Case no. 08A69

IN THE

SUPREME COURT OF THE UNITED STATES

IN-CHAMBERS APPLICATION

to the Justices

for injunctive relief and a stay

in

DR. RICHARD CORDERO, Petitioner

v.

DAVID AND MARY ANN DELANO, Respondents
docket no. 06-4780-bk in
the United States Court of Appeals
for the Second Circuit

and

JAMES PFUNTNER

v.

TRUSTEE KENNETH GORDON ET AL.
docket no. 02-2230 in
the United States Bankruptcy Court
Western Bankruptcy New York

by

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August 4, 2008

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Petitioner has been prosecuting this matter for over six years against insiders of the bankruptcy system carrying on a fraud scheme. He has been denied justice, for they have so much to gain if they deny it and too much to lose if they do it. What follows has sustained Petitioner in his pursuit of justice. Will you join those who deny justice or Him who does justice?

> **1** Then he went on to tell them an illustration with regard to the need for them always to pray and not give up, **2** saying: "In a certain city there was a certain judge that had no fear of God and had no respect for man. **3** But there was a widow in that city and she kept going to him, saying, 'See that I get justice from my adversary at law.' **4** Well, for a while he was unwilling, but afterward he said to himself, 'Although I do not fear God or respect a man, **5** at any rate, because of this widow's continually making me trouble, I will see that she gets justice, so that she will not keep coming and pummeling me to a finish.'" 6 Then the Lord said: "HEAR what the judge, although unrighteous, said! 7 Certainly, then, shall not God cause justice to be done for his chosen ones who cry out to him day and night…? Luke 18:1-7

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III. REASONABLE ASSUMPTIOM THAT THE JUSTICES WILL INTERVENE

1. This case presents evidence that the Court of Appeals for the Second Circuit (CA2) and the District and the Bankruptcy Courts, WD&BNY,

> "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power" (Rule 10.a of the Rules of the Supreme Court of the U.S.; hereinafter SCtR #)

when they denied due process of law both to themselves in aid of their jurisdiction and to Petitioner in the exercise of his right to discovery and to the presentation of evidence supporting his contentions by each court denying him *every single document* that he requested to defend against a motion to disallow his claim on a debtor, a 39-year veteran banker who at the time of filing his bankruptcy petition was and continued to be precisely a bankruptcy officer.

2. The filing of *In re DeLano*, 04-20280, WBNY, by an expert insider of the bankruptcy system in good standing with his bank rendered his petition inherently suspicious. It should have induced the trustee and the judge to do what they were supposed to do with any petition: ask for supporting documents. All the more so here because even a cursory intrinsic analysis revealed the petition to be riddled with self-serving, implausible, and incongruous statements about the financial affairs of the banker and his Xerox technician wife. Their petition blatantly pointed to concealment of assets and evasion of debts. When Petitioner tried to confront it with supporting documents, the banker spent at last count $27,953 in legal fees to oppose his requests for documents since they would have proved his and his wife's concealment of at least $673,657, still unaccounted for. They and the insiders would have been exposed as participating in a bankruptcy fraud scheme.
3. So the bankruptcy judge scheduled sua sponte the motion to disallow Petitioner's claim for an evidentiary hearing. Therein he acted as the Banker's chief advocate and his lawyer's former law firm partner, as shown by the transcript (see Appendix) that the judge's district judge colleague

tried to prevent Petitioner from filing in *Cordero v. DeLano*, 05-6190-bk, WDNY. The judge disallowed the claim and deprived Petitioner of standing to participate further in the Banker's bankruptcy. Thereby he sought to stop him from making further discovery requests.

4. On appeal in *Dr. Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2 should have ordered the documents produced to afford Petitioner due process and enforce his right to discovery. Likewise, CA2 needed the documents to discharge its own due process duty to apply the law to ascertained facts. Moreover, it needed them to exercise its supervisory power over the integrity of the judges in its circuit. Instead, CA2 denied Petitioner *every single document* that he requested, for the documents would have shown the existence of the bankruptcy fraud scheme and the use by its twice-appointed bankruptcy judge of the artifice of the motion to disallow and the evidentiary hearing sham to run it. So CA2 hid the facts to protect its appointee, its district peer, and itself since their indictment risked their exposing its support or toleration of the scheme. This was a disqualifying conflict of interests. Hence, only this Court can provide the relief sought.
5. The evidence that CA2 and the Bankruptcy and District judges have participated in a bankruptcy fraud scheme and covered it up should offend this Court and each of its members. The fact that they have in self-interest inflicted upon Petitioner the legal detriment of the disallowance of his claim and the enormous waste of effort, time, money as well as the tremendous distress of litigation for years calls upon the Justices to end such abuse. Thousands of other people and institutions fall prey to the schemers: The trustee in *DeLano* had 3,907 *open* cases before that bankruptcy judge just as the trustee in the case where Petitioner's claim against the Banker arose, i.e., *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY, had 3,382 before him. Indisputably, the public at large is also a victim of fraud, for it always bears its externalities, such as higher prices to compensate for fraudulent losses and for the means to fight fraud. As for judges, those who are allowed by their peers and supervisors to engage in bankruptcy fraud with impunity are thereby

encouraged to do wrong alone and in coordination with them in every other aspect of their office. The judiciary itself loses public esteem when its judicial public servants serve themselves and betray public trust. This should drive home the point that this "case is of such imperative public importance as to justify", SCtR 11, "an exercise of this Court's supervisory power" SCtR 10(a).

6. Effective supervision requires that the Justices examine how judges, whether they be their peers, colleagues, or friends, have allowed judicial power and money to become the driving forces of the antithesis of justice through due process of law, namely, fraud on and by the court. The Justices should examine all of them impartially and thoroughly because they too took an oath of office "to administer justice without respect to persons, and do equal right to the poor [in influence pro se litigant] and to the rich [in incriminating stories peers]". (28 U.S.C. §453) They must not allow fraud to fester among judges and corrupt the Constitutional guarantee that is the prerequisite for the protection of all other guarantees, namely, due process of law.
7. If the Justices and the Court reduce themselves to the role of traffic cops that decide which circuit has the right of way to the construction of a legal instrument, they would substantially impair their moral standing in our society as the entity entrusted with the lofty mission of safeguarding and dispensing Justice. If they were to refuse to intervene in a case so rife with judicially supported fraud, they would give not just the appearance of partiality, but also proof that fraud by their peers is tolerable because "Equal Justice Under Law" is a naïve notion not applicable to those that can abuse their power to put themselves in an immune position above the law.
8. Thus, one must assume that the whole Court will intervene now and grant eventually the petition for a writ of certiorari. To that end, the Justices can issue the proposed document production order and stay *DeLano* and *Pfuntner*, which is pending before the same bankruptcy judge and other insiders. If this relief is denied, they will feel that the Court too condones their scheme and from the start, i.e., discovery, inflict on Petitioner even more blatantly irreparable prejudicial harm.

IV. STATEMENT OF FACTS

A. The DeLanos, inherently suspicious debtors in bankruptcy, and other scheming insiders of the bankruptcy system

9. The DeLanos are exceptional bankrupts, for Mr. DeLano was at the time of filing the bankruptcy petition on January 27, 2004, a 39-year career financial and banking officer (Transcript, page 15 Line 17 to pg 16 L15=Tr:15/17-16/15) and Mrs. DeLano was a Xerox technician, a person experienced in thinking methodically along a series of technical steps. Both knew exactly what moves to make to prepare for a debt-free asset-loaded golden retirement by filing a voluntary petition although their assets of $263,456 far exceeded their liabilities of $185,462. (D:29) Indeed, when they filed their petition, Mr. DeLano was and continued to be employed as an officer in precisely the bankruptcy department of a major bank, M&T Bank, with $65 billion in assets at the end of 2007. Hence, they filed their petition in the U.S. Bankruptcy Court, WBNY, under 11 U.S.C. Chapter 13 "Adjustment of debts of an individual with regular income", thus avoiding liquidation under Chapter 7. Together with the petition they filed a plan for debt repayment to their creditors for the minimum of 3 years, at the end of which Mr. DeLano, 62, would be 65 and could collect a 100% of his social security pension. Timing matters.

10. An insider of the bankruptcy system, Mr. DeLano had learned during his 39-year long career how to keep people afloat with financial advice and how to sink them with stories of their wrongdoing with one of the two most insidious corruptors: *Money!* Mr. DeLano's petition came as a farewell wish list before Bankruptcy Judge John C. Ninfo, II, WBNY (D:317, 325, 327).

