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July 3, 2009

Senator Patrick J. Leahy
Chairman
Senate Judiciary Committee
Dirksen Senate Office Building, Washington, D.C. 20515

Senator Jeff Sessions
Ranking Member
Senate Judiciary Committee

Dear Senator Leahy and Senator Sessions,

I hereby bring to your attention, and explain the significance for the assessment of the integrity and impartiality of Justice Nominee Judge Sonia Sotomayor of, a case that she withheld from you and your Committee. Indeed, the latter requested in its Questionnaire for Judicial Nominees that she “13.c. Provide citations to all cases in which you were a panel member, but did not write an opinion” and “13.f. Provide a list of all cases in which certiorari was requested or granted”.¹ Although the Judge referred you to the Appendix² for her answer and stated in her letter to you of June 15 that “In responding to the Committee Questionnaire, I thoroughly reviewed my files to provide all responsive documents in my possession”, she neither included that case in the Appendix nor in either of the supplements with her letters to you of June 15 or 19³ following your requests for more precise answers.

The case that Judge Sotomayor withheld from you is *Dr. Richard Cordero v. David Gene and Mary Ann DeLano*, 06-4780-bk.⁴ She knows that case, for she was the presiding judge on the panel that heard oral argument on January 3, 2008, and received the written statement that I also filed with her on that occasion.⁵ By then she had been made aware of the importance of the case by the motions judge referring to the panel many of the 12 substantive motions that I filed in that case.⁶ She was also the first judge listed on the order dismissing the case the following February 7.⁷ She had to further handle the case because I filed a petition for panel rehearing and hearing en banc on March 14.⁸ Moreover, after she and her colleagues denied both on May 9 by reissuing the order as the mandate (attached hereto), I filed an application with Justice Ginsburg⁹ on June 30, and then with all the Justices for injunctive relief and a stay of the order on August 4.¹⁰ Thereafter I filed a petition for certiorari on October 3.¹¹ What is more, I also filed a petition for rehearing on April 23, 2009, of the denial of certiorari, which was denied last June 1.¹²

All these proceedings were exceedingly sufficient to make the case stand out in Judge Sotomayor’s mind. Nonetheless, she had to deal with it once more after I filed with the Judicial Council of the Second Circuit, of which she is a member, a petition for review of the dismissal by Chief Judge Dennis Jacobs of my judicial misconduct complaint for bias, prejudice, and abuse of judicial power, 02-08-90073-jm.¹³ The complaint’s subject was, not just any judge, but rather her and her colleagues’ appointee to a bankruptcy judgeship, i.e., Bkpt. Judge John C. Ninfo, II, WBNY. This could only have made her all the more aware of the need to submit *DeLano* too to your Committee. However, the risk for her of your reviewing it was too high because what is at stake is a cover-up of a judge-run bankruptcy fraud scheme involving lots of money.¹⁴

The cover-up aimed to keep concealed from creditors at least \$673,657 in just one of the unmanageable 3,907 *open* cases as of April 2, 2004, according to PACER¹⁵, brought by the same trustee, George Reiber, before Judge Ninfo. To that end, Judge Sotomayor condoned her Appointee’s denial of, and denied me herself, *every single document* that I ever requested to defend my claim from the motion to disallow it and evidentiary hearing concocted by the DeLanos and J. Ninfo.¹⁶ That constituted a blatant denial of the right to discovery under FRBkrP 7026 and 7034 and FRCivP 26 and 34. By so doing, she showed contempt for the most important constitutional guarantee that any judge, let alone a Supreme Court justice, must safeguard: due process of law.

The cover-up began when Judge Ninfo protected the most unlikely of ‘bankrupts’, Mr. DeLano, a 39-year veteran banker who at the time of filing for bankruptcy was and remained employed by a major bank, M&T Bank, as a bankruptcy officer! M&T, with \$65 billion in assets at the end of 2008¹⁷, is an important client of the law firm, Underberg & Kessler, in which J. Ninfo was a partner at the time of taking the bench. Both M&T and Mr. DeLano were represented by another partner in that firm, Michel Beyma, Esq., in the case from which *DeLano* arose, i.e., *Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY,^{cf. 30} and in which their liability to me had to be determined. As for Trustee Gordon, he had 3,382 cases before Judge Ninfo out of his 3,383 as of June 26, 2004.¹⁸ So, when it came time for Mr. DeLano to prepare his debt-free retirement to a golden pot, he filed together with his wife a bankruptcy petition in which they listed me as a creditor. Hardly randomly did their case land before Judge Ninfo.

However much the expertise and position of a professional like Mr. DeLano rendered his bankruptcy inherently suspicious, Judge Ninfo did not review his petition for bankruptcy relief at all. Rather, he denied my request for production by the DeLanos of even their bank account statements. So did Judge Sotomayor, impervious to how much common sense, never mind review with due diligence, requires that such statements be produced by anyone claiming lack of money to pay his debts, particularly if still employed and earning an above average salary. She could not in good faith have considered that the DeLanos had no duty whatsoever to produce a single document to support their otherwise self-serving declarations in their petition; or that a creditor facing the loss of his claims on them had no right under any legal or equitable theory to obtain a single document from the self-portrayed bankrupts and was reduced to taking their declarations at face value. It is absolutely impossible to imagine that she, “a wise woman with the richness of her experiences” as a former member of the board of directors of the State of New York Mortgage Agency, financial counselor in her own firm of Sotomayor and Associates, and corporate litigator at Pavia & Harcourt for high-end clients, such as Ferrari, Fendi, and Bulgari, did not suspect that something was wrong and required close scrutiny. She had stronger grounds for suspicion due to the petition’s incongruousness and implausibility, which I pointed out to her.¹⁹

In fact, in their bankruptcy petition²⁰, the DeLanos declared, inter alia, that **1)** they had earned \$291,470 in the preceding three years, were still on their jobs, and had a monthly excess income of \$1,940, yet claimed that they only had \$535 in hand and on account; **2)** their only real property was their home, appraised at \$98,500, yet their mortgage was still \$77,084 and their equity only \$21,416...after making payments on it for 30 years and receiving during that time at least \$382,187 through a string of *eight mortgages!*; and **3)** they owed \$98,092 on credit cards, spread thinly over 18 of them so that no issuer would have a stake high enough to deem litigation cost-effective, yet they valued their household goods at only \$2,810 and described their life style as modest, but they had at last count \$27,953 to pay the legal fees of their bankruptcy attorney, Christopher Werner, Esq., who had 525 cases before Judge Ninfo²¹, to defend against my document production motions.²² They simply could not risk producing them, for those documents would have proved that they had engaged in bankruptcy fraud through concealment of assets.

Judge Sotomayor could not risk ordering them produced either, because the ensuing domino effect incriminations could topple her too. The documents would have made it possible to track at least \$673,657 of the DeLanos’ known salary and mortgage receipts to their hidden stash. After finding the latter, the DeLanos could be indicted for bankruptcy fraud. Facing up to 20 years imprisonment and up to up to \$500k in fines²³, Mr. DeLano would deem it in his interest to plea bargain for leniency for himself and/or his wife in exchange for his incriminating testimony

of what he had learned during his long banking career about the involvement of Judge Ninfo, trustees, lawyers, court staff, and other bankruptcy system insiders like himself in a bankruptcy fraud scheme. Any one of them could in turn incriminate higher ups in the judiciary who, like Judge Sotomayor, at least had reason to suspect the scheme's existence, but rather covered it up and enabled its continued operation. Confronted with a conflict of interests between saving herself and her colleagues through collegial complicity and discharging her duty to ensure due process and denounce bankruptcy fraud²⁴, Judge Sotomayor compromised her integrity. She showed gross partiality toward her colleagues and other insiders by dismissing the appeal without addressing even one of the issues presented or using the term that explicitly linked them all: fraud.⁴

Thus covering for Appointee Ninfo is standard practice for Judge Sotomayor and her Council colleagues. In the 12-year period 1oct96-30sep8, they have *denied 100% of all petitions* for review of dismissed misconduct complaints, as the official statistics show.²⁵ The egregiousness of the complained-about conduct was no bar for her participation in such systematic denial: After having 'heard' it in *DeLano*, Judge Sotomayor 'heard' again in the complaint from the mouth of Judge Ninfo himself, as recorded in the transcript of the evidentiary hearing on March 1, 2005, how he, over my outraged objections, repeatedly allowed Mr. Beyma, the partner in the same firm as his, and Mr. Werner, the frequent insider in his court, to signal answers with their arms to their client, Mr. DeLano, as he was on the stand responding under oath to my examination!²⁶ Will she defend at the hearings his or her conduct, which showed contempt for due process and an Act of Congress²⁷ and no "empathy" for the complainants left at the mercy of complained-against judges? Why does she hold judges unaccountable: Judges Above the Law?

So she holds herself. Just as she let the DeLanos disregard their duty to disclose their financial affairs, Judge Sotomayor has failed to perform her duty under the Questionnaire to "Provide a complete, current financial net worth statement which itemizes in detail all assets [and] all liabilities".²⁸ This results from her own answers to your Committee and publicly available documents. Based thereon, a table²⁹ with links to those sources shows that from January 1988 to May 2009, she earned at least \$3,773,824 plus took out loans worth at least \$381,775. Yet, the total of \$4,155,599 minus taxes and the cost of her reportedly modest living³⁰ cannot by any means be accounted for by assets worth only \$543,903, excluding capital appreciation. Unlike a discussion of her judicial philosophy, which turns on a matter of opinion, her handling of her and her colleagues' money is a matter of fact that concerns two qualifications which all agree are indispensable for confirmation: her integrity and impartiality. Public outrage at the President's nomination of tax evaders Tim Geithner, Tom Daschle, and Nancy Killefer attests to that.

Therefore, I respectfully request that your Committee **1)** ascertain why Judge Sotomayor withheld from you *DeLano* as well as any other requested cases; **2)** conduct a *Follow the money!* investigation of her financial affairs as well as of the DeLanos' concealed assets and of the parties to *Pfuntner*³¹ in order to expose the bankruptcy fraud scheme³²; **3)** investigate the impossible coincidence that on several occasions my four email accounts stopped receiving emails a day after I widely emailed articles with evidence of CA2's scheme cover-up³³; and **4)** invite me to be heard at the hearings on Judge Sotomayor's confirmation so that I may provide a firsthand account of her participation in the cover-up and its reflection on her integrity and impartiality³⁴.

To Follow the money! to a judge-run bankruptcy fraud scheme before journalists do and determine how much it aggravates the misery of millions of debtors and creditors are worthy tasks for a principled national politician who wants to become the Sen. Howard Baker of our generation and ask at nationally televised public hearings "What did J. Sotomayor know and when did she know it?"

