by the transaction;

- e. the source or recipient of funds or who made any charge or claim for funds;
  - f. the opening date of, the payment due date of the amount owing on, and the good or delinquent standing of, the account, agreement, or contract dealt with in the document;
  - g. the beneficiary of any payment;
  - h. the surety, codebtor, or collateral; and
  - i. any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the document;
28. A concerned person shall certify individually as a person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that:
- a. it has not been the subject of any addition, deletion, correction, or modification of any type whatsoever; and
  - b. it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or
  - c. such certification cannot be made with respect to any part or the whole of such document and the reason therefor and attach the whole document to the certificate;
29. A concerned person shall produce documents pursuant to the following timeframes measured from the time the order is served on such person or the latter has actual knowledge or would have knowledge of it, as provided for in ¶1 above, whichever is earlier:
- a. within seven days with respect to documents that a concerned person has possession of at home or other permanent or temporary dwelling, in the office or vehicle, or equivalent place;
  - b. with respect to documents that are kept, stored or archived elsewhere than in a. above;
    - 1) within two weeks with respect to documents dated January 1, 2000, or since, to date;
- and

- 2) within 30 days with respect documents dated since January 1, 1975, to December 31, 1999, including the first and last dates of such period.

### **C. Documents in general, production, and certification**

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

### **D. Particular documents to be produced**

32. A concerned person that has any of the following documents shall produce them to an executor:
33. The financial documents in either or both of the names of:
  - a. the DeLanos,

- b. Mr. Palmer and/or Premier; and
- c. third parties but concerning a financial matter under the total or partial control of either or both of them, respectively, whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's;

34. The dates of the documents referred to in ¶33 above are:

- a. in the case of the DeLanos, since January 1, 1975, to date; and
- b. in the case of Mr. Palmer, since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier to date.

35. The financial documents referred to in ¶33 above include the following:

- a. the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at, or issued by, M&T Bank and any other entity, whether banking, financial, investment, commercial, or otherwise, in the world;
- b. the unbroken series of documents relating to the purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, by either or both of the DeLanos and Mr. Palmer/Premier, respectively, including, but not limited to:
  - 1) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY 14580;
  - 2) Premier, any similar moving or storage company, or other business, whether incorporated or not incorporated;
  - 3) Premier's warehousing space at the warehouse at 2130 Sackett Road, Avon, NY,

14414, owned by Mr. James Pfunter;

4) moving and storage equipment, including, but not limited to, vehicles, forklifts, crates, padding and packaging material; and

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

c. mortgage documents;

d. loan documents;

e. title documents and other documents reviewing title, such as abstracts of title;

f. prize documents, such as lottery and gambling documents;

g. service documents, wherever in the world such service was, is being, or may be received or given; and

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

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

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

a. in *Pfunter* on: [http://Judicial-Discipline-Reform.org/dockets/6Pfunter\\_Bkr-SCt\\_28mar5.pdf](http://Judicial-Discipline-Reform.org/dockets/6Pfunter_Bkr-SCt_28mar5.pdf)

a. December 18, 2002

d. April 23, 2003

g. July 2, 2003

b. February 12, 2003

e. May 21, 2003

h. October 16, 2003

c. March 26, 2003

f. June 25, 2003

b. in *DeLano* on: [http://Judicial-Discipline-Reform.org/dockets/11DeLano\\_Bk-SCt\\_28jan9.pdf](http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf)

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

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

- a. The audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman;
- b. its transcription on paper and as a PDF file on a floppy disc or CD; and
- c. the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it.

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

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

41. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Pfuntner*, regardless of the source, up to the date of compliance with this order, whether such documents relate generally to the DeLanos' or Mr. Palmer/Premier's bankruptcy petition or particularly to the investigation of whether either or both of them have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;

42. The statement reported in entry 134 of the docket of *DeLano* to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read and the stenographic packs and folds used by the reporter to record it;
43. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including the following:
- a. in *DeLano*: [http://Judicial-Discipline-Reform.org/dockets/11DeLano\\_Bk-SCt\\_28jan9.pdf](http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bk-SCt_28jan9.pdf)
    - 1) July 26, 2004, for production of some documents by the DeLanos;
    - 2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;
    - 3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;
    - 4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;
    - 5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;
    - 6) August 8, 2005, ordering M&T Bank to pay part of Mr. DeLano's salary to Trustee Reiber;
    - 7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet

titled “I/We filed Chapter 13 for one or more of the following reasons”;

- 8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos’ debt repayment plan;
  - 9) November 22, 2005, denying Dr. Cordero’s motion to revoke the confirmation of the DeLanos’ debt repayment plan;
  - 10) Notice of January 24, 2007, releasing Mr. DeLano’s employer, M&T Bank, from making further payments to Trustee Reiber.
  - 11) February 7, 2007, discharging the DeLanos after completion of their plan;
  - 12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinder of creditors, the closing of the DeLanos’ estate, and the release of their employer from the order to pay the Trustee;
- b. in *Pfuntner*: [http://Judicial-Discipline-Reform.org/dockets/6Pfuntner\\_Bkr-SCt\\_28mar5.pdf](http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCt_28mar5.pdf)
- 1) December 30, 2002, dismissing Dr. Cordero’s cross-claims for defamation as well as negligent and reckless performance as trustee against Trustee Gordon;
  - 2) February 4, 2003, transmitting to District Judge David Larimer, WDNY, the record in a non-core proceeding and findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero’s request for entry of default judgment;
  - 3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court that the default judgment not be entered by the District Court;
  - 4) February 18, 2003, denying Dr. Cordero’s motion to extend time to file notice of appeal;
  - 5) July 15, 2003, ordering that a “discrete hearing” be held in Rochester on October 23, 2003, followed by further monthly hearings;

- 6) October 16, 2003, Disposing of Causes of Action;
- 7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
- 8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
- 9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
- 10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

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

Docket: [http://Judicial-Discipline-Reform.org/dockets/1Premier\\_01-20692\\_27jan5.pdf](http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf)

a. Documents entered in the docket:

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

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

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

- 2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
  - 3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
  - 4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
  - 5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
  - 6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.
45. Judge Ninfo's annual financial disclosure reports since 1992, required to be filed under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (identified in West publications as App. 4) shall be produced by Judge Ninfo and by the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600.

for the Supreme Court of the United States:

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Date

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