11. Judge Ninfo too was exceptional, "At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester [where] from 1970 until 1992 he engaged in private law practice". (http://www.nywb.uscourts.gov/about_judge_ninfo_46.php, Add:636) That firm represents M&T Bank and Banker DeLano in *Pfuntner* (Add:531), which is

pending before the Judge. Mr. DeLano mishandled the bankruptcy concerned in that case, thus harming Dr. Cordero, a defendant in *Pfuntner*, who impleaded him as a third party defendant (Add:785); so arose the claim there that later became at stake in *DeLano*. Judge Ninfo handled the other most insidious corruptor: *Power!* Judicial power over people's property, liberty, and even life that is in practice unaccountable becomes absolute power…and corrupts absolutely.

12. The DeLanos listed Dr. Cordero among their unsecured creditors in their voluntary bankruptcy petition. (D:40) They submitted it and their debt repayment plan for evaluation to the chapter 13 trustee, who is supposed to represent unsecured creditors. (Revision Notes and Legislative Report on 11 U.S.C. §704, 1978 Acts, 2nd para.; D:882§II) That Trustee was George Reiber, Esq.

13. Trustee Reiber too is especial: According to PACER, he had 3,907 *open* cases before Judge Ninfo out of his 3,909 *open* cases. After his evaluations, he depends on Judge Ninfo to have his recommendations for bankrupts' plans approved so that he may keep his 10% fee of every payment made through him under the plan to the creditors. (28 U.S.C. §586(e)(1)(B)(ii)(I)) His frequent appearances before the Judge and his financial interest in the Judge's goodwill toward him have developed a modus operandi between them that has led the Trustee's loyalties to run to the Judge, not to one-time creditors, much less to non-local ones who live hundreds of miles away from Rochester, NY, such as Dr. Cordero, a resident of NY City. When the Trustee and the Judge rubberstamp petitions smoothly, so flows the enormous amount of money that they control …in just this one case the whereabouts of $673,657 of the DeLanos' are still unknown. (CA:1654)

14. It was Assistant U.S. Trustee Kathleen Dunivin Schmitt, Trustee Reiber's supervisor, who allowed him to amass such an unmanageable number of cases. So much so that since he could not be at the same time in all places where he was needed, she let him conduct the meeting of creditors (11 U.S.C. §341: D:23) of the DeLanos on March 8, 2004, not only in a room connected to her office, but also unlawfully by his attorney, James Weidman, Esq. For a trustee not to conduct a

meeting of creditors personally is such a serious violation of his duty that it is listed in 28 CFR §58.6(10) among the causes for removal. (SApp:1689) On that occasion, Trustee Reiber was taking care of business, of all places, downstairs in Judge Ninfo's courtroom. In a well coordinated scheme everybody has to pitch in. Trustee Schmitt's friendly next door neighbor is the local office of the U.S. Department of Justice in the cozily small federal building in Rochester.

15. Accompanying the DeLanos to the meeting were their one of a kind attorneys (D:79¶3): Christopher Werner, Esq., had brought 525 cases before Judge Ninfo, according to PACER, and at the time had spent 28 years in the business. (D:217) Michael J. Beyma, Esq., is also a partner in Underberg & Kessler, the same law firm in which Judge Ninfo was a partner at the time of his appointment by CA2 under 28 U.S.C. §152 to his first 14-year term as bankruptcy judge. He represents both Mr. DeLano and his employer, M&T Bank. (Add:531, 532, 778, 784, 811). Mr. Beyma "was a founding partner of Boylan, Brown LLP in 1974", the law firm in which Mr. Werner is a partner. (http://www.underberg-kessler.com/Attorneys/Detail/?ID=30) It is better when everything remains in the family. (law firm addresses at US:2361 below)

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

16. Att. Weidman knew perfectly well what was going on with the DeLanos and the other co-schemers. At that meeting of creditors, he examined the DeLanos under oath while being officially recorded on an audio-tape. After examining the DeLanos, Mr. Weidman asked whether any of their creditors were in the audience. Dr. Cordero was the only one present. He identified himself and stated his desire to examine them. Mr. Weidman asked him to fill out an appearance form (D:68) and to state what he objected to. Dr. Cordero submitted to him and Mr. Werner copies of his Objection to Confirmation of the DeLanos' Plan of Debt Repayment (D:63). No sooner had he asked Mr. DeLano to state his occupation –he answered 'a bank loan officer'- and

then how long he had worked in that capacity -he said 15 years, but see Tr:15/17-16/15- than Mr. Weidman unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos' having committed fraud. When Dr. Cordero would not reveal what he knew, Att. Weidman put an end to the meeting even though Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)

17. Later that afternoon at the confirmation hearing before Judge Ninfo in the presence of Trustee Reiber and Att. Weidman and without being contradicted, Dr. Cordero brought to the Judge's attention how that Attorney had prevented him from examining the Debtors. Rather than uphold the law and Dr. Cordero's right thereunder, Judge Ninfo faulted Dr. Cordero for applying the Bankruptcy Code too strictly and thereby missing "the local practice". He stated that Dr. Cordero should have phoned to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. (D:99§C) Thereby the Judge protected the co-scheming "locals" from the law of the land of Congress, which provides for not one, but rather a series of meetings where creditors can engage in a very wide-scope examination of the debtors. (§341; FRBkrP 2004(b); D:283¶¶a-b, 98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)

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

necessary for his employer, M&T Bank, to decide on its clients' financial applications?

19. The DeLanos' production of documents was so objectionable that Trustee Reiber himself moved to dismiss the petition "for unreasonable delay which is prejudicial to creditors, or to convert to a Chapter 7 proceeding", that is, liquidation. (D:164) This was only for show, or for other purpose, given that the Trustee never asked the DeLanos, despite Dr. Cordero's requests, to produce documents as obviously pertinent to determine the good faith of any petition (11 U.S.C. §1325(a)(3)) as their bank account statements, which they have not produced to date. Neither Trustee Schmitt nor her superior, U.S. Trustee for Region 2, Deirdre A. Martini, required Trustee Reiber or the DeLanos to produce those documents. Yet, it was the trustees' duty to obtain that type of documents of each bankrupt to determine their compliance with the Bankruptcy Code and to meet the request of a party in interest. (11 U.S.C. §§1302(b)(1), 704(a)(4) and (7)) Those trustees had especial reasons to do so in the case of the DeLanos: Their petition contained a statement of financial affairs so intrinsically incongruous and implausible as to give rise to probable cause to suspect that it was a vehicle of concealment of assets and evasion of debts.

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

20. The DeLanos stated in Schedules A-J, the Statement of Financial Affairs, the Plan for Debt Repayment, and various Declarations accompanying the petition (all referred to herein as the petition):

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

    b. that they had in cash and on account only $535 (D:31), although they declared that their excess income after subtracting from their monthly income their monthly living expenses was $1,940 (D:45), and that in just the three fiscal years preceding their bankruptcy filing

they had earned $291,470 (D:47; 2001-03 1040 IRS forms at D:186-188);

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

d. that their only real property was their home, appraised two months before their filing at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and having received during that period at least $382,187 through a string of eight known mortgages! (D:341-354) *Mind-boggling!* For each of those mortgages they had to pay closing costs. For example, just for the last known mortgage they had to pay $3,444. (D:351, 354 lines 1400 and 1602) None of the trustees or any of the judges that had the duty to review the facts could have either competently or honestly believed that Career Banker DeLano would waste on closing costs for eight mortgages more money than the equity he ended up with in his home. They had to ask: "What did you do with all that money received from eight mortgages?"

21. None did despite their power to do so (11 U.S.C. §521(a)(4)) and Dr. Cordero's request that they do it. (D:77, 492) Far from it, Trustee Reiber was ready to recommend after that meeting of creditors the confirmation by Judge Ninfo of the DeLanos' debt repayment plan without either having checked it against any supporting documents. Only Dr. Cordero's Objection (D:63) stopped their rubberstamping the plan; otherwise, they would have given the DeLanos a retirement gift at the expense of the creditors and gotten insurance for themselves by avoiding that the denial of the petition as fraudulent and the indictment of the DeLanos could have led Mr. DeLano to plea bargain by trading up his stories about the officers' role in the fraud scheme against leniency for the couple.