Sincerely, *Dr. Richard Cordero, Esq.*

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- 1 **a)** <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm> >Committee Questionnaire > p.88§c and 98§f;
- 2 **b)** with added bookmarks useful for navigating the file containing the materials relating to cases and financial affairs submitted by Judge Sotomayor in response to the Questionnaire, also at http://Judicial-Discipline-Reform.org/SCT_nominee/JSotomayor_integrity/2SenJudCom_Questionnaire_JSotomayor.pdf
- 3 <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm> > Committee Questionnaire - Appendix; and endnote 1.b) supra.
- 4 <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm>; and endnote 1.b) supra >JS:304 and 313.
- 5 http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_06_4780_CA2.pdf
- 6 http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_CA2_oralarg.pdf
- 7 http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCT_petition_3oct8.pdf >US:2484. Table: Document requests by Dr. Cordero and denials by CA2.
- 8 Endnotes 4 and 6 supra >CA:2180; attached hereto after reissuance as mandate.
- 9 http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_CA2_rehear.pdf
- 10 http://Judicial-Discipline-Reform.org/SCT_chambers/2injunctive_relief/DrCordero_JGinsburg_injunction_30jun8.pdf
- 11 http://Judicial-Discipline-Reform.org/SCT_chambers/8application_injunction_stay/1DrRCordero-SCTJustices_4aug8.pdf
- 12 Endnote 6 supra.
- 13 http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCT_rehear_23apr9.pdf
- 14 http://Judicial-Discipline-Reform.org/JNinfo/21review_petition/2DrCordero_JudCoun_10nov8.pdf; cf. endnote 25 infra.
- 15 http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf
- 16 http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf
- 17 Endnote 4 supra >CA:1732§2. Cf. endnote 26 infra and corresponding paragraph.
- 18 <https://www.mtb.com/aboutus/Pages/WhoIsMT.aspx>
- 19 http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf
- 20 Endnote 4 supra >CA:1725§III.A. Statement of Facts of *DeLano*.
- 21 http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf >§V
- 22 http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf
- 23 The Salient Facts of the DeLano Case, http://Judicial-Discipline-Reform.org/Follow-money/DrCordero_journalists.pdf >2.
- 24 18 U.S.C. §§152-157, 1519, 1957 and 3571, concealing assets and money laundering in a bankruptcy setting; http://Judicial-Discipline-Reform.org/docs/18usc_bkrp_crimes.pdf
- 25 18 U.S.C. §3057(a) Any judge, receiver, or trustee having reasonable grounds for *believing* that any violation under chapter 9 of this title [18 U.S.C. §§152-157 on

bankruptcy crimes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans [e.g. 18 U.S.C. §1519 on destruction of bankruptcy records; §3284 on concealment of bankrupt's assets] has been committed, or that an investigation should be had in connection therewith, *shall* report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses *believed* to have been committed ... [emphasis added: just a belief, not hard evidence, triggers the duty, which was disregarded]

- ²⁵ http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf >N:51¶¶1-4 and N:39, which collects on one table the statistical complaint tables of the Administrative Office of the U.S. Courts and provides links thereto. See also N:146, which describes how its Director, James Duff, refused to discharge his “self-explanatory” duty under Rule 22(e) of the Rules for Judicial Conduct and Disability Proceedings to “distribute the petition [for review of the Judicial Council’s mishandling of the complaint against Judge Ninfo] to the members of the Committee [on Judicial Conduct and Disability] for their deliberation”. http://Judicial-Discipline-Reform.org/docs/Rules_complaints.pdf
- ²⁶ http://Judicial-Discipline-Reform.org/docs/transcript_DeLano_1mar5.pdf >Tr.28/13-29/4; 75/8-76/3; and 141/20-143/16. Endnote 13 supra >JC:18¶17.
- ²⁷ Judicial Conduct & Disability Act, <http://Judicial-Discipline-Reform.org/docs/28usc351-364.pdf>
- ²⁸ Ent. 1.a supra >167; and ent. 3 >June 15 letter, Supp., p.2; also at 1.b>JS:167 and 317
- ²⁹ http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_integrity/12table_JSotomayor-financials.pdf
- ³⁰ N.Y. Federal Judge Likely on Shortlist, Keith Richburg, The Washington Post, May 7, 2009; <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/06/AR2009050603762.html>; Friends Provide a Glimpse Into Sotomayor's 'Very Full Life', Keith B. Richburg, Robin Shulman and Nancy Trejos, The Washington Post, May 31, 2009; <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053002061.html?nav=emailpage>
- ³¹ The conduct in *Pfuntner* of J. Ninfo, District J. David Larimer, WDNY, and other judges who protected Trustee Gordon, ‘bankrupt’ David Palmer, owner of Premier Van Lines Moving & Storage, its lender M&T and Bankruptcy Officer DeLano, and Warehouse Pfuntner is just as outrageous and contemptuous of due process as that in *DeLano*, for it is intended to protect the same bankruptcy fraud scheme. Hence, the two cases must be investigated together. *Pfuntner* was appealed to CA2 sub nom. *In re Premier Van et al.*, 03-5023, http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_CA2.pdf; and to the Supreme Court as *Cordero v. Gordon*, 04-8371, http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCT.pdf.
- ³² Useful for the *Follow the money!* investigation: endnote 20 supra >data: W:1-3 personal, §§VI-VIII financial; §XIII [proposed subpoena](#) for key documents and contact information.
- ³³ Dr.Richard.Cordero.Esq@gmail.com; Dr.Richard.Cordero.Esq@Judicial-Discipline-Reform.org; CorderoRic@yahoo.com; and Cordero.Ric@hotmail.com
- ³⁴ The Choice: Judge Sotomayor’s Ethnicity v. Equal Justice Under Law; http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_v_Equal_Justice.pdf

MANDATE

W.D.N.Y.
0: cv-6190
Larimer, J.

United States Court of Appeals FOR THE SECOND CIRCUIT

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

Present:

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



Dr. Richard Cordero,

Creditor-Appellant,

v.

06-4780-bk

David DeLano, Mary Ann DeLano,

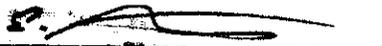
Debtors-Appellees.

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

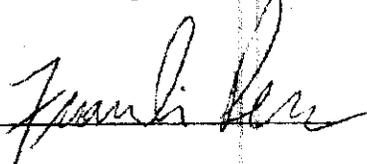
FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk

by


DEPUTY CLERK

By:



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

SAO-LB

ISSUED AS MANDATE: 5/16/08

Table of the Key Documents
submitted to
the U.S. Senate Judiciary Committee
concerning Justice Nominee Judge Sotomayor and her withholding
of personal financial information and the *DeLano* Case,
and useful to conduct a *Follow the money!* investigation
of a judge-run and tolerated bankruptcy fraud scheme

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(as of June 29, 2007)

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II. RETRIEVAL **Bank of Hyperlinks**

JDR’s call for a Watergate-like *Follow the money!* investigation into a bankruptcy fraud scheme supported by coordinated judicial wrongdoing:

C:1/E:1; C:271; C:441; C:551; C:711; C:821; C:981; C:1081; C:1285; C:1331; C:1611; C:1741

Pfuntner:**A:1; 261; A:353; A:734; A:1061; A:1301; A:1601; A:1675; A:1765** E:1-60; E:1-62

DeLano: **D:1; D:103; D:203; D:301; D:425; Add:509; Add:711; Add:911; Pst:1171; SApp:1501; CA:1700**

Transcript of the evidentiary hearing in *In re DeLano* held in Bankruptcy Court, WBNY, on March 1, 2005: **Tr**

Downloadable Bank of Hyperlinks

http://judicial-discipline-reform.org/Bank%20of%20Links.htm#Table_of_Exhibits.htm

**How did Judge Sotomayor
earn \$3,773,824 since 1988 + receive \$381,775 in loans = \$4,155,599 +
her 1976-1987 earnings, yet disclose assets worth only \$543,903
in her answers to the Questionnaire of the Senate Judiciary Committee?**

The similarity to the *DeLano* Case that she withheld from the Committee

http://Judicial-Discipline-Reform.org/SCT_nominee/JSotomayor_integrity/12table_JSotomayor-financials.pdf

The Senate Judiciary Committee required Justice Nominee Judge Sonia Sotomayor to “Provide a complete, current financial net worth statement which itemizes in detail all assets [and] all liabilities”.¹ Judge Sotomayor was also under an independent duty under the Ethics in Government Act to file “full and complete” annual financial disclosure reports.² Her discharge of such obligations or failure to do so reflects her respect or lack thereof for the law applicable to her and thus, the law that she applies to others and the quality of justice that she dispenses to them. Hence, examining her handling of such obligations is warranted by the need to ascertain her personal and judicial integrity.

The following table and its endnotes show that Judge Sotomayor failed to disclose the whereabouts of her earnings, as summarized in the title above. Money does not simply disappear.³ It is either spent, donated, or saved.⁴ To some extent, how a person spends money can be determined from her appearance and public conduct. How she saves it, e.g., by investing it, requires mostly disclosure or subpoenas⁵. Failure to disclose financial information when under a duty to do so is a violation of the law. Nondisclosure by a bankruptcy petitioner constitutes concealment of assets and perjury. It is a crime punishable by up to 20 years imprisonment and a fine of up to \$500,000.

In the *DeLano* case, 06-4780-bk, Judge Sotomayor, presiding, and her colleagues on a panel of the Court of Appeals, 2nd Circuit (CA2), issued a summary order⁶ to protect, not the rule of law, but rather their appointee to a bankruptcy judgeship⁷, Bkrp. Judge John C. Ninfo, II, WBNY. He had covered up the concealment of at least \$673,657 by the most unlikely of ‘bankrupts’: a 39-year veteran banker who at the time of filing for bankruptcy was and remained employed by a major bank, M&T Bank, precisely as a bankruptcy officer!⁸ Both M&T and Mr. DeLano are clients of the law firm, Underberg & Kessler, in which Judge Ninfo was a partner at the time of taking the bench.⁹ To protect such concealment of assets by a bankruptcy system insider and her bankruptcy appointee, Judge Sotomayor violated discovery rights¹⁰ by denying *every single document* in all creditor-requests,¹¹ which would have exposed a judge-run bankruptcy fraud scheme.¹² Worse yet, by so doing, Judge Sotomayor failed to protect the single most important Constitutional guarantee that a judge, let alone a Supreme Court justice, is required to safeguard: due process of law.¹³ Her gross partiality toward her own and blatant denial of due process to the creditor so indict her integrity that she withheld *DeLano* despite the Judiciary Committee’s request for her to submit all her cases. Her conduct in, and handling of, that case has been brought to the Committee’s attention.¹⁴

The table aims to have Judge Sotomayor and *DeLano* investigated by the Committee, which is authorized to do so¹⁵, and journalists¹⁶. Their *Follow the Money!* investigation should determine whether she has been complying with her financial disclosure obligations and, if not, whether she reckoned that she too was protected by her peers, who are also above the law.¹⁷ The investigation should also expose her and other judges¹⁸ involvement in a bankruptcy fraud scheme that aggravates the misery of millions and the extent to which withholding *DeLano* was part of the cover-up. The ensuing public outrage should force Congress to adopt effective judicial accountability and discipline legislation that brings our legal system closer to the noble ideal of “Equal Justice Under Law”.