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

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

23. Only thereafter, in July 2004, after the DeLanos had treated Dr. Cordero as creditor for six months, did they come up with the idea of a motion to disallow his claim. (D:218) They did not cite any authority at all for challenging the presumption of validity of a creditor's claim. (D:256§VII) Moreover, their challenge had become barred by waiver and laches. (D:255§VI) Indeed, they themselves had listed in Schedule F (D:40) Dr. Cordero's claim against them in *Pfuntner* precisely because Mr. DeLano had been aware for more than a year and a half that in November 2002, he had been brought into *Pfuntner* as a third party defendant by Dr. Cordero (Add:785). In addition, months before his motion, in May 2004, he had been reminded thereof by Dr. Cordero filing his proof of claim (D:142) with relevant excerpts of his third party complaint in *Pfuntner* (D:250§I). What is more, in April 2004 the DeLanos had raised the objection, already untimely after treating Dr. Cordero as their creditor for months, that he "is not a proper creditor in this matter". (D:118) Less than 10 days later, Dr. Cordero countered their objection. (D:128) Then they dropped the issue…for months. Their conduct shows that their motion to disallow was a desperate attempt to get rid of Dr. Cordero and his overt charge of their commission of bankruptcy fraud as part of the bankruptcy fraud scheme. (D:253§V)

24. Judge Ninfo came through to assist Co-schemer DeLano with his disallowance motion artifice. Sua sponte, he called in his order of August 30, 2004, for an evidentiary hearing to determine the motion. (D:272) He required that thereat Dr. Cordero introduce evidence to establish his claim against Mr. DeLano in *Pfuntner*, that is, in isolation from all the other parties, their claims and defenses, and issues. Dr. Cordero realized that he was being set up to try piecemeal in *DeLano* one claim severed from *Pfuntner*. So he moved in CA2 to quash the Judge's order. (D:441) CA2 merely "Denied" with no explanation the motion to disallow. (D:312) Thereby it covered up for his use of a process-abusive motion and encouraged him to engage in even more abuse.

25. Judge Ninfo got the message and resorted to even more egregious abuse, knowing that he would soon be rewarded with his reappointment to a second 14-year term bankruptcy judgeship, as he was in 2006, and that for Dr. Cordero to complain about him to CA2 would prove useless, as it already had before (D:425; SApp:1655, 1657; CA:1721, 1859 fn.5). So he required that discovery for the evidentiary hearing be completed by December 15, 2004, when he would set its date. (D:278¶3) On the strength of that order, Dr. Cordero requested documents from the DeLanos, including those to which he was entitled not only as a creditor, but also as a mere party in interest and as a party to *Pfuntner*. (D:287) But the DeLanos and Mr. Werner, the attorney who had brought 525 cases before Judge Ninfo, denied him *every single document*, self-servingly characterizing all as irrelevant. (D:313, 314) Dr. Cordero moved Judge Ninfo to order the DeLanos to comply with the discovery provisions of his order and respect his right to discovery under FRBkrP 7026-7037 and FRCivP 26-37. (D:320§II) Disregarding his own order and showing contempt for the rules, Judge Ninfo aided and abetted the DeLanos' blatant violation of the right to discovery (D:325) and denied him *every single document!* (D:327) In December, he scheduled the evidentiary hearing for March 1, 2005. (D:332)

26. Having no documents to introduce, Dr. Cordero examined Mr. DeLano at the evidentiary

hearing. Judge Ninfo acted as Mr. DeLano's Chief Advocate, as if he still were a partner in the law firm of his other attorney, Mr. Beyma, who was there and had entered his appearance. (Tr:2) The Judge objected on behalf of Mr. DeLano to Dr. Cordero's questions, warned him about how to answer them, and engaged Dr. Cordero in an adversarial discussion. (Pst:1266§E)

27. Although Judge Ninfo reduced Atts. Beyma and Werner to deferential second chairs, they were not inactive at all. Far from it. So confident did they feel in the presence of Mr. Beyma's old buddy John and Mr. Werner's frequent trier of 525 cases that they signaled answers to Mr. DeLano while he was on the stand being examined under oath by Dr. Cordero. When the latter protested in each of several occasions, Judge Ninfo ludicrously pretended that he had not seen them do so even though the attorneys were only a few feet in front of him and near Dr. Cordero's table in the well. (Beyma Tr.28/13-29/4, 75/8-76/3; Werner: 141/20-143/16; Pst:1289§f). No doubt, their experience with the Judge had assured them that they could suborn perjury right in front of his eyes with no adverse consequences for themselves or Career Banker-Insider DeLano.

28. Indeed, Mr. Werner felt so confident that the Judge would grant his motion to disallow Dr. Cordero's claim against Mr. DeLano that neither of them had read the complaint containing it (Add:785) or the proof of claim (D:142) or even brought a copy of either to the hearing. So in the middle of it, Mr. Werner asked Dr. Cordero to lend them his copy! (Tr.49/13-50/25; Pst:1288§e)

29. What prompted Atts. Werner and Beyma's effort to suborn perjury was that the testimony that Mr. DeLano was giving confirmed Dr. Cordero's claim against him in *Pfuntner*. (Pst:1285¶70) So Judge Ninfo explicitly disregarded Mr. DeLano's testimony against self-interest as "confused", although it concerned his own handling of the bankruptcy at stake in *Pfuntner*, and found that Dr. Cordero had not introduced any documents to prove his claim, the very same ones that they had taken care to deny him during discovery. Then he entered the predetermined disallowance of Dr. Cordero's claim and deprived him of standing to participate in *DeLano*

anymore. (Pst:1281.d) Judge Ninfo can be "heard" as the partisan, leading voice of the schemers in the transcript. (Pst:1255§E). Dr. Cordero had in fact been set up.

30. Does the use of a disallowance motion as an artifice to conceal incriminating documents and of a sham evidentiary hearing to eliminate a troublesome party that could blow the cover of a bankruptcy fraud scheme seem to you to have anything to do with due process, the rule of law, fairness, or equity? Or are they means of coordinated wrongdoing used by bankruptcy system insiders to escape detection? Will you too condone their fraud scheme without qualms because it involves peers and friends or condemn it with outrage because it offends justice and the conscience?

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

31. On appeal from the disallowance of the claim against the DeLanos, District Judge David G. Larimer, WDNY, covered up for Judge Ninfo, his peer downstairs, by denying *every single documen*t that Dr. Cordero requested (Add:951, 1021; Pst:1307), including the transcripts of the initial and the adjourned meetings of creditors (D:333; Pst:1262¶¶13-21). He even maneuvered together with Bankruptcy Court clerks, trustees, and Court Reporter Mary Dianetti to prevent the incriminating transcript of the evidentiary hearing from being incorporated into the record on appeal. (Add:870, 911, 991, 993, 1019; Pst:1264 ¶22 et seq.) It cost Dr. Cordero seven month's worth of effort and money to thwart their maneuver and have that transcript produced so that he could use it to write and support his appellate briefs to the District Court and eventually to CA2 and this Court. (Add:1027, 1031; CA1735§1)

32. Despite the transcript, Judge Larimer affirmed the disallowance in a conclusory order (SApp:1501) that did not make even one reference to it or to Dr. Cordero's brief. What is more, he did not use once the term 'fraud' even though it and 'a bankruptcy fraud scheme' were the

express key notions of the four questions presented on appeal (Pst:1257§C; CA:1749§2) and permeated the brief. Actually, Judge Larimer did not address even one of those questions. On the contrary, he committed the gross mistake of stating that the '"preserved, appellate issues" had been "set forth" by the DeLanos' attorneys'. (SApp:1502 2nd para.) However, those attorneys never filed a cross appeal and thereby could not present any issues on appeal at all. (CA:1746§1) The issues that Judge Larimer went on to name were those "set forth" by those attorneys in their response to Dr. Cordero's brief. (Pst:1365) Yet, he did not engage in any legal analysis of even those issues. (CA:1756§4) In fact, to write his order Judge Larimer need not have read Dr. Cordero's brief at all; he only needed to skim over the DeLanos'. (Pst:1361, 1398§§II-III, 1409§V)

33. Judge Larimer showed blatant partiality. (CA:1752§3) He refused to take notice of the controversy that was put to him by Appellant Dr. Cordero, thus denying him opportunity to be heard while confirming Judge Ninfo's taking of his property right for the benefit of the schemers. Consequently, Judge Larimer denied Dr. Cordero due process of law and did so intentionally as part of coordinated wrongdoing aimed at covering up and running a bankruptcy fraud scheme.

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

34. CA2 docketed the appeal in *DeLano* (06-4780-bk) on October 25, 2006 (Sapp:1571), and the following day entered Dr. Cordero's Statement of Issues (SApp:1508). It dismissed the appeal on February 7, 2008 (CA:2180), and denied his petition for panel rehearing and hearing en banc (CA:2191) last May 9 (CA:2209). On June 16, he was notified of its denial of his motions to recall and stay the mandate (CA:2211) and to remove and stay *Pfuntner* (CA:2222; ¶58 below).

35. On 12 occasions (on page 2363¶15 below) during the appeal, Dr. Cordero requested that CA2 order

the production of the documents listed in his proposed order of production. But CA2 denied him *every single document*, doing so summarily, with no explanation, only an expedient "Denied".

36. Instead of ordering those documents produced and examining them for their incriminating statements concealed by the lower courts, CA2 showed in its three-liner order of dismissal (CA:2180) not to have examined even Dr. Cordero's appellate brief. It too omitted using the terms expressly unifying the four issues presented and did not address any, which dealt with fraud and the effect and means of running a bankruptcy fraud scheme. (CA:1719§V)

37. CA2, just as any other court, is not an independent entity above the people with its own source of power. Rather, it is only part of the government set up by the people for public servants to render them certain services, i.e., judicial services necessary for the orderly and consistent resolution of the controversies that arise in society due to its members' multiplicity of views and competing interests. Dr. Cordero paid CA2 the filing fee of $455 for it to render a service, i.e., that of adjudicating according to law the four issues that he presented to it -and only he did since again the DeLanos filed no cross-appeal and, thus, stated no additional issue-. But CA2 disregarded its contractual obligations by not adjudicating any of those issues, thus failing to render the service due in exchange for the fee received.

38. Instead, it chose to serve its own by protecting Peer Larimer, Reappointee Ninfo, and its interest in not giving them occasion to incriminate it, for instance, by in turn trading up in a plea bargain where they would agree to testify to CA2's support or toleration of their bankruptcy fraud scheme. (CA:1965¶¶39-40; ¶21 above) Faced with a disqualifying conflict of interests between its duty to apply the law to decide controversies impartially and its interest in preserving its good name and ensuring its very survival (CA:1963§III), CA2 compromised its integrity. By choosing its interest it disqualified itself as an impartial adjudicator. In so doing, CA2 perverted justice, for it also disregarded its legal and moral duties to uphold the law and do what is equitable.

V. CA2'S ORDER OF DISMISSAL RESTS ON THE WRONG LAW AND THE DISREGARD OF THE FACTS OF *DELANO*

A. Without discussion, CA2 fetched a doctrine and strung together two cases that are objectively inapplicable to *DeLano*

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

40. Nor do they deal, as *DeLano* does, with bankruptcies under 11 U.S.C. Ch. 13 and its simple "adjustment of debts of an individual with regular income" to creditors under a repayment plan providing merely for the claims of the same class to be treated equally (§1322(a)(3) and (b)(1)), e.g. by paying the same number of cents on the dollar and, if the discharge is revoked due to fraud (§1330(a)), for the continued payment of what the debtor still owes the creditors (§1330(b)).

41. Rather, *Metromedia* and *Chateaugay* dealt with Chapter 11 bankruptcies and the complex reorganization of bankrupt companies. Actually, they are even more complex, for they involved arrangements, not only between the bankrupt companies and their creditor companies, but also third companies and individuals that were not even parties to the bankruptcy cases. Indeed, those cases dealt with the release of debt owed by non-party companies to the reorganizing debtor company in exchange for a substantial contribution to its reorganization plan and a challenge after the completion of the arrangement by a creditor, to whom giving relief would have required "unraveling the Plan". *Metromedia §III* To avoid the dire consequences of such "unraveling", the doctrine of equitable mootness was applied, which provides as follows:

> Equitable mootness is a prudential doctrine that is invoked to avoid disturbing a reorganization plan once implemented. [E]quitable mootness is a pragmatic

> principle, grounded in the notion that, with the passage of time after a judgment in equity and implementation of that judgment, effective relief on appeal becomes impractical, imprudent, and therefore inequitable. The doctrine [is] merely an application of the age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties. *Metromedia, §III*, internal quotations omitted.

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

43. Additionally, the companies in *Metromedia* and *Chateaugay* that challenged those complex debt-release arrangements failed to do so until after their completion. In this respect, the court in *In re Chateaugay Corp*., 94 F.3d 772, 776 (2d Cir.1996), "presume[d] that it will [not] be inequitable or impractical to grant relief after substantial consummation, [if], among other things, the entity

seeking relief has diligently pursued a stay of execution of the plan throughout the proceedings". This is precisely what Dr. Cordero did: He "diligently pursued a stay of execution of the [DeLanos'] plan" of debt repayment and was denied his motions by Judge Ninfo (D:21) and Judge Larimer (Add:881, 974¶7, 1021; Pst:1182 entry 10; CA:2199¶¶13, 20). He even pursued the revocation of the confirmation order in Bankruptcy Court (Add:1038, 1066, 1094, 1095, 1125) and in District Court (Add:1064, 1070, 1121¶61, 1126, 1155; Pst:1306¶123, 1313¶21).

44. The pretense of "equitable mootness" as the grounds for dismissing *DeLano* is objectively inapplicable to *Pfuntner*, which is pending before Judge Ninfo and revived by the dismissal of *DeLano*. (¶58 below) In *Pfuntner,* discovery has not even begun! Hence, it cannot be applied to prevent the disturbance of debt-release arrangements where there are no arrangements to disturb to begin with. Moreover, there are parties to *Pfuntner* that were not parties to *DeLano* and whose rights and liabilities as a matter of law cannot have been disposed of through CA2's dismissal of *DeLano* or the Bankruptcy Court's disallowance of Dr. Cordero's claim. As a matter of fact, neither those parties nor their rights were even hinted at in the CA2's three-liner summary order.

45. This shows that CA2 proceeded to dismiss the appeal without any justification in law and with disregard for the facts of *DeLano*. It simply fetched the term "equitable mootness", strung together two citations, and slapped them on a summary order form without ascertaining whether either the doctrine or the cases logically or analogically related to the appeal. It never considered whether equity favored such dismissal, let alone required it. In so doing, CA2 committed an inequity by depriving Dr. Cordero, an innocent party, of his claim against the DeLanos, the fraudsters. It also denied him due process by dispensing with the rule of law in order to protect Reappointee Ninfo, Peer Larimer, and itself. CA2 proceeded as a Worker of Injustice.

46. This Court must not join CA2 in corrupting justice. It must condone neither its denial of due process to a litigant nor the abandonment of its duty of impartiality nor tarnish its own by

affirming CA2's unresponsive and irresponsible summary order in defense of its unlawful individual and judicial class interests. Thus, it is reasonable to expect that the Court, as the Ultimate Dispenser of Justice, will grant certiorari and thereafter set aside CA2's dismissal of the appeal in *DeLano* and order that the case be tried in an impartial court to a jury.

B. CA2's characterization of Trustee Reiber's motion to dismiss as containing only "minor deficiencies" reveals its disingenuous disregard for the law and the facts

47. CA2 confirmed its disregard for the facts and the law by the way it handled Trustee Reiber's motion of October 30, 2007, to dismiss the appeal as moot (CA:2102) and his amendment to correct a gross mistake (CA:2130, 2124¶¶39-42). In his opposition, Dr. Cordero pointed out (CA: 2111, 2135) that the Trustee, who in his motions' first sentence insisted he was a lawyer, had:

    a. failed to cite any authority for the proposition that failure to object timely to a trustee's final report…or perhaps it was to the judge's order approving it –the Trustee could not make up his mind (CA:2103¶¶15-16)- the appeal had been rendered moot and dismissible;

    b. failed to identify what class of people of whom Dr. Cordero was supposedly representative had an obligation to object to whatever it was that he was supposed to object;

    c. failed to note that Dr. Cordero's objections to **i)** the DeLanos' fraudulent bankruptcy petition (D:63), **ii)** Judge Ninfo's confirmation of their debt repayment plan (Add:1038, 1066, 1095, 1097), **iii)** the Trustee's failure to perform his duty (¶62q.1)(b) below), and **iv)** Judge Larimer's affirmance in the appeal filed over 2½ years earlier (D:1; SApp:1507) constituted clear evidence that Dr. Cordero objected to every other act flowing therefrom because if his objections were sustained on appeal, the Trustee's report and Judge Ninfo's approval of it would have become null and void as deriving from nullities;

    d. failed to notice that Judge Ninfo had deprived Dr. Cordero of standing in *DeLano* (D:22),

leaving him only the right to appeal, so that the Judge neither would serve, let alone do so timely, his report-approving order on Dr. Cordero nor could expect the latter to object to it;

e.; failed to assert that the alleged service on Dr. Cordero of "a summary of the account" (CA: 2103¶14) -whatever relation that bore to the Trustee's report or the Judge's order- was timely;

f. failed to explain how service of such "summary" would impose any duty on the recipient to object to something else not served.