INCOME¹⁹

	Year	Federal, Outside, and Rental Income					Salary
1.	1976	The Equitable Life Assurance Society of the U.S. jun-aug1976					
		\$					
2.	1977	Office of the General Counsel, Yale U. jun-sep 77					
		\$					
3.	1977		The Graduate-Professional Center sep77-may78				
			\$				
4.	1978		\$	Paul, Weiss, Rifkind, Wharton & Garrison jun-aug78	Yale Law School Mimeo Room sep78-may79		
				\$	\$		
5.	1979	Assist. D.A. in NY County (Manhattan) D.A.'s Office sep79-mar84			\$		
		\$					
6.	1980	\$	Puerto Rican Legal Defense & Education Fund (now LatinoJustice PRLDEF) 1980-oct92				
			\$				
7.	1981	\$	\$				
8.	1982	\$	\$				
9.	1983	\$	\$	Sotomayor & Associates 1983-86			
				\$			
10.	1984	\$	\$	\$	Pavia & Harcourt: associate apr84-dec87		
					\$		
11.	1985		\$	\$	\$	Maternity Center Association 85-86	
						\$	
12.	1986		\$	\$	\$	\$	

13.	1987		\$		\$	State of New York Mortgage Agency 1987-oct92	
						\$	
14.	1988		\$	NY City Campaign Finance Board 88-oct92	partner 1jan88-30sep92 ²⁰	\$	
				\$	\$141,951 ²¹		141,951
15.	1989		\$	\$	\$145,920	\$	145,920
16.	1990		\$	\$	\$150,000	\$	150,000
17.	1991		\$	\$	\$154,080	\$	154,080
18.	1992	U.S. District Judge, SDNY 2oct92-12oct98	\$	\$	\$118,703 \$25,000 ²²	\$	215,469
		\$32,198 ²³					
19.	1993	133,600 ²⁴				Rental income from Brooklyn co- op apartment ²⁵	133,600
						\$1,100/month =\$13,200	
20.	1994	133,600 ²⁶				\$13,200	146,800
21.	1995	133,600 ²⁷				\$13,200	146,800
22.	1996	133,600 ²⁸				\$13,200	146,800
23.	1997	133,600 ²⁹				\$13,200	146,800
24.	1998	1Jan-12oct98				\$13,200	119,938
		106,738 ³⁰					
25.	1998	U.S. Circuit Judge, 2 nd Circuit 13oct-to date			Adjunct professor, NYU School of Law 1997-2007 ³¹		41,781
		31,781 ³²			\$10,000 ³³		
26.	1999	145,000 ³⁴	Lecturer-in-Law, Columbia University 1999-2009 ³⁵		\$10,000	\$13,200	168,200
			\$?				
27.	2000	149,900 ³⁶	\$10,000		\$12,000	\$13,200	185,100
28.	2001	153,900 ³⁷	\$10,000		\$10,000	\$13,200	187,100
29.	2002	159,100 ³⁸	\$10,000		\$13,500	\$13,200	195,800
30.	2003	164,000 ³⁹	\$10,000		\$14,600	\$13,200	201,800
31.	2004	167,600 ⁴⁰	\$10,000		\$13,205	\$13,200	204,005
32.	2005	171,800 ⁴¹	\$10,000		\$14,315	\$13,200	209,315
33.	2006	175,100 ⁴²	\$10,000		\$14,780	\$13,200	213,080
34.	2007	175,100 ⁴³	\$10,000	Trustee, Princeton University 2007-to date	\$14,780	\$13,200	213,080
				\$			
35.	2008	179,500 ⁴⁴	\$25,830	\$		\$13,200	218,530

36.	Jan-May 09	76,875 ⁴⁵	\$	\$		\$13,200 x 5/12= \$5,500	87,875
37.						Total earnings over time	\$3,773,824

ASSETS			LIABILITIES	
38.	31,985	Cash on hand and in banks ⁴⁶	Real estate mortgages payable ⁴⁷	381,775
39.	360,000	purchase price of Greenwich Village condo bought in 1998 ⁴⁸	Accounts and bills due	5,752
			Credit card bills	15,823
40.	43,000	interest in condominium	Dentist bill (estimate)	15,000
41.	108,918	Autos and other personal property		
42.	\$543,903	Total	Total	\$418,350

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- ¹ **a)** U.S. Senate Committee on the Judiciary, Associate Justice of the U.S. Supreme Court – Sonia Sotomayor – Questionnaire; <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm> >Committee Questionnaire, United States Senate Committee on the Judiciary, Questionnaire for Judicial Nominees, Public, pp. 167 -168; and
- b)** <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm> >June 15, 2009 - Questionnaire Supplement, pp. 2-3;
- c)** also at http://Judicial-Discipline-Reform.org/Sct_nominee/JSotomayor_integrity/2SenJudCom_Questionnaire_JSotomayor.pdf >JS:167-168 and 317-318; this file collects the above two and several others in the Questionnaire and adds to them bookmarks useful for navigating through them.
- ² The Ethics in Government Act of 1978 (5 U.S.C. Appendix (Appendix IV in West)) is one of the pieces of legislation adopted by Congress in the wake of the Watergate Scandal. It is made applicable to federal judges at §§101(f)(11) and 109(10), mandating that they file an annual financial disclosure report. Section 102(a) requires that they make “a full and complete statement with respect to...income,...gifts,...interest in property,... liabilities, ...purchase, sale or exchange...in real property...or...securities,...all positions held [in an entity],...any...future employment,...total cash value of any interest...in a qualified blind trust,...information...respecting the spouse or dependent child”. So it calls for very specific and detailed financial information. Judges must file their reports with the Administrative Office of the U.S. Courts (AO), where they are publicly available. For AO’s address, see <http://www.uscourts.gov/comment.html>. The Act, with the addition of useful bookmarks, can be found at http://Judicial-Discipline-Reform.org/docs/5usc_Ethics_Gov_14apr9.pdf.

³ “Sotomayor, an avid Yankees fan, **lives modestly**, reporting virtually no assets despite her \$179,500 yearly salary. [Since January 1, 2009, her annual salary is \$184,500; endnote 45 infra.] On her financial disclosure report for 2007, she said her only financial holdings were a Citibank checking and savings account, worth \$50,000 to \$115,000 combined. During the previous four years, the money in the accounts at some points was listed as low as \$30,000. When asked recently how she managed to file such streamlined reports, Sotomayor, according to a source, replied, "When you don't have money, it's easy. There isn't anything there to report."” N.Y. Federal Judge Likely on Shortlist, Keith Richburg, The Washington Post, May 7, 2009; <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/06/AR2009050603762.html>. (emphasis added)

Judge Sotomayor’s statement quoted above is contradicted by the evidence. Her own answers to the Questionnaire show that she is reimbursed for her numerous travel to, and lodging and meals at, judicial conferences and other events at which she speaks; endnote 1a) and c) supra >11. Membership, p.15.c.; 165(c-f); and 1c) JS:307, entry for 6/16/95. If she spent her earnings minus taxes and the cost of living modestly neither to participate in such events nor acquire assets other than those listed on the table, which exclude capital appreciation, how did she spend, or in what else did she invest, them?

⁴ There are basically three ways of spending money: on goods, on services, or in charitable contributions.

1. It is unlikely that a public figure could have spent millions of dollars on services, such as eating at expensive restaurants or going on extravagantly luxurious vacations, without attracting attention.
2. It is likely that if a person gave away to charitable entities almost every penny that she earned, she or the entities would bring it to public attention, if only to persuade others to contribute to her cherished charitable causes.
3. If the money went to the purchase of goods, the latter are somewhere, that is, either in:
 - a) household goods, and she would have had to buy lots of, and have space for, them;
 - b) personal goods, such as designer clothes and sparkling jewels that everybody would have noticed; or
 - c) (i) investment goods, such as real property, which must be recorded in somebody’s name in the county clerk’s office, or
(ii) certificates of deposit, stock and bonds, and similar financial instruments, all of which have to be reported in the annual judicial financial disclosure reports required under the Ethics in Government Act of 1978. Endnote 2.

⁵ http://Judicial-Discipline-Reform.org/SCt_nominee/Senate/6DrCordero-SenJudCom_subpoena.pdf

⁶ The summary order, scanty as such orders are just to get rid of the case, appears at CA:2180 in http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_06_4780_CA2.pdf; see CA:1725§VII. Statement of Facts.

⁷ Bankruptcy judges are appointed by their respective circuit courts; 28 U.S.C. §152; http://Judicial-Discipline-Reform.org/docs/28usc151-159_bkr_judges.pdf.

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- ⁸ The Salient Facts of the *DeLano* Case; http://Judicial-Discipline-Reform.org/Follow_money/DrCordero-journalists.pdf >2.
- ⁹ http://www.nywb.uscourts.gov/about_judge_ninfo_46.php. Would you trust the impartiality and objectivity of a judge who was a partner in the firm of your opposing counsel? Judge for yourself; http://Judicial-Discipline-Reform.org/docs/transcript_DeLano_1mar5.pdf >Tr.28/13-29/4; 75/8-76/3; and 141/20-143/16; and http://Judicial-Discipline-Reform.org/docs/DrCordero_DeLano_WDNY_21dec5.pdf >Pst:1255§E.
- ¹⁰ Federal Rules of Civil Procedure 26 and 34, <http://www.uscourts.gov/rules/index.html>, are applied in bankruptcies by reference in Federal Rules of Bankruptcy Procedure 7026 and 7034, <http://www.uscourts.gov/redirects/cornellLaw.html> ><http://www.law.cornell.edu/rules/frbp/>.
- ¹¹ Table of Documents Requested by Dr. Cordero and Denied by CA2, at US:2484, in the appeal of *DeLano* to the Supreme Court on petition for certiorari to CA2, *Richard Cordero v. David DeLano et ux.*, docket 08-8382; http://Judicial-Discipline-Reform.org/US_writ/DrCordero-SCt_petition_3oct8.pdf. See there also US:2442§IX. Statement of Facts; and US:2456§X. Analysis of CA2's Order of Dismissal.
- ¹² http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf
The petition for panel rehearing and hearing en banc shows how the order was a perfunctory job intended to cover up the bankruptcy fraud scheme by disregarding the facts of the case, referring to cases unrelated with the law or the facts of the case, and evading the issues on appeal, id. CA:1719§V, and even the term explicitly made its key issue: fraud; http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_CA2_rehear.pdf
- ¹³ See the discussion of how Judge Sotomayor's and her colleagues' conduct gave "the appearance of impropriety" and constituted "improprieties" under the Code of Conduct for U.S. Judges; http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCt_rehear_23apr9.pdf.
- ¹⁴ http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_integrity/11DrCordero-SenJudCom.pdf
- ¹⁵ Endnote 2 supra: Ethics in Government Act §101(a)...Nothing in this Act shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.
- ¹⁶ Synopsis of an Investigative Journalism Proposal: Has a Federal Judgeship Become a Safe Haven for Coordinated Wrongdoing?; endnote 8 supra >1.
- ¹⁷ The Choice: Judge Sotomayor's Ethnicity v. Equal Justice Under Law; http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_v_Equal_Justice.pdf > para. 4 and 5.
- ¹⁸ See the role of District Judge Larimer, WDNY, and Former CA2 Chief Judge Walker in the scheme in *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY; http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf >N:66§IV and http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCt.pdf >A:1642§B.
- ¹⁹ Endnote 1a) and c) supra >question 6. Employment Record.