48. The motions' quality should have alerted CA2 to the need to determine whether the Trustee had been allowed to amass 3,907 *open* cases before Judge Ninfo because of his competence or his participation in the scheme. Instead, CA2 characterized these as "minor deficiencies". (CA2180) For it to do so was not only disingenuous; it was also dishonest. It was also evidence that due to its self-interest (¶4 above), CA2 disregarded the facts and the law so as to dismiss the appeal to Dr. Cordero's detriment and protect itself and the schemers. Will this Court condone such conduct?

VI. APPLICATION FOR INJUNCTIVE RELIEF

A. Applicable principle of law

28 U.S.C.A. §1651

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
>
> (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

This section serves as legislatively approved source of procedural instruments designed to achieve rational ends of law and may be relied on by courts in issuing orders appropriate to assist them in conducting factual inquiries. *Harris v. Nelson*, U.S.Cal.1969, 89 S.Ct. 1082, 394 U.S. 286, 22 L.Ed.2d 281, rehearing denied 89 S.Ct. 1623, 394 U.S. 1025, 23 L.Ed.2d 50.

A Supreme Court justice may grant a party's application for injunctive relief, where there is significant possibility that the Court would note probable jurisdiction of the appeal of the underlying suit and reverse, and there is likelihood that irreparable injury would otherwise result. (Per Justice Blackmun,

as Circuit Justice.) *American Trucking Associations, Inc. v. Gray*, 108 S.Ct. 2, U.S. Ark., 1987, U.S.Sup.Ct.Rule 44, 28 U.S.C.A

Circuit justice's issuance of original writ of injunction, pursuant to the All-Writs Act and Supreme Court Rule, does not simply suspend judicial alteration of the status quo but also grants judicial intervention that has been withheld by lower courts and, thus, demands significantly higher justification than that required for stays of final judgments or decrees of any court to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. (Per Justice Scalia, Circuit Justice). *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Com'n,* 107 S.Ct. 682, U.S., 1986.

B. The denial in violation of discovery rights and due process of *every single document* requested for the evidentiary hearing will substantially and likely irreparably prejudice both Dr. Cordero in litigating *DeLano* and *Pfuntner* and this Court in safeguarding the integrity of judicial process

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

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

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

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

    a. Contrary to the DeLanos' statement in Schedule B of their petition that they had in hand and on account only $535 (D:31), their bank account statements would have shown that they actually had a much larger amount both of the $291,470 that they had earned in just the three years preceding their filing (D:47; 2001-03 1040 IRS forms at D:186-188) and of

their declared monthly excess income of $1,940 (D:45) after subtracting their monthly living expenses from their monthly income.

b. Their mortgage and property documents would have shown that **i)** the proceeds of their eight known mortgages through which they received at least $382,187 (CA:1654) and **ii)** their equity built through their payment of monthly mortgage installments for at least 30 years far exceeded the mere $21,416 that they claimed to have in the sole real property that they declared in Schedule A, that is, their home, on which they declared an outstanding mortgage of $77,084 (D:30)…after 30 years?!

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

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

e. The documents would have revealed the source of the belief of Christopher Werner, Esq., and his colleague, Devin Palmer, Esq., that they could keep providing the DeLanos with legal services and racking up such high legal fees because in fact the DeLanos had money to pay them, despite their "declar[ation] under penalty of perjury that the information provided in this petition is true and correct" (D:28), which Mr. Werner signed off on, including their statement that they only had $535 in hand and on account. (D:31; CA:1924§V)

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

a. the DeLanos committed bankruptcy fraud in the form of concealment of assets and evasion

of debts by means of the false statement of their financial affairs as part of a fraud scheme;

b. their motion to disallow Dr. Cordero's claim was an artifice to lead to the evidentiary hearing sham where to disallow it so as to strip him of standing to request those documents;

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

d. as such, neither supports Judge Ninfo's order (D:22) disallowing Dr. Cordero's claim against the DeLanos (D:142) or affects his claim against Mr. DeLano in *Pfuntner* (Add:802§A);

e. the orders entered in *Pfuntner*, e.g. Judge Ninfo's order (Add:536 entry 30) of December 23, 2002, dismissing Dr. Cordero's cross-claims against Trustee Gordon (Add:803§C; ¶58.h below) were also intended to protect co-schemers and further the same bankruptcy fraud scheme so that they are nullities that must be vacated and the cross-claims must be reinstated;

f. *Pfuntner,* revived by the dismissal of *DeLano* (¶58 below) and including Mr. DeLano as a party subject to liability to Dr. Cordero, must be started anew after its transfer to a court not under the control of the schemers and it must be tried to a jury.

52. Moreover, those and other documents requested (see the proposed order at the back here) would have shown that Trustees Reiber, Schmitt, and Martini as well as Judges Ninfo, Larimer, and CA2:

a. knew or should have known had they discharged their duty to ascertain the DeLanos' petition and Creditor Dr. Cordero's contentions, that the DeLanos had committed fraud;

b. breached their duty by denying Dr. Cordero the documents that he requested; and

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

53. It follows that this Court's denial of the petition for injunctive relief in the form of the proposed document production order will substantially and likely irreparably prejudice Dr. Cordero in

asserting his claims against the DeLanos, Mr. DeLano, and Trustee Gordon among others; in participating in the pending proceedings in *Pfuntner*; and in writing his brief in support of his petition for a writ of certiorari and, if granted, in writing the merits brief.

2. The lack of the requested documents will prejudice the Court in deciding the petition for a writ of certiorari and, if granted, the case in chief, in safeguarding judicial process from corruption and adjudicating issues affecting the public but ignored by the courts below

54. Likewise, the lack of those documents will prejudice this Court because they are "necessary [and] appropriate in aid of…its jurisdiction", as provided under the All Writs Act. (US:2340 above). The Court needs them both to administer justice in accordance with due process of law to Petitioner Dr. Cordero and other litigants before it and to exercise its own "supervisory power" (SCtR 10.a, ¶1 above) over the integrity of judicial process conducted by the courts subject to its review. Those documents will enable it to ascertain by itself or through briefs the facts indispensable to carrying out these two key institutional functions. In deciding whether to issue the order, the Court should consider that neither CA2 nor District Judge Larimer challenged Dr. Cordero's assertion of the existence of a bankruptcy fraud scheme or protested his statement of their support or toleration of it. If the Court does not order production of those documents, it will be lending its support both to the cover-up mounted by them and other co-schemers to avoid incrimination in, and to their continued running of, the fraud scheme.

55. Moreover, neither CA2 nor Judge Larimer showed even an awareness that the issues presented to them include two concerning the lawfulness of a district court rule and the constitutionality of a law. Those issues could not have been disposed of by the disposition of the controversy between the parties to this case. They continue to affect every litigant and non-litigant in that district and the Second Circuit as well as in the nation, respectively. Those two issues are the following:

> c) Whether WDNY Local Rule of Civil Procedure 5.1(h) (Add:633), which requires for filing a claim under RICO, 18 U.S.C. §1961 et seq., such detailed evidence before discovery has even started as to make such filing impossible in practice, is thereby void as inconsistent with the notice pleading and enabling provisions of the FRCivP, as a deprivation of a right of action granted by an act of Congress, and as a subterfuge crafted in self-interest through the abuse of judicial power to prevent the exposure of judicial involvement in a bankruptcy fraud scheme. (CA:1720; Pst:1257¶2c))
>
> d) Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process of law, provides for forum shopping, and denies 5th Amendment Equal Protection under law so that it is unconstitutional and has been abused to terminate the BAP in the Second Circuit and allow local operation of a bankruptcy fraud scheme. (CA:1720; Pst:1257¶2d)

56. Neither of those issues became moot by any order entered below. In addition, it can reasonably be assumed that to protect themselves from incrimination in the bankruptcy fraud scheme and keep running it, the courts below have dealt and will deal with any case pregnant with those issues by misapplying to them the term moot or similar ones intended to abort consideration of them before the case ever reached or reaches this Court for adjudication. By so doing, they in practice act in coordination and self-interest to deprive the Court of jurisdiction over those issues to the detriment of both the litigants in those cases and the public as well as the integrity of judicial process. Just as those documents will prove the existence of the scheme and the outcome-determinative influence that it exerted on the courts' disposition of *DeLano* and *Pfuntner*, they will strengthen the contention that the drafting of Local Rule 5.1(h) by Judge Larimer's WDNY Court and the application of 28 U.S.C. §158(b) by CA2 and other judges in the circuit have been determined by their intentional misuse as fraud scheme instruments. These issues afford the Court the opportunity to strike down those provisions and hold that local rulemaking power cannot be used to invalidate the FRCivP or shield judicial wrongdoing; and that the national patchwork of arrangements for bankruptcy appeals to go either to a local district judge or a panel of 3 non-local judges provides such divergent standards of review and impartiality as to deny equal protection under the 5th Amendment.

VII. APPLICATION FOR A STAY

A. Applicable principle of law

28 U.S.C. §2101

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

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

1. A stay may be granted by a Justice as permitted by law.

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

B. CA2 denied the application to stay *DeLano* and *Pfuntner*

57. CA2 dismissed *DeLano* on February 7, 2008 (CA:2180), and denied the petition of Dr. Cordero for panel rehearing and hearing en banc (CA:2191) last May 9 (CA:2209). On May 23, he moved CA2 to recall the mandate and stay *DeLano* (CA:2211) and on May 24 to prevent further denial of due process and avoid waste of litigants' and the court's resources by removing and staying the pending proceedings in *Pfuntner* in the Bankruptcy and District Courts, WB&DNY, or by transferring that case to the U.S. District Court in Albany, NY (CA:2222). He received notice on June 16 of CA2's denial of both motions (CA:2232, 2233). On June 30, he made an in-chambers application for this relief, which was denied on July 24.

C. Both the CA2 order that dismissed *DeLano* and the pending proceedings in *Pfuntner* that it revived should be stayed because to allow those proceedings to be conducted before judges that have shown such bias and disregard for the facts and the law would be to condone their denial of due process and encourage them to stage another travesty of justice

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

58. CA2's dismissal of *DeLano* revived *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, where Dr. Cordero's claim against Mr. DeLano arose and which is pending before Judge Ninfo. The Judge himself linked it to *DeLano* when he disallowed the claim on April 4, 2005 (D:3; Add:853), as did the DeLanos' appellate attorney, Devin L. Palmer, Esq., (Add:711-752). Among the parties to *Pfuntner* are the following:

a. Judge Ninfo (¶11 above);

b. Mr. DeLano (¶¶9-10 above; Add:797);

c. M&T Bank, Mr. DeLano's employer (Add:712);

d. Michael J. Beyma, Esq. (¶16 above);

e. Dr. Cordero, who impleaded Mr. DeLano as a third party defendant (Add:785), who in turn together with his wife named him a creditor in their voluntary bankruptcy petition (D:40);

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

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

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

h. Chapter 7 Trustee Kenneth W. Gordon, who according to PACER, had 3,382 cases out of 3,383 before Judge Ninfo as of June 26, 2004 (Add:891§III). No wonder Judge Ninfo granted his motion (D:534/15) and summarily dismissed (D:535/27) Dr. Cordero's cross-claims against him for defamation and reckless and negligent performance (Add:798§f, 803§C) despite the genuine issues of material facts that they raised (Add:593¶11; CA:2026§2=Dr. Cordero's brief in *Premier Van et al*., 03-5023, CA2, 10§2=*Premier* 10§2).

i. Assistant U.S. Trustee Schmitt, who allowed Trustee Gordon to accumulate such an unmanageable number of liquidations, as did her supervisor, the former U.S. Trustee for Region 2 Carolyn S. Schwartz (D:85§A; Add:534/19; 570¶19), whose successor, U.S. Trustee Deirdre A. Martini (D:90§VII, 104), did likewise with regard to the 3,909 cases that Trustee Reiber amassed, of which 3,907 were before Judge Ninfo;

j. Bankruptcy Court Reporter Mary Dianetti, who was a party in *Pfuntner* and *DeLano* to a coordinated wrongful effort with bankruptcy clerks (CA:2028§4, 2070§D=*Premier* 12§4, 54§D) and Judges Ninfo and Larimer to deprive Dr. Cordero of the transcript of the hearing (D:540/71) on Trustee Gordon's motion to dismiss (D:534/15) Dr. Cordero's cross-claims against him (D:395§4; Add:918§II); and the transcript of the evidentiary hearing (Tr:i-190) on the DeLanos' motion to disallow (D:218) in *DeLano* Dr. Cordero's claim against Mr. De-Lano in *Pfuntner* (Pst:1266§1; CA:1735§B), as arbitrarily ordered by Judge Ninfo (D:441).

k. Judge Larimer, who disposed of *Cordero v. Gordon*, 03-cv-6021L, and *Cordero v. Palmer*, 03-mbk-6001L, in the same professionally irresponsible and conclusory fashion (CA:2054 §B, 2064§C=*Premier* 38§B, 48§C) as he did *DeLano* (¶¶31-33 above).

59. This list shows that the parties common to *DeLano* and *Pfuntner* are bankruptcy system insiders, except for Dr. Cordero. Led by Judges Ninfo and Larimer, they have engaged in a series of acts (¶62) so arbitrary and in disregard of the facts and the law and so consistently biased against Dr.

Cordero, the sole non-local party, who resides in NY City, and who is also the sole pro se party, and in favor of the insiders, who are local parties resident in Rochester, NY, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing (CA:1846§II, 2070§D) in furtherance of a bankruptcy fraud scheme. (D:458§V; CA:2025§C=*Premier* 9§C) That scheme forms the common core of operative facts to which *DeLano* and *Pfuntner* belong.

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

60. Judge Ninfo and Judge Larimer's conduct shows blatant bias that has persistently denied due process to Dr. Cordero. *Liteky v. United States*, 510 U.S. 540, 551, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) (defining bias as a favorable or unfavorable predisposition so extreme as to display clear inability to render fair judgment). Their conduct supports the reasonable assumption that in the revived *Pfuntner* proceedings they will conduct themselves in coordination with the other co-schemers and insiders the same way because their motives are the same: to escape the penalties and enjoy the benefits of operating the scheme. Consequently, they will run the proceedings in accordance with their own brand of "local practice" (D:98§II, 358§A) and heap upon Dr. Cordero yet more of their bias, arbitrariness (D:355, 385, 454§IV), and contempt for the law of the land of Congress and the facts of the case at hand. Not to do so would be very risky for them.

61. For instance, if instead of denying *every single document* that Dr. Cordero requested, as they did in *DeLano* (US:2330§§D-F above), the schemers allowed discovery in *Pfuntner* as required under FRBkrP 7026-7037 and FRCivP 26-37, they would be exposed as having participated in bankruptcy fraud (¶¶50-52 above), which also explains why they had to protect Mr. Palmer (¶58.f above.) In addition to being found liable to Dr. Cordero, they could be criminally prosecuted for

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

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

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

b. to prevent discovery, as Judge Ninfo did in *Pfuntner* by dragging it along for months on end so that it must yet be started (D: 379§3, 409§E; CA;2037§9);

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

d. to try to wear him down by causing him enormous waste of effort, time, and money as well as emotional distress by raising false hopes, as Judge Ninfo did by asking Dr. Cordero to reapply for default judgment in *Pfuntner* (CA:2029§§5-7=Premier 13§§5-7) and reformat his request for documents in *DeLano* (D:207, 217) only to deny them after even more arbitrariness (D:238§III, 364§B, 407§§6-7; Add:592§A; CA:2064§C= Premier 48§C) and announcing a series of monthly hearings for 7 or 8 months to be held in Rochester and to be attended in person, not by phone, by Dr. Cordero, the only non-local party (D:409§E);

e. to disregard a dispositive procedural rule, such as the requirement to answer a summons and its penalty as unambiguous and non-discretionary as entry of default judgment (2039§C=Premier 23§C);

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

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

g. to protect the locals after they have disobeyed the judges' own orders, as Judge Ninfo did to protect Mr. Pfuntner and his attorney, David MacKnight, Esq., after they ignored for months Judge Ninfo's discovery order and even failed to show up at the inspection of Dr. Cordero's property at Mr. Pfuntner's warehouse in Avon, Rochester, on May 19, 2003 (D:404§D; CA:2034§8=Premier 18§8);

h. to disregard the purpose of 'these rules [which is] to make the determination of every case and proceeding inexpensive' (FRBkrP 1001 and FRCivP 1), as Judge Ninfo did by arbitrarily denying Dr. Cordero applications to appear by phone at hearings so as to make him travel from NY City to Rochester on short notice for a hearing that on average would last 15 minutes (D:412§3, 415§6; Add:1062¶66e, 1065, 1066);

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

j. to change the date of filing of any of Dr. Cordero's papers, as Judge Ninfo already did to pretend that he had dismissed as untimely filed his motion to extend time to file notice of appeal, despite Trustee Gordon's admission against legal interest that the motion had been timely filed (CA:2027§3= *Premier* 11§3);