²⁰ “She reported making about \$150,000 in 1990, her last full year as a private lawyer in New York.” For a justice, Sonia Sotomayor is low on dough, Josh Gerstein, Politico, May 28, 2009; <http://www.politico.com/news/stories/0509/23045.html>.

In her answer to 6. Employment Record, she stated: “Pavia & Harcourt, *Partner* 1/1/88 – 9/30/92”; endnote 1a) and c) supra >2. It can reasonably be assumed that she earned at least as much for the subsequent full year and pro rata for part of her last year there.

To estimate her earnings as a partner for those years as well as for the preceding ones, i.e., 1988-1989, the average Cost of Living Adjustment for judicial salaries for the available years, namely, 1992-2009, has been used. The justification for this is that COLA intends to reflect the pace of earning increases that judges would have received if they had remained in private practice. The Late Chief Justice Rehnquist had this to say on the subject: “[Judges] are only asking that the pay that was set some years ago be adjusted for increases in the cost-of-living since that time -- a benefit that many working people in the private sector, and almost all employees of the federal government, regularly expect and receive”. Supreme Court Year-End Report, 1996; <http://www.uscourts.gov/ttb/jan96ttb/1yearend.html>.

Average of the Percentage Increases in Judicial Salaries Between 1992 and 2009						
1992	129,500 dis judge			2001	153,900	2.67
1993	133,600	3.17		2002	159,100	3.38
1994	133,600	0		2003	164,000	3.08
1995	133,600	0		2004	167,600	2.20
1996	133,600	0		2005	171,800	2.51
1997	133,600	0		2006	175,100	1.92
1998	136,700	2.32		2007	175,100	0
1999	145,000 cir judge	0		2008	179,500	2.51
2000	149,900	3.38		2009	184,500	2.79
					Average	2.72

1990 earnings of \$150,000 – 2.72% = 1989 earnings of \$145,920

1989 earnings of \$145,920 - 2.72% = 1988 earnings of \$141,951

1990 earnings of \$150,000 + 2.72% = 1991 earnings of \$154,080

1991 earnings of \$154,080 + 2.72% = 1992 earnings of \$158,271/ ¾ of a year (1/1-9/1/92)= \$118,703

Whatever excess income may have been thus estimated for these years is vastly compensated by the fact that no income at all has been estimated for the years 1979-1987.

²¹ Values in *italics* are estimated.

²² “She said she was due about \$25,000 for her partnership interest in a small firm, Pavia & Harcourt. By contrast, when Chief Justice John Roberts left a major Washington law firm, Hogan & Hartson, in May 2003 to take a seat on the D.C. Circuit Court, he was paid more than \$1 million in salary and compensation for his

partnership interest.” For a justice, Sonia Sotomayor is low on dough, Josh Gerstein, Politico, May 28, 2009; <http://www.politico.com/news/stories/0509/23045.html>.

- ²³ **1992:** 5 U.S.C. §5332 The General Schedule, Schedule 7, Judicial Salaries; http://bulk.resource.org/courts.gov/juris/j0110_03.sgml. Salary as U.S. district judge from 2oct-31dec92= \$129,500/366 days= \$353.83 x 91 days= \$32,198.
- ²⁴ **1993:** http://bulk.resource.org/courts.gov/juris/j0113_03.sgml.
- ²⁵ “Kinzer and Cardi became Sotomayor's friends in the 1980s when Cardi was working as a legal aid lawyer and Sotomayor was a prosecutor in the Manhattan district attorney's office. Cardi persuaded Sotomayor to move to their neighborhood, Carroll Gardens in Brooklyn, when there was a vacant apartment next door. Sotomayor later bought her own condo down the block.... Sotomayor only reluctantly left the neighborhood when she became a judge in Manhattan, because rules stipulate that judges must live in the district to which they are assigned.” Friends Provide a Glimpse Into Sotomayor's 'Very Full Life', Keith B. Richburg, Robin Shulman and Nancy Trejos, The Washington Post Staff Writers, The Washington Post, Sunday, May 31, 2009; <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053002061.html?nav=emailpage>.

“Papers submitted in connection with her nomination to the 2nd Circuit Court of Appeals in 1997 say she was earning \$1,100 a month in rent on a co-op apartment that she owned in Brooklyn. As recently as 2004, she reported less than \$30,000 in her two bank accounts. A source told The Washington Post earlier this month that Sotomayor once said that filling out her financial reports was a breeze. “When you don't have money, it's easy. There isn't anything there to report”, she was quoted as saying. Sotomayor is divorced and has no children.” For a justice, Sonia Sotomayor is low on dough, Josh Gerstein, Politico, May 28, 2009; <http://www.politico.com/news/stories/0509/23045.html>. The implication is obvious: What else did she spend her money on or where did she place it? The question is particularly pertinent since it is reported that she “lives modestly”; endnote 3 supra.

It is assumed that she still owns her rental property in Brooklyn and earns rent therefrom; otherwise, the proceeds of its sale are unaccounted for. To be conservative, the rent is stated at the same level for the past 11 years. By comparison, controlled rents increase in NY City on average 3.5% for a one-year lease and 7% for a two-year lease.

- ²⁶ **1994:** No Schedule 7 was found for the period beginning on or after January 1, 1994. However, since Schedule 7 for the preceding and the following years indicate that the salary for district judges was \$133,600, then it is absolutely certain that such was the salary also for 1994 given that Const., Art. III, Sec. 1, provides that “The Judges...shall...receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office”. http://Judicial-Discipline-Reform.org/docs/US_Constitution.pdf.
- ²⁷ **1995:** <http://www.gpoaccess.gov/uscode/search.html> >United States Coder (1994) >Search: 5usc5332> <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> > 5USC Sec. 5332. The General Schedule > Text: <http://frwebgate6.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=510554514834+0+1+0&WAISaction=retrieve>.

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- ²⁸ **1996:** <http://www.gpoaccess.gov/uscode/search.html> >United States Coder (1994 suppl. 1) >Search: 5usc5332 > <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> > 5USC Sec. 5332. The General Schedule > Text: <http://frwebgate5.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=511085272174+0+1+0&WAISaction=retrieve>.
- ²⁹ **1997:** Photocopy of 5usc5332 in USC, v. 1994, suppl. 2. Cf. <http://www.gpoaccess.gov/uscode/search.html> >United States Code (1994 suppl. 2) >Search: 5usc5332> <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> > 5 USC Sec. 5332. The General Schedule > Text: <http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=610555377786+0+0+0&WAISaction=retrieve>.
- ³⁰ **1998:** 5 U.S.C. §5332; <http://www.gpoaccess.gov/uscode/search.html> >United States Code (1994 suppl. 3) Search: 5usc5332 ><http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> >Text, <http://frwebgate6.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=60606640734+0+1+0&WAISaction=retrieve>. Judge Sotomayor's salary as district judge from 1jan-12oct98 at \$136,700/365 days= \$374.52 x 285 days= \$106,738.
- ³¹ United States Senate Committee on the Judiciary, Questionnaire for Judiciary Nominees, Public, <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm> >Committee Questionnaire >Question 19. Teaching, p. 164.
- ³² Endnote 30 supra. Judge Sotomayor's salary as U.S. circuit judge from 13oct-31dec98 = \$145,000/365 days= \$397.26 x 80 days= \$31,781.
- ³³ Note that there are limitations on the amount of earned income that federal judges can add to their federal salaries under the Ethics in Government Act, endnote 2 supra, (Titles I to V of Pub. L. 95-521) Title V. Government-wide Limitation on Outside Earned Income and Employment, §501. (1) [A judicial] officer... may not in any calendar year have outside earned income attributable to such calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5 U.S.C., as of January 1 of such calendar year; <http://uscode.house.gov/pdf/2007/>.
To see 5 U.S.C. §5313 go to <http://www.gpoaccess.gov/> >2006 U.S. Code >Search: 5usc5313 ><http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> >5USC Sec. 5313. Positions at level II: PDF
- ³⁴ **1999:** 5 U.S.C. §5332; <http://www.gpoaccess.gov/uscode/search.html> >United States Code (1994 suppl. 4) Search: 5usc5332 ><http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi> >Text, <http://frwebgate4.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=512498187600+0+1+0&WAISaction=retrieve>.
- ³⁵ Endnote 31 supra >165.
- ³⁶**2000:** 5 U.S.C. §5332; <http://wyomcases.courts.state.wy.us/applications/oscn/DeliverDocument.asp?CiteID=185097>
- ³⁷ **2001:** 5 U.S.C. §5332; <http://www.gpoaccess.gov/uscode/search.html> >United States Code (2000) >Search: 5usc5332 > Text: <http://frwebgate4.access.gpo.gov/cgi->

[bin/TEXTgate.cgi?WAISdocID=509036228003+0+1+0&WAISaction=retrieve](http://www.gpoaccess.gov/uscode/search.html).

- ³⁸ **2002**: 5 U.S.C. §5332; <http://www.gpoaccess.gov/uscode/search.html> >United States Code (2000 suppl. 1) >Search: 5usc5332 > Text: <http://frwebgate1.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=507570115300+0+1+0&WAISaction=retrieve>.
- ³⁹ **2003**: 5 U.S.C. §5332; <http://uscode.house.gov/download/downloadPDF.shtml> >107th Congress, 2d Session (2002) (2000 Edition and Supplement II) >Friday, April 09, 2004 4:28 PM 4494151 2002usc05.pdf
- ⁴⁰ **2004**: 5 U.S.C. §5332; <http://uscode.house.gov/download/downloadPDF.shtml> > [108th Congress, 1st Session](#) (2003) (2000 Edition and Supplement III) >Thursday, July 07, 2005 3:56 PM 4576090 2003usc05.pdf.
- ⁴¹ **2005**: 5 U.S.C. §5332; <http://uscode.house.gov/download/downloadPDF.shtml> > [108th Congress, 2d Session](#) (2004) (2000 Edition and Supplement IV) > Thursday, April 06, 2006 3:21 PM 4753695 2004usc05.pdf.
- ⁴² **2006**: 5 U.S.C. §5332; <http://uscode.house.gov/download/downloadPDF.shtml> > [109th Congress, 1st Session](#) (2005) (2000 Edition and Supplement V) > Tuesday, April 17, 2007 12:55 PM 5269282 2005usc05.pdf.
- ⁴³ **2007**: 5 U.S.C. §5332; <http://www.gpoaccess.gov/> > [2006 U.S. Code](#) >5usc5332, <http://www.gpoaccess.gov/uscode/index.html>, Search: 5usc5332 <http://frwebgate.access.gpo.gov/cgi-bin/multidb.cgi>, 5USC Sec. 5332 The General Schedule >PDF.
- ⁴⁴ **2008**: 5 U.S.C. §5332; <http://uscode.house.gov/download/downloadPDF.shtml> > [110th Congress, 1st Session](#) (2007) (2006 Edition and Supplement I) > Tuesday, April 14, 2009 5:02 PM 5343812 2007usc05.pdf.
Also at <http://uscode.house.gov/> > Search, <http://uscode.house.gov/search/criteria.shtml> >Title: 5, Section: 5332, <http://uscode.house.gov/uscode/cgi/fastweb.exe?search> >5 USC Sec. 5332 > <http://uscode.house.gov/uscode/cgi/fastweb.exe?getdoc+uscview+t05t08+468+0++%28%29%20%20AND%20%28%285%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%285332%29%29%3ACITE%20%20%20%20%20%20%20%20%20>.
- ⁴⁵ **2009**: The salary of circuit judges increased to $\$184,500/12=\$15,375 \times 5=\$76,875$. COLA for Federal Judges in 2009, The Third Branch, Newsletter of the Federal Courts, Mar 2009, vol. 41, num. 3; http://www.uscourts.gov/ttb/2009-03/article03.cfm?WT.cg_n=TTB&WT.cg_s=Mar09_article03_tableOfContents.
- ⁴⁶ The Financial Statement Net Worth table of the Questionnaire, endnote 1a) and c) supra >186, requires that Judge Sotomayor “Provide a **complete, current** financial net worth statement which **itemizes in detail all assets** (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) **all liabilities** (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.” (emphasis added)
- ⁴⁷ “The judge's reportable net worth has hardly changed at all since she was appointed to

the bench in 1992, according to a source in a position to know. The modest increase in her net worth in 2007 may be attributable to a home equity loan she took out to do some renovations, the source said. Disclosed assets may not tell the whole financial picture, as federal rules do not require judges to disclose the value of their personal residences. **Sotomayor has listed no outstanding loans or other liabilities in recent years, except for four credit cards.** Sotomayor brought in some extra income in 2007 by working as an adjunct professor at New York Law School and lecturing at Columbia Law School. Those jobs paid her nearly \$25,000 that year. She also has traveled frequently to conferences. In 2007, she reported being reimbursed for expenses related to six trips, such as a stint teaching at the University of Puerto Rico and a trip to a judicial clerkship institute at Pepperdine University.” Sotomayor Rose High, with Few Assets, Joe Stephens, The Washington Post, May 7, 2009; http://voices.washingtonpost.com/44/2009/05/07/sotomayor_rose_high_with_few_a.html?sid=ST2009050702123. (emphasis added)

But see endnote 46 supra. See also, endnote 48 infra, where it is reported that “city records indicate two outstanding mortgages totaling \$450,000.” This inconsistency needs to be resolved.

It should also be found out the rate of interest of those mortgages and their closing costs. It is not apparent at all why a person would need to take those mortgages and incur those costs although the whereabouts of her earnings of \$3,577,024 plus those for 1976-1987 cannot be accounted for. A person with expertise in financial matters, let alone in real estate, who understands the basic concept of interest rate spreads, would not keep earnings in a savings account, where she would earn a low rate, only to take a mortgage and pay a high rate. However, those mortgages can represent the leveraging of undisclosed investments earning a higher rate or with a high potential for capital appreciation that would more than offset the mortgage rate.

Judge Sotomayor has real estate expertise and connections. To question “16. Legal Career...a.ii. whether you practiced alone, and if so, the addresses and dates”, her answer was:

Yes, with Sotomayor & Associates, 10 3rd Street, Brooklyn, New York 11231, from 1983 to 1986, but this work was as a consultant to family and friends in their real estate, business, and estate planning decisions. If their circumstances required more substantial legal representation, I referred the matter to my firm, Pavia & Harcourt, or to others with appropriate expertise.” Endnote 1 supra >1a) & c) 143-144.

...

“From April 1984 as an associate, and from January 1988 until October 1992 as a partner [in Pavia & Harcourt], I was a general civil litigator involved in all facets of commercial work including, but not limited to, real estate, employment, banking, contract, distribution and agency law.” Id, p.145

...

[At] Pavia & Harcourt[, m]y typical clients were significant European companies doing business in the United States. My practice at that firm focused on commercial litigation...My work also involved advising clients on a wide variety of legal issues, including, but not limited to...banking, real estate, patents, employment, partnership, joint venture and shareholder laws...and franchising and licensing matters. Moreover, I conducted over fifteen arbitration hearings...involving banking, partnership, tire and fashion industry disputes.

She was a member of the board of directors of the State of New York Mortgage Agency from 1987 to October 1992.

“She was engaged in the 1990s to Peter White, who worked in construction and real estate, but they later broke up.” Friends Provide a Glimpse Into Sotomayor's 'Very Full Life', Keith B. Richburg, Robin Shulman and Nancy Trejos, The Washington Post Staff Writers, The Washington Post, Sunday, May 31, 2009;

[http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053002061.html?nav=emailpage)

[dyn/content/article/2009/05/30/AR2009053002061.html?nav=emailpage.](http://www.washingtonpost.com/wp-dyn/content/article/2009/05/30/AR2009053002061.html?nav=emailpage)

Judge Sotomayor said this in her speech at her induction to the Court of Appeals:

“Before Peter, Marguerite and Tom moved me out of and settled me into every home I have ever had since I moved into the city. You don't know how hard that is.” p.39. “At Pavia [& Harcourt], I also met Alessandro and Fe Saracino of the Fendi family, who along with their parents have introduced me to the beauty of the international world. Every day for five years I spoke to Marta Fontanesi, Fendi's legal representative. We formed a bond that is so special that she has come from Italy to be here today. Her husband Daniel Valebrega and his parents, who could not be here, have not only given us friendship but they gave Peter and me the opportunity to buy our current home in the Village.” p.41 “Peter, it was you who convinced me to say yes when the President [Clinton] called about my nomination, and it was you who lifted my spirits each time I came close to giving up during this process. Four years ago, we committed to a life together. It is a commitment for life and it is the best thing that has ever happened to me. Thank you for all that you do for me, large and small, for all that we do together.” pp. 55-56; <http://judiciary.senate.gov/nominations/SupremeCourt/Sotomayor/SoniaSotomayor-Questionnaire.cfm> >November 6, 1998 - United States Court of Appeals for the Second Circuit, [Induction Speech](#).

- ⁴⁸ Her personal financial disclosure form filed last year puts her sum total of investments at the end 2007 from \$50,001 to \$115,000. She reported only two assets: a checking account and a savings account — both at Citibank. The form does not require disclosure of the value of a judge's personal residence. **But New York City records show that Sotomayor owns a Greenwich Village condo that she bought in 1998 for \$360,000.** It's now worth about \$1.4 million, according to Zillow.com. **And city records indicate two outstanding mortgages totaling \$450,000.** Papers submitted in connection with her nomination to the 2nd Circuit Court of Appeals **in 1997 say she was earning \$1,100 a month in rent on a co-op apartment that she owned in Brooklyn.** As recently as 2004, she reported less than \$30,000 in her two bank accounts. A source told The Washington Post earlier this month that Sotomayor once said that filling out her financial reports was a breeze. “When you don't have money, it's easy. There isn't anything there to report”, she was quoted as saying. Sotomayor is divorced and has no children. In 2007, Sotomayor supplemented her federal judicial salary with nearly \$25,000 from teaching at the Columbia and New York University law schools. She has missed out on the escalation in salaries and profits at major law firms in the past two decades. For a justice, Sonia Sotomayor is low on dough, Josh Gerstein, Politico, May 28, 2009; <http://www.politico.com/news/stories/0509/23045.html>. (emphasis added)

**[Contact Information and Links to Items in The Record
useful for preparing to interview people that can provide documents and
information for the *Follow the money!* investigation to expose
a judge-run and tolerated bankruptcy fraud scheme^{1]}**

http://Judicial-Discipline-Reform.org/SCt_nominee/Senate/6DrCordero-SenJudCom_subpoena.pdf
part of http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_integrity/11DrCordero-SenJudCom.pdf

**UNITED STATES SENATE
JUDICIARY COMMITTEE**

SUBPOENA

(as of 3jul9)

Having considered information submitted to this Committee, we hereby issue this subpoena:

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A. Persons concerned by this subpoena and its execution

1. Any person or entity, whether a corporation, company, firm, association, unincorporated group, branch of government or subdivision thereof, is concerned by this subpoena (hereinafter concerned person) who:
 - a. has actual knowledge of it;
 - b. would have knowledge of it by proceeding as a reasonable person would acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity.
2. Among the concerned persons are those identified in ¶¶3-18 below:
3. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), formerly resident at 1262 Shoecraft Road, Webster, NY 14580, and debtors in *In re David and Mary Ann DeLano*, 04-20280, WBNY; *Cordero v. DeLano*, 05-cv-6190L, WDNY; *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2, and *Dr. Richard Cordero v. David and Mary Ann DeLano*,

Discipline-Reform.org/docs/DrCordero_v_DeLano_WDNY.pdf >Pst:1289§f]

6. James Pfunter, at the address of his attorney, David MacKnight, Esq., dmacknight@lacykatzen.com, or successor, at Lacy, Katzen, Ryen & Mittlemann, LLP, 130 East Main St., Rochester, NY 14604; tel. (585)454-5650, fax (585)269-3077, plaintiff in *Pfunter v. Trustee Gordon et al.*, 02-2230, WBNY (hereinafter *Pfunter*); <http://www.lacykatzen.com/>; [cf. **(a)** Statement of counterclaims, cross-claims, and 3rd party claims in *Pfunter*, http://Judicial-Discipline-Reform.org/Pfunter_record/A1-260.pdf >A:72§I, 78§A; **(b)** Combined docket from Bankruptcy Court, WBNY, to Supreme Court, http://Judicial-Discipline-Reform.org/dockets/6Pfunter_Bkr-SCt_28mar5.pdf; **(c)** Table of entries in the record of *Pfunter*, http://Judicial-Discipline-Reform.org/Pfunter_record/ToE_A_Pfunter.pdf; **(d)** see ¶3.d supra]
7. Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee for Rochester, Office of the U.S. Trustee, U.S. Courthouse, 100 State Street, Rochester, NY, 14614, tel. (585)263-5812, fax (585) 263-5862, and any and all members of her staff, including, but not limited to, Ms. Christine Kyler, Ms. Jill Wood, and Ms. Stephanie Becker; <http://www.usdoj.gov/ust/r02/rochester.htm>; [cf. **(a)** http://Judicial-Discipline-Reform.org/docs/DrCordero-to_parties_30mar5.pdf >D:84§IV; **(b)** http://Judicial-Discipline-Reform.org/Delano_record/files_D-CA/4_D301-424.pdf >309, 330; **(c)** http://Judicial-Discipline-Reform.org/DeLano_record/files_D-CA/5_D425-508q.pdf >D:470 -476, 492-495]
8. Ms. Diana G. Adams, U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, NY 10004, tel. (212)510-0500, fax (212) 668-2255; and any and all members of their staff; <http://www.usdoj.gov/ust/r02/>; [cf. **(a)** http://Judicial-Discipline-Reform.org/docs/DrCordero-to_parties_30mar5.pdf >D:90§VI; **(b)** [Contact information and links useful for the *Follow the money!* investigation of a bankruptcy fraud scheme](http://Judicial-Discipline-Reform.org/Delano_record/files_D-</div><div data-bbox=)