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

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

l. to fail to discharge the basic clerical duty of filing papers, as the bankruptcy clerks did by keeping the application for default judgment in non-filed limbo for more than a month and filing it only after Dr. Cordero inquired about it of Judge Ninfo (CA:2031§6, 2040§D), or not filing at all papers submitted to the Judge for filing (FRBkrP 5005(a)(1); D:234§II);

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

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

o. to allow a trustee to submit a shockingly unprofessional and perfunctory report **i)** with gross mistakes, from its title on and its reference to a non-existent "341 Hearing", **ii)** without dates, **iii)** with lots of nonsensical scribblings (Add:937-938, 953§I), **iv)** no signature of the

parties supposedly providing its underlying information (Add:939, 956§A), **v)** no content whatsoever evidencing any investigation of the contention that the DeLanos had committed bankruptcy fraud. Yet, Judge Ninfo referred to such "Report" as evidence that Trustee Reiber had investigated such contention and found no fraud (Add:941, 970§C). Dr. Cordero criticized both officers as he analyzed the "Report", but Judge Larimer disregarded the criticism and analysis and let the "Report" stand unquestioningly (Add:951, 1022);

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

q. 1) to provide the insiders with such reassurance that no harm is going to come to them regardless of their misconduct or deficient performance as to encourage them to engage further in the same conduct. So Dr. Cordero:

   (a) filed a motion in District Court to have Court Reporter Dianetti referred to the Judicial Conference for investigation (Add:911) of her refusal to certify the reliability of her transcript (Add:867, 869) and requested repeatedly her replacement (Add:929¶48.b, 73¶¶60.1.c, 3, 993);

   (b) repeatedly requested U.S. Trustees Martini and Schmitt under 28 CFR §58.6(a), and Judge Larimer and Judge Ninfo under 11 U.S.C. 324(a) to remove Trustee

Reiber for his failure to discharge his statutory duty under 11 U.S.C. §§1302(b)(1), 704(a)(4) and (7) to investigate the financial affairs of the DeLano Debtors (D:94¶80.c, 137, 307, 682, 685; D:201¶32, 243¶34.d, 460¶62.b; Add:882§II & 885¶15.c, 973¶¶60.1.d-e, 4; 1062¶66.b), 1096¶61.d, 1121¶61.e; Pst:1306¶123.d, 1419¶62.b); CA:1773.f);

(c) moved in Bankruptcy Court against Att. Werner and his law firm for sanctions and compensation for violation of FRBkrP Rule 9011(b) (D:258), as he did against Mr. Pfuntner and Att. MacKnight (CA:2034§8=Premier 18§8;

(d) filed 12 motions requesting that CA2 issue his proposed document production order. (Table at US:2364¶15 below)

2) Yet, neither Reporter Dianetti, Trustee Reiber, Mr. Werner, the DeLanos nor anybody else felt the need to file even a yellow stick-it to object to those motions even though the grant of their requested relief would have spelled the end of their professional careers just as the production of the requested documents would have incriminated them in a bankruptcy fraud scheme. (CA:1738§2) Rather, they simply let their judges take care of such requests by dismissing them out of hand, as did Judge Larimer (Add:993, 1019, 1155) and CA2 (Table at US:2364¶15 below). Hence, they showed no concern that as a matter of fact and law the Judge and CA2 could and should have granted by default the relief requested, including the order of document production.

3) Would these parties have proceeded with such indifference and reliance had they been before a non-local, non-insider, non-scheming, non-CA2-appointed senior judge from a circuit other than the Second Circuit appointed by this Court under 28 U.S.C. §294(d), whom they did not know and who sat in another district, such as the U.S. District Court in Albany, NY, as repeatedly requested by Dr. Cordero and ignored by

CA2? (cf. D:422§III & 423¶123.2), 439¶c), D:460¶62.c); CA:1772¶110.b, 1928¶e, 2076¶151.2); CA:1976¶d, 2126¶f.iii), 2140¶i.iii), 2205¶25.d, 2227¶b.2)).

63. The reality of these facts surpass the appearance conditions necessary to meet this Court's standard for interpreting and applying the notion of bias or prejudice in 28 U.S.C. §455(a), reaffirmed in *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (Rehnquist, C. J.):

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

64. A reasonable person informed of the facts of *DeLano* and *Pfuntner* can conclude that Judge Ninfo, Judge Larimer, and CA2 together with the other co-schemers and insiders have shown, not just 'reasonably questionable impartiality', but also manifest bias and prejudice against Dr. Cordero. They will do so again to ensure their scheme's and their own survival. In so doing, they will cause Dr. Cordero irreparable prejudice.

VIII. THE BALANCE OF EQUITIES FAVORS ISSUING THE STAY AND THE ORDER FOR DOCUMENT PRODUCTION

65. If the stay of the dismissal of *DeLano* and the revived proceedings in *Pfuntner* is not granted, another series of similar acts of manifest bias and prejudice by law-contemptuous Judge Ninfo, Judge Larimer, the trustees, court clerks, and other bankruptcy system insiders and local parties will cause irreparable prejudice to outsider Dr. Cordero by making him spend additional years in wasteful litigation: Premier Van Lines went bankrupt in March 2001, *Pfuntner* was commenced in September 2002, followed by the filing of *DeLano* in January 2004. The co-schemers will use such litigation to wear down Dr. Cordero by costing him an additional enormous amount of effort, time, and money, whose effect upon him will be exacerbated by the additional tremendous

emotional distress that they, as people in practice above the law, will risklessly and intentionally inflict upon him through their arrogant and insensitive denial of his rights and imposition of unlawful burdens. (D:231§§I-III) They will ensure that the litigation, however protracted, is an exercise in futility due to its predetermined outcome: The pending proceedings in *Pfuntner* will only lead to more unresponsive and irresponsible summary orders holding that Dr. Cordero has no valid claim against the locals and insiders, who will go on running their bankruptcy fraud scheme and spreading it into any other areas of judicial process or economic activity from which they may extract a benefit. Do they count on your friendship, self-interest, or indifference to do this?

66. Indeed, Judge Ninfo and Judge Larimer scarcely ever cite any authority and never engage in legal analysis in their orders. (Judge Ninfo: D:3, cf. Pst:1293.i; D:220, cf. 231, 272, 327, 332, 508.o; Add: 719, 725, 729, 731, 741, 749, 940, 941, 1065, 1094, 1125, 1933; Judge Larimer: Add:692, 831, 839, 991, 1019, 1021, 1092, 1155, 1214, 1501, 1506) Yet, Judge Ninfo had no qualms about requiring Dr. Cordero to engage in more legal research (cf. Pst:1292§h) even after having disregarded all that which Dr. Cordero had presented to him; just as Judge Larimer dismissed with a conclusory "It has no merits" all the painstaking legal research and writing that Dr. Cordero had conducted and submitted to him. (Add:584) After all, their goal was not to do justice.

67. In their disregard for the law, these judges can find comfort in the example set by CA2: It denied all of Dr. Cordero's substantive motions with an expedient "Denied" (CA:1623, 1632, 1633, 1634, 1678, 1679, 1802, 1880, 1185, 2079, 2143, 2186, 2189, 2209, 2210, 232, 2233) and dismissed *DeLano* with a summary invocation of "equitable mootness" (CA:2180)…as if it had been concerned with equity at all rather than by the need to protect Peer Larimer, Reappointee Ninfo, and itself. (US:2336§A above) Circling the option "Denied" on Motion Information Sheets does not show that CA2 even read the motions; by contrast, dismissing the appeal by citing two objectively inapplicable cases as its pretended authority does show that CA2 did not

read Dr. Cordero's brief. Doing so was inequitable both to Dr. Cordero and the public.

68. Dr. Cordero paid the $455 filing fee of a contract of adhesion for appellate review services on October 16, 2006, just as he paid $255 to the District Court on April 11, 2005. He was entitled to see evidence that CA2 had in fact addressed the issues that he had raised on appeal and that it had actually ascertained the relative rights and liabilities of the parties in the context of their factual allegations and legal arguments. However, the only thing to be seen was that CA2 did not hold its end of the bargain, failing to render any such service in exchange for the filing fee. The CA2-internal clerical tasks of filing and keeping the docket were not those that induced the payment of the fee. CA2 is not merely a registry of cases; it is a court of justice. So it was not only contractually at fault by not providing the counterpart of the filing fee. CA2 committed an inequity by not caring to be seen not doing justice.