CA/2_D103-202.pdf >D:137, 139-141, 154-158, 198§V; **(c)** http://Judicial-Discipline-Reform.org/Delano_record/files_D-CA/4_D301-424.pdf >307, 330; **(d)** http://Judicial-Discipline-Reform.org/DeLano_record/files_D-CA/5_D425-508q.pdf >492-494; **(e)** http://Judicial-Discipline-Reform.org/Delano_record/files_D-CA/6_Add509-710.pdf>682]

9. Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623, tel. (585)427-7225, fax (585)427-7804, and any and all members of his staff, including, but not limited to, James Weidman, Esq., attorney for Trustee Reiber; trustee13@roch13.com; [cf. **(a)** http://Judicial-Discipline-Reform.org/docs/DrCordero-to_parties_30mar5.pdf >D:79§§I-II; III, V; **(b)** http://Judicial-Discipline-Reform.org/Follow_money/Tr_Reiber_Report.pdf >Add:953§§I-II; **(c)** http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf]
10. Trustee Kenneth W. Gordon, Gordon & Schall, LLP, 1099 Monroe Ave., Ste. 2, Rochester, NY 14620-1730; tel. (585)244-1070, and any and all members of his staff; [cf. **(a)** http://Judicial-Discipline-Reform.org/Pfuntner_record/A1-260.pdf >A:72§I, 83§F; **(b)** http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCT.pdf >A:1637§A]; **(c)** http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf]
11. M&T Bank, 255 East Avenue, Rochester, NY, tel. (800)724-8472, 585-546-0501, fax: 585-546-0550, (585)546-7584; <https://www.mtb.com/personal/Pages/Index.aspx>; [cf. http://Judicial-Discipline-Reform.org/Pfuntner_record/A1-260.pdf>A:72§I, 83§E]
12. David Palmer, 1829 Middle Road, Rush, NY 14543, and his company, Premier Van Lines, debtor in *In re Premier Van Lines*, 01-20692, WBNY (hereinafter Mr. Palmer/Premier and *Premier*); [cf. **(a)** http://Judicial-Discipline-Reform.org/Pfuntner_record/A1-260.pdf >A:72§I, 78§A; **(b)** http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCT.pdf >A:1642§B]

13. David M. Dworkin & Jefferson Henrietta Associates, at the address of their attorney, Karl S. Essler, Esq., Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450, tel. (585) 641-8000; fax (585)641-8080; kessler@fixspin.com; [cf. http://Judicial-Discipline-Reform.org/Pfuntner_record/A1-260.pdf >A:72§I, 79§B-C]
14. Mary Dianetti, Bankruptcy Court Reporter, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392; [cf. **(a)** http://Judicial-Discipline-Reform.org/Follow_money/DrCordero_to_JConf_CtReporter_28jul5.pdf; **(b)** http://Judicial-Discipline-Reform.org/DeLano_record/transcript_DeLano_1mar5.pdf]
15. Ms. Melissa L. Frieday, Contracting Officer for court reporters, US. Bankruptcy Court, WDNY, Olympic Towers, 300 Pearl Street, Suite 250, Buffalo, NY 14242, tel. (716) 362-3200, fax (716)551-5103; [cf. http://Judicial-Discipline-Reform.org/docs/DrCordero-Off_Frieday_18oct5.pdf]
16. Bankruptcy Judge John C. Ninfo, II, WBNY, and Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585)613-4200, and any and all members of their staff, including, but not limited to, Andrea Siderakis, Assistant to Judge Ninfo, courtroom tel. (585)613-4281, fax (585)613-4299; Deputy Clerk in Charge Todd M. Stickle, tel. (585)613-4223, fax (585)613-4242; Case Administrators Karen S. Tacy and Paula Finucane; <http://www.nywb.uscourts.gov/>; [cf. **(a)** http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_06_4780_CA2.pdf >CA:1725§A; **(b)** http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCt_rehear_23apr9.pdf >US:2518¶18; **(c)** http://Judicial-Discipline-Reform.org/docs/DrCordero-BkrClerk_Stickle_8jan4.pdf]
17. U.S. District Judge David G. Larimer and Rodney C. Early, Clerk of Court, U.S. District Court, 2120 U.S. Courthouse, 100 State Street, Rochester, N.Y. 14614, tel. (585)613-4000, fax (585) 613-4035, and any and all members of their staff; <http://www.nywd.uscourts.gov/mambo/>;

[cf. http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_06_4780_CA2.pdf
>CA:1735§B] and

18. Former Chief Judge John M. Walker, Jr., of the Court of Appeals for the Second Circuit and former Clerk of Court Roseann B. MacKechnie, Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, NY, 1007, tel. (212)857-8500, and any all members of their staff; <http://www.ca2.uscourts.gov/>; [cf. **(a)** petition to the Judicial Conference for review re complaint v. CJ Walker, http://Judicial-Discipline-Reform.org/docs/DrCordero_2complaints_JConf.pdf >JC1, 11§III, 224, 324, 462 **(b)** http://Judicial-Discipline-Reform.org/docs/complaint_to_Admin_Office_28jul4.pdf]
19. The officer with authority to execute this subpoena is hereinafter referred to as executor.
20. Without prejudice to the duty to comply with this subpoena and lend all assistance to its complete, efficient, and timely execution, as such assistance is requested by any executor, no person shall be an executor who is an investigation-related person, that is, a person who is or was:
 - a. an agent or employee in the offices of the U.S. Department of Justice or the Federal Bureau of Investigation in Rochester or Buffalo, NY; or
 - b. familiar or acquainted with any person of interest.
21. A person of interest is one who is or was:
 - a. a party to either *DeLano* or *Pfuntner* and their progeny;
 - b. a court officer, whether judicial or administrative, a lawyer, a private or U.S. trustee, a bankruptcy professional, or a member of their respective staff, directly or indirectly involved in, concerned with, or affected by either of those cases or the investigation concerning this subpoena; or
 - c. employed by, or otherwise a worker in, any of the U.S. courts in Rochester or Buffalo or

anywhere else where their judges hold or held court; or

- d. investigated or is likely to be investigated in connection with those cases or with this subpoena.

B. Duties of a concerned person

22. A concerned person shall:

- a. understand a reference to a named concerned person to include any and all members of such person's staff or membership;
- b. comply with the instructions stated herein and complete such compliance within seven days of the issue of this subpoena unless a different deadline for compliance is stated in ¶24 below;
- c. be held responsible for any non-compliance and subject to the continuing duty to comply with this subpoena within the day each day after the applicable deadline is missed, under pain of being named the subject of a contempt proceeding.

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

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

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

- a. whenever a reasonable person would who is:
 - 1) acting in good faith, or with due diligence, or competently, or in the official or fiduciary capacity or with the training or experience that is the same as, or equivalent to, that of such person or entity, and
 - 2) applying the principle “If in doubt, produce the document to an executer”, and
- b. believes that at least one part of such document is a document herein identified;
- c. has doubts as to whether any or no part of the document is herein identified; or
- d. believes that another person with an adversarial interest would want such information, production, or certificate or find it of interest to the end of ascertaining whether an individual or entity:
 - 1) is a holder or an identifier, as defined in ¶25; or
 - 2) has committed, covered up, or tolerated an offense, including, but not limited to, bankruptcy fraud, concealment of assets, destruction of documents, money laundering, perjury, and bribery.

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

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

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

27. A concerned person shall produce those parts of each document herein identified that state as to each transaction covered by such document:
- a. The time and amount of each such transaction;
 - b. the rates, including but not limited to normal and delinquent rates, applied to the transaction;
 - c. the opening and closing dates of the transactions reported in the document, such as a statement of account;
 - d. the description of the goods or service concerned by the transaction;
 - e. the source or recipient of funds or who made any charge or claim for funds;
 - f. the opening date of, the payment due date of the amount owing on, and the good or delinquent standing of, the account, agreement, or contract dealt with in the document;
 - g. the beneficiary of any payment;
 - h. the surety, codebtor, or collateral; and
 - i. any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the document;
28. A concerned person shall certify individually as a person, or if an entity, by its representative, in an affidavit or an unsworn declaration subscribed as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each document produced that:
- a. it has not been the subject of any addition, deletion, correction, or modification of any type whatsoever; and
 - b. it is the whole of the document without regard to the degree of relevance or lack thereof of any part of such document other than any part requiring its production; or
 - c. such certification cannot be made with respect to any part or the whole of such document and the reason therefor and attach the whole document to the certificate;

29. A concerned person shall produce documents pursuant to the following timeframes measured from the time the subpoena is served on such person or the latter has actual knowledge or would have knowledge of it, as provided for in ¶1 above, whichever is earlier:
- a. within seven days with respect to documents that a concerned person has possession of at home or other permanent or temporary dwelling, in the office or vehicle, or equivalent place;
 - b. with respect to documents that are kept, stored or archived elsewhere than in a. above;
 - 1) within two weeks with respect to documents dated January 1, 2000, or since, to date;
and
 - 2) within 30 days with respect documents dated since January 1, 1975, to December 31, 1999, including the first and last dates of such period.

C. Documents in general, production, and certification

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

information referred to or derived therefrom, such as through addition, deletion, modification, correction, transformation from one form to another, or rearrangement for inclusion in a database, is available.

D. Particular documents to be produced

32. A concerned person that has any of the following documents shall produce them to an executor:
33. The financial documents in either or both of the names of:
 - a. the DeLanos,
 - b. Mr. Palmer and/or Premier; and
 - c. third parties but concerning a financial matter under the total or partial control of either or both of them, respectively, whether either or both exercised or still exercise such control directly or indirectly through a third person or entity, and whether for their benefit or somebody else's;
34. The dates of the documents referred to in ¶33 above are:
 - a. in the case of the DeLanos, since January 1, 1975, to date; and
 - b. in the case of Mr. Palmer, since he began to work for, or do business as, or acquired partially or totally, or otherwise controlled, Premier to date.
35. The financial documents referred to in ¶33 above include the following:
 - a. the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at, or issued by, M&T Bank and any other entity, whether banking, financial, investment, commercial, or otherwise, in the world;
 - b. the unbroken series of documents relating to the purchase, sale, or rental of any property or share thereof or right to its use, wherever in the world such property may have been, is, or

may be located, by either or both of the DeLanos and Mr. Palmer/Premier, respectively, including, but not limited to:

- 1) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY 14580;
- 2) Premier, any similar moving or storage company, or other business, whether incorporated or not incorporated;
- 3) Premier's warehousing space at the warehouse at 2130 Sackett Road, Avon, NY, 14414, owned by Mr. James Pfuntner;
- 4) moving and storage equipment, including, but not limited to, vehicles, forklifts, crates, padding and packaging material; and
- 5) personal property, including any vehicle, mobile home, or water vessel;

c. mortgage documents;

d. loan documents;

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

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

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

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

36. The minutes, transcript, stenographic packs and folds, audio tape, and any other recording of the status conference and pretrial hearing in *Pfuntner* requested by Trustee Schmitt on December 10,

2002, and held before Judge Ninfo on January 10, 2003.

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

a. in *Pfuntner* on: http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCt_28mar5.pdf

- | | | |
|----------------------|-------------------|---------------------|
| a. December 18, 2002 | d. April 23, 2003 | g. July 2, 2003 |
| b. February 12, 2003 | e. May 21, 2003 | h. October 16, 2003 |
| c. March 26, 2003 | f. June 25, 2003 | |

b. in *DeLano* on: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bkr_SCt.pdf

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

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

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

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

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

available upon request to an executor;

41. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Pfuntner*, regardless of the source, up to the date of compliance with this subpoena, whether such documents relate generally to the DeLanos' or Mr. Palmer/Premier's bankruptcy petition or particularly to the investigation of whether either or both of them have committed fraud, regardless of whether such documents point to their joint or several commission of fraud or do not point to such commission but were obtained in the context of such investigation;
42. The statement reported in entry 134 of the docket of *DeLano* to have been read by Trustee Reiber into the record at the confirmation hearing on July 25, 2005, of the DeLanos' plan of debt repayment, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read and the stenographic packs and folds used by the reporter to record it;
43. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including the following:
 - a. in *DeLano*: http://Judicial-Discipline-Reform.org/dockets/11DeLano_Bkr_SCt.pdf
 - 1) July 26, 2004, for production of some documents by the DeLanos;
 - 2) August 30, 2004, severing Dr. Cordero's claim against Mr. DeLano from *Pfuntner*, and requiring Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him while suspending all other proceedings until the DeLanos' motion to disallow Dr. Cordero's claim was finally determined;
 - 3) November 10, 2004, denying Dr. Cordero all his requests for discovery from Mr. DeLano;
 - 4) December 21, 2004, scheduling *DeLano* for an evidentiary hearing on March 1, 2005;
 - 5) April 4, 2005, holding that Dr. Cordero has no claim against Mr. DeLano and depriving him of standing to participate in any future proceedings in *DeLano*;

- 6) August 8, 2005, ordering M&T Bank to pay part of Mr. DeLano's salary to Trustee Reiber;
 - 7) August 9, 2005, confirming the DeLanos' debt repayment plan after hearing Trustee Reiber's statement and obtaining his "Trustee's Report", that is, his undated "Findings of Fact and Summary of 341 Hearing" and his undated and unsigned sheet titled "I/We filed Chapter 13 for one or more of the following reasons";
 - 8) November 10, 2005, letter denying Dr. Cordero his request to appear by phone to argue his motion of November 5, 2005, to revoke the order of confirmation of the DeLanos' debt repayment plan;
 - 9) November 22, 2005, denying Dr. Cordero's motion to revoke the confirmation of the DeLanos' debt repayment plan;
 - 10) Notice of January 24, 2007, releasing Mr. DeLano's employer, M&T Bank, from making further payments to Trustee Reiber.
 - 11) February 7, 2007, discharging the DeLanos after completion of their plan;
 - 12) June 29, 2007, providing, among other things, for the allowance of the final account and the discharge of Trustee Reiber, the enjoinder of creditors, the closing of the DeLanos' estate, and the release of their employer from the order to pay the Trustee;
- b. in *Pfuntner*: http://Judicial-Discipline-Reform.org/dockets/6Pfuntner_Bkr-SCt_28mar5.pdf
- 1) December 30, 2002, dismissing Dr. Cordero's cross-claims for defamation as well as negligent and reckless performance as trustee against Trustee Gordon;
 - 2) February 4, 2003, transmitting to District Judge David Larimer, WDNY, the record in a non-core proceeding and findings of fact, conclusions of law, and the Recommendation not to grant Dr. Cordero's request for entry of default judgment;
 - 3) Attachment of February 4, 2003, to the Recommendation of the Bankruptcy Court

that the default judgment not be entered by the District Court;

- 4) February 18, 2003, denying Dr. Cordero's motion to extend time to file notice of appeal;
- 5) July 15, 2003, ordering that a "discrete hearing" be held in Rochester on October 23, 2003, followed by further monthly hearings;
- 6) October 16, 2003, Disposing of Causes of Action;
- 7) October 16, 2003, denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with Any Hearings and a Trial;
- 8) October 23, 2003, Finding a Waiver by Dr. Cordero of a Trial by Jury;
- 9) October 23, 2003, setting forth a Schedule in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Claims of the Third-Party Plaintiff, Richard Cordero;
- 10) October 28, 2003, denying Dr. Cordero's Motion for a More Definitive Statement of the Court's Order and Decision.

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

Docket: http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_27jan5.pdf

a. Documents entered in the docket:

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

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

- 1) the court order authorizing payment of fees to Trustee Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72;
- 2) the court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97;
- 3) the financial statements concerning Premier prepared by Bonadio & Co., for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16;
- 4) the statement of M&T Bank of the proceeds of its auction of estate assets on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89;
- 5) the information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70;
- 6) the Final report and account referred to in entry no. 67 and ordered filed in entry no. 62.

45. Judge Ninfo's annual financial disclosure reports since 1992, required to be filed under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (identified in ThomsonWest publications as Appendix 4) shall be produced by Judge Ninfo and by the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600.

for the U.S. Senate Judiciary Committee:

Date

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The Salient Facts of The *DeLano* Case

revealing the involvement of bankruptcy & legal system insiders in a bankruptcy fraud scheme

with links to [references](http://Judicial-Discipline-Reform.org/Follow_money/DrCordero-journalists.pdf) at http://Judicial-Discipline-Reform.org/Follow_money/DrCordero-journalists.pdf

DeLano is a federal bankruptcy fraud case. As part of a cluster of cases, it reveals fraud conducted through coordinated wrongdoing that is so egregious as to betray overconfidence born of a *long standing practice*: Fraud has been organized into a *bankruptcy fraud scheme*.¹ This case was commenced by a bankruptcy petition filed with Schedules A-J and a Statement of Financial Affairs on January 27, 2004, by the DeLano couple. (04-20280, WBNY²) Mr. DeLano, however, was a most unlikely candidate for bankruptcy, for at the time of filing he was already a 39-year veteran of the banking and financing industry and was and continued to be employed by M&T Bank precisely as a bankruptcy officer. He and his wife, a methodical Xerox technician, declared:

1. that they had in cash and on account only \$535 (D:31), although they also declared that their monthly excess income was \$1,940 (D:45); and in the FA Statement (D:47) and their 1040 IRS forms (D:186) that they had earned \$291,470 in just the three years prior to their filing;
2. that their only real property was their home (D:30), bought in 1975 (D:342) and appraised in November 2003 at \$98,500³, as to which their mortgage was still \$77,084 and their equity only \$21,416 (D:30)...after making mortgage payments for 30 years! and receiving during that period at least \$382,187...through a string of *eight mortgages*⁴! (D:341) Mind-boggling!
3. that they owed \$98,092 –spread thinly over 18 credit cards (D:38)- while they valued their household goods at only \$2,810 (D:31), less than 1% of their earnings in the previous three years! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their working lives of more than 30 years.
4. Theirs is one of the trustee's 3,907 *open* cases and their lawyer's 525 before the same judge.

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

The Creditor requested that the DeLanos *produce documents*⁵ as reasonably required from any bankrupt as their bank account statements. Yet the trustee, whose role is to protect the creditors, tried to prevent the Creditor from even meeting with the DeLanos. After the latter denied *every single document* requested by the Creditor, he moved for production orders. Despite his discovery rights and their duty to determine whether bankrupts have concealed assets, the *bankruptcy*, the *district*, and the *circuit judges* also denied him *every single document* and, thus due process. Then *they* eliminated him by disallowing his claim in a *sham evidentiary hearing*. Revealing how incriminating these documents are, to oppose their production the DeLanos, with the trustee's recommendation and the bankruptcy judge's approval, were allowed to pay their lawyers \$27,953 in legal fees⁶...although they had declared only \$535 in cash and on account! To date \$673,657⁷ is still unaccounted for. *Where did it go*⁸ and for whose benefit? How many of the trustee's 3,907 cases have unaccounted for assets? Will the *Supreme Court* cover it *up*? Do DoJ and the FBI dare investigate *de facto unimpeachable judges* or their own officers so deferential to them?

¹http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf >§III ²§V. ³id.>§X ⁴§§I.B and VIII ⁵Cf. §XII ⁶§I.B ⁸§II

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<http://Judicial-Discipline-Reform.org>

Summary of the DeLanos' income of \$291,470 + mortgage receipts of \$382,187 = \$673,657 and credit card borrowing of \$98,092

**unaccounted for and inconsistent with their declaration in Schedule B
 of their voluntary bankruptcy petition (D:23)¹ that at the time of its filing
 on January 27, 2004, they had in hand and on account only \$535!**

Exhibit page #	Mortgages ² referred to in the incomplete documents produced by the DeLanos ^a to Chapter 13 Trustee George Reiber (cf.Add:966§B)	Mortgages or loans	
		year	amount
D ^b :342	1) from Columbia Banking, S&L Association	16jul75	\$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers & Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-54	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed?	Subtotal	\$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition (04-20280, WBNY; D:23)			
2001	1040 IRS form (D:186)	\$91,229	\$91,229
2002	1040 IRS form (D:187) Statement of Financial Affairs (D:47)	\$91,859	91,655
2003	1040 IRS form (D:188) Statement of Financial Affairs (D:47)	+97,648	+108,586
to this must be added the receipts contained in the \$98,092 owed on 18 credit cards, as declared in Schedule F (D:38) ^c		\$280,736 ^d	\$291,470 ^d
		TOTAL	\$673,657

^a The DeLanos claimed in their petition, filed just three years before traveling light of debt to their golden retirement, that their home was their only real property, appraised at \$98,500 on 23nov3, as to which their mortgage was still \$77,084 and their equity only \$21,416 (D:30/Sch.A) ...after paying it for 30 years! and having received \$382,187 during that period through eight mortgages! *Mind-boggling!* They sold it for \$135K³ on 23apr7, a 37% gain in merely 3½ years.