69. As for the public, it is entitled to see its public servants in the judiciary, whose salaries it pays, safeguarding the public good of just and fair judicial process and determine whether such process has been impaired by fraud on and by the courts below. Far from it, all the public can see is a CA2 that will not even 'aid its own jurisdiction' by ordering the production of documents to ascertain whether courts in its circuit are part of a bankruptcy fraud scheme or any other type of corruption. It is inequitable for CA2 to get away with taking from the public the trust of a judgeship and its salary without giving back even the appearance of justice.

70. Justice will not emerge from the pending *Pfuntner* proceedings by Dr. Cordero citing even more Supreme Court cases and constitutional provisions, and arguing more statutes and rules, for those to whom he would submit his citations and arguments will not even read them, just as they failed to do before. More law will make no difference to those judges whose sole worry is to ensure that they are not caught and can continue running their scheme. This negates any equitable considerations in denying the stay on behalf of the schemers given that the stay provides them

precisely with what they want: to avoid litigation that can expose their coordinated wrongdoing.

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

72. The stay and the document production orders also work in the reputational interest of this Court and each Justice. They are harmed institutionally and individually by being seen as the complicit protectors of their peers, aiding and abetting their effort to obstruct their exposure as bankruptcy fraud schemers. They are also harmed by allowing *Pfuntner* to proceed to the predetermined outcome of suppressing incriminating documents, abusing Dr. Cordero with more bias and contempt for the law and disregard for the facts, and finally stripping him of any rights.

73. Far from it, the Court and its members should want to appear as impartial administrators of a system of justice governed by the rule of law. They should show their determination to apply the law to all relevant facts that can be established through a liberal construction of the rules of discovery and evidence aimed at furnishing ample information to decision-makers so that they can reach just and fair decisions. By adopting this attitude they would endorse J. Brandeis' dictum, "Sunshine is the best disinfectant". It is most effective when the largest number of documents and other sources of evidence cast the brightest light on the case at hand so that its facts of lawful and unlawful conduct can be seen distinctly and told apart. To discern the presence in *DeLano* and *Pfuntner* of the infectious corruptor of fraud, this Court and its Justices should apply the principle 'When in doubt, disclose'. The stay will prevent fraud from contaminating the

pending proceedings in *Pfuntner*; the production order will make it possible to diagnose the gravity of the infection by fraud. Both will help cure *DeLano* of the fraud that already vitiated it.

74. None of the Justices has the authority to pardon his or her judicial buddies; the Court itself is not entitled to abuse its power to exonerate them from the consequences of their participation in a bankruptcy fraud scheme or, for that matter, in any other form of individual or coordinated wrongdoing. Friendship with a judge or a lower court provides no basis in law or equity to issue either of them with a license to breach the public trust attached to a judgeship. If the Court still asserts that nobody is above the law, it should be seen giving effect to that principle by meeting out to its own colleagues and friends "Equal Justice Under Law".

IX. RELIEF REQUESTED

75. Therefore, Dr. Cordero respectfully requests that the Justices and the Court:

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

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

c. issue the proposed document production order (in bound and loose forms at the back of this volume;

d. stay the filing of the petition for a writ of certiorari, due next October 6, until 60 days after the order of production of documents has been complied with and Dr. Cordero has received a copy of all the documents produced so that he may use them to write the petition;

e. 1) in consideration of:

(a) the enormous cost of litigating *DeLano* and *Pfuntner* already incurred by Dr. Cordero;

(b) the acceptance of 8½ x 11" paper for printing an application such as this as well

as other papers, such as briefs, applications, and motions under SCtR 19.1, 21.2.c, 26.4(b), 37.5, 39.3 & 5, 40.1 & 2;

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

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

(e) the privacy concerns protecting the information required for filing *in forma pauperis*;

(f) the record in *DeLano* running to more than 2,300 pages;

2) cause leave to be granted to print the petition for a writ of certiorari and, if granted, the merits brief, on 8½ x 11" paper and CDs in 10 copies;

3) accept the accompanying Appendix volume as part of the certiorari petition when made;

f. refer *DeLano* and *Pfuntner* under 18 U.S.C. §3057(a) to the U.S. Attorney General with the recommendation that they be investigated by U.S. attorneys and FBI agents that are not and have never before been related in any way to the staff of the U.S Department of Justice or FBI offices in either Rochester or Buffalo, NY, and that are unfamiliar with the cases and unacquainted with any of the parties or officers that may be interviewed or investigated;

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

Dated: August 4, 2008

Dr. Richard Cordero, Esq.

59 Crescent Street
Brooklyn, NY 11208

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

Certificate of Service

In re Dr. Richard Cordero v. David and Mary Ann DeLano, dkt. no. 06-4780-bk, CA2
and ***Pfuntner v. Trustee Gordon et al.,*** dkt. no. 02-2230, WBNY

I, Dr. Richard Cordero, Esq., certify that I mailed or e-mailed to the parties listed below a copy of my in-chambers application to the Justices of the U.S. Supreme Court for injunctive relief and a stay concerning the above captioned cases.

Please note that the part of the Table of Contents of the Appendix whose entries bear the references D:#, Add:#, Pst:#, and SApp:# and the transcript were served on all the parties named below with my principal brief in CA2 of March 17, 2007. Hence, pages US:2365-2398 are not served again. I also served the documents that I have produced and that have been collected in the Appendix. The proposed document production order was served with my June 30 application.

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X. APPENDIX

A. Table of Contents of the items in a separate volume and on the accompanying CD and consisting of the records in all courts US:2365-2406

B. Items in this volume

1. Orders entered in conjunction with the judgment sought to be reviewed

2. Other relevant orders entered in the case

15.

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

3. Other relevant material

16. Proposed document production order
http://Judicial-Discipline-Reform.org/SCt_chambers/8application_4aug8/4doc_order_4aug8.pdf

Case no.

IN THE

SUPREME COURT OF THE UNITED STATES

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

A. Persons and entities concerned by this Order

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

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

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

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

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

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

a. the source or recipient of funds or who made any charge or claim for funds;
b. the time and amount of each such transaction;
c. the description of the goods or service concerned by the transaction;
d. the document closing date;
e. the payment due date;
f. the applicable rates, including but not limited to normal and delinquent rates;
g. the opening date and the good or delinquent standing of the account, agreement, or contract concerned by the document;
h. the beneficiary of any payment;
i. the surety, codebtor, or collateral; and
j. any other matter relevant to this Order or to the formulation of the terms and conditions of such document;

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

23. Produce a document and/or a certificate concerning it whenever a reasonable person acting in good faith would:
    a. believe that at least one part of such document comes within the scope of this Order;
    b. be in doubt as to whether any or no part of a document comes within that scope; or
    c. think that another person with an adversarial interest would want such production or certificate made or find it of interest in the context of ascertaining whether any person or entity concerned by this Order has committed bankruptcy fraud or any other act punishable under law or there is a bankruptcy fraud scheme involving any such, and/or any other, person or entity; and
24. File any document produced or certificate made pursuant to this Order with:
    a. this Court;
    b. Dr. Richard Cordero, Esq., Creditor in *DeLano*, 59 Crescent Street, Brooklyn, NY 11028, tel. (718)827-9521; and
    c. the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee).
25. The production of documents within the scope of this Order shall be made pursuant to the following timeframes:
    a. within two weeks of the date of this Order, such documents dated since January 1, 2000, to date;
    b. within 30 days from the date of this Order, such documents dated since January 1, 1975, to December 31, 1999.
26. The holder of the original of any document within the scope of this Order shall certify that he or she holds such original and acknowledges the duty under this Order to hold it in a secure place, ensure its chain of custody, and produce it upon order of this Court.

C. Substantive provisions

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

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

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

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

a. the audio tape of the meeting of creditors of the DeLanos held on March 8, 2004, at the Office of the U.S. Trustee in Rochester, room 6080, and conducted by Att. Weidman, shall be produced by Trustee Schmitt or her successor, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and as a PDF file on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

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

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

d. the stenographic, audio, or video tapes and any corresponding transcripts of the other proceedings since 2001, including hearings in the courtroom and meetings in chamber

or their equivalent, in *In re DeLano*, 04-20280, *Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, *In re Premier Van Lines*, 01-20692, WBNY, whether the court reporter was Reporter Dianetti or somebody else, and the presiding officer was Judge Ninfo or his delegate, representative, or substitute;

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

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

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

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

    2) the unbroken series of documents relating to the DeLanos' purchase, sale, or

rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or may be located, including but not limited to:

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

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

3) mortgage documents;

4) loan documents;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Documents entered in the docket:

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

2) the reports for the following months;

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

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

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

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

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

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

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

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

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

_____ _____

Date