^b D=Designated items in the record of [Cordero v. DeLano, 05-6190L, WDNY](#), of April 18, 2005.

^c The DeLanos declared that their credit card debt on 18 cards totals \$98,092 (D:38/Sch.F), while they set the value of their household goods at only \$2,810! (D:31/Sch.B) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their working lives of more than 30 years.

^d Why do these numbers not match?

¹ http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf §V ²Id. >§§VI and VIII. ³Id >§X

**Follow the Money! from the Available Data
of the Weak Link, the DeLanos, to the Top of the Bankruptcy Fraud Scheme¹**

The weak link is the DeLanos, for if they were shown to have concealed assets, they would face up to 20 years imprisonment and up to \$500,000 in fines each. (18 U.S.C. §§152-157, 1519, and 3571) In that event, Mr. DeLano could use the wealth of inside knowledge of wrongdoing that he gained during the more than 42 years that he spent as a banker and bankruptcy officer as his chip in plea-bargaining for leniency. He could trade up to “bigger fish”, such as Bankruptcy John C. Ninfo, II, WBNY, the trustees, and other bankruptcy system insiders, anyone of whom could also incriminate the Judge. In turn, the latter could trade up to “fat cats” in the federal judiciary who have either participated in running, or sharing in the benefits of, the [bankruptcy fraud scheme](#) or have knowingly looked the other way for years.

The *Follow the money!* investigation can search the public registries, such as county clerk’s offices. (<http://www.naco.org>; for Rochester, NY, go to <http://www.monroecounty.gov/>; see also¹) These leads and those at ¹>W:147§A can pinpoint and expedite a cost-effective investigation:

David Gene DeLano, SS # 077-32-3894; DoB: September 1, 1941
Last employer: M&T Bank; <https://www.mtb.com/personal/Pages/Index.aspx>
255 East Avenue, Rochester, NY 14604
Previous employers: Central Trust and First National Bank (as V-P), Rochester, NY
Voter Identification #: 13374201

Mary Ann DeLano, SS # 091-36-0517; DoB: September 21, 1944
Last employer: Xerox, Rochester, NY; employed as a product specialist
Address: Last known: 1262 Shoecraft Road, Webster, NY 14580; tel. (585) 671-8833
Previous: 35 State Street, Rochester, NY 14814-8954
For current see ¹>W:131-133

Their children: **Jennifer** DeLano, born circa 1969; Mercy High School, 1988
Michael David DeLano, born circa 1971; Aquinas High School, 1989
both with Associate Business degrees from Monroe Community College, NY

Chapter 13 Trustee George Reiber, South Winton Court, 3136 S. Winton Road, Rochester, NY 14623; tel. (585) 427-7225; fax (585)427-7804; trustee13@roch13.com
cf. http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf

Christopher K. Werner, Esq., the DeLanos’ attorney, <http://www.boylanbrown.com/index.php>
cf. http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf

Initial judges: Their investigation can begin by matching up **a)** the assets that they declared in their mandatory annual financial disclosure reports publicly filed with the Administrative Office of the U.S. Courts (<http://www.uscourts.gov/>) under the Ethics in Government Act (5 USC App. 4) and **b)** assets –homes, cars, boats- registered in their names or their relatives’ or strawmen’s; then on to finding from drivers, barmen, maids, etc. about their conduct at judicial junkets; etc.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. U.S. Bkrp. Judge John C. Ninfo, II, WBNY; Rochester, NY; http://www.nywb.uscourts.gov/ 2. U.S. Dis. Judge David Larimer, WDNY; Rochester, NY; http://www.nywd.uscourts.gov/ 3. Former Chief Judge John M. Walker, Jr., and | <p>Current Chief Judge Dennis Jacobs; Judges Sotomayor², Livingston, and Hall^{2a}, CA2; NYC;
http://www.ca2.uscourts.gov/judgesmain.htm</p> <p>4. Judge Carman, Court of International Trade; NYC;
http://www.cit.uscourts.gov/informational/directory.htm</p> |
|---|---|

¹ From http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf>W:3; see also W:1-2, 75-76, 147§A.
² http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCT_petition_3oct8.pdf>CA:2180, 2456§X; ^{2a} SApp:1623

The judges' 'eroded morale over stagnant compensation' is aggravated by the corruptive power of the lots of money available in bankruptcy and both factors lay the basis for a bankruptcy fraud scheme

(excerpt from Dr. Cordero's petition to the Supreme Court of the United States for a writ of certiorari to the Court of Appeals for the Second Circuit in *Cordero v. Trustee Gordon et al.*, 04-8371, SCt http://Judicial-Discipline-Reform.org/Follow_money/for_certiorari_SCt.pdf¹)

1. Given that the Judicial Conduct and Disability Act (28 U.S.C. §351 et seq.) has been misapplied for decades, the Court has had no regular indication of the nature and extent of judicial misconduct and its impact on the integrity of the judiciary or the kind of justice that litigants receive and their current perception of "the appearance of justice". However, the Court is aware of a situation in the judiciary that is a potent cause for misconduct: money, "the root of all evils", the Bible at 1 Timothy 6:10. Thus, for years the Court has known that judges are discontent because of inadequate pay and Congress' failure to provide the promised regular COLAs (Cost of Living Adjustments). This problem has "serious effects", as Chief Justice Rehnquist put it:

Although we cannot say that the judges who are leaving the bench are leaving only because of inadequate pay, many of them have noted that financial considerations are a big factor.⁴ The fact that judges are leaving because of inadequate pay is underscored by the fact that most of the judges who have left the bench in the last ten years have entered private practice.⁵ It is no wonder that judges are leaving when law clerks who join big law firms in large cities can earn more in their first year than district judges earn in a year. Inadequate pay has other serious effects on the judiciary. [Administrative Office of the U.S. Courts] Director Mecham's June 14 letter to you makes clear that judges who have been leaving the bench in the last several years believe they were treated unfairly...[due to] Congress's failure to provide regular COLAs...That sense of inequity erodes the morale of our judges. *Statement on Judicial Compensation by William H. Rehnquist, Chief Justice of the United States, Before the National Commission on the Public Service, July 15, 2002*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_07-15-02.html.

2. It cannot come as a surprise if such erosion of morale has stripped some judges of the moral standards that should prevent every person from resorting to illegal means of self-help to increase his income. Should one reasonably expect judges to have remained unaffected by the lure of money in the midst of a society that values material success above anything else and pursues it with unbound greed and conspicuous disregard for legal and ethical constraints?
3. In the bankruptcy context, the lure of money is extremely powerful because there is not just money, but rather lots of money. Indeed, an approved debt repayment plan followed by debt discharge can spare the debtor an enormous amount of money. For instance, the DeLano's plan [SCtA.379] contemplates the repayment of only 22¢ on the dollar, which means its approval would spare the DeLanos 78% of their total liabilities of \$185,462 [SCtA.381 Summary of Schedules] or over \$144,462...and that does not take into account all the money saved on their total credit card debt of \$98,092 [SCtA.381 Schedule F] that given their over 230 late payments would otherwise be charged annual compound interest at the delinquent rate of over 23%.

¹ See also http://Judicial-Discipline-Reform.org/US_writ/1DrCordero-SCt_petition_3oct8.pdf>US:2442§IX.

4. Others too can make lots of money. A standing trustee is appointed under 28 U.S.C. §586(b) for cases under Chapter 13 and is a federal agent inasmuch as her performance is dictated and supervised by a U.S. trustee, who in turn is under the general supervision of the Attorney General, §586(c). However, the standing trustee earns part of her compensation from ‘a percentage fee of the payments made under the repayment plan of each debtor’, §586(e)(1)(B) and (2).
5. After receiving a petition, the trustee is supposed to investigate the debtor’s financial affairs to determine the veracity of his statements, 11 U.S.C. §1302(b)(1) and §704(4) and (7). If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves the repayment plan of the debtor, who can count with the trustee’s support when the plan is submitted to the court for confirmation, §1325(b)(1). A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, §1326(a).
6. If the plan is not confirmed, which is likely if the trustee opposes its confirmation, the trustee must return the money paid, less certain deductions, to the debtor, §1326(a)(2). This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to secure the confirmation of its plan by any judge or any other officer or entity that can derail confirmation, §1325(b)(1)(A).
7. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of “the actual, necessary expenses incurred”, 28 U.S.C. §586(e)(2)(B)(ii); cf. 11 U.S.C. §330(a) and (c). Now, an investigation of the debtor that allows the trustee to require him to pay his creditors another \$1,000 will generate a percentage fee for the trustee of \$100 (in most cases, §586(e)(1)(B)(i)). Such a system creates a perverse incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let’s say, \$300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves \$700. Even if the debtor has to pay \$600 to make available money to get also other officers to go along with his plan, he still comes \$400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than \$1,000. After all, it is not necessarily as if he were broke and had no money.
8. Add the corruptive power of money to the corruptive power of judicial power that escapes any effective control and discipline system, let alone any investigation, and the end product is a morally corrosive mix. It can dissolve the will to abide by the oath of office already weakened by a “sense of inequity [over unadjusted judicial compensation that] erodes the morale of our judges”, para. 1 above. In contact with such mix, due process ends up severely deteriorated.

Addendum²: In FY08, 1,043,993 new bankruptcy cases were filed. This represented a 30% increase over the 801,269 in FY07. Yet the number of such type of case filed in the regional circuit courts of appeals decreased 9% from 845 to 773. This means that bankruptcy judges disposing of \$10s of bls. annually were all but sure that whatever they decided would stand since only 0.07% of all bankruptcy cases went to the appeals courts or only 1 in every 1,351 cases. Yet, 61,104 appeals were filed in those courts. Moreover, since bankruptcy judges are appointed by circuit judges, the former are further assured that the latter will not overturn their rulings on appeal, for that would call into question their capacity to appoint competent bankruptcy judges. Judges that dispose of \$10s of bls. however they want with no adverse consequences have the most powerful incentive to engage in wrongdoing: riskless enormous profit under cover of their colleagues.

² See http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCT_rehear_23apr9.pdf >US:2521§III.

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United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address): DAVID G DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580 AKA:	Date Case Filed(or Converted): January 27, 2004	Soc Sec/Tax Id Nos: 077-32-3894 091-36-0517
Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580		

Individual debtors must provide picture identification and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and address): CHRISTOPHER K WERNER, ESC BOYLAN BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	Bankruptcy Trustee (name and address): George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225
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See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM

Location: U.S. Trustee's Office
6080 U.S. Courthouse
100 State Street
Rochester, NY 14614

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines.

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): **June 07, 2004**

For governmental units: **July 26, 2004**

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM

Location: U. S. Bankruptcy Court
1400 U.S. Courthouse
100 State Street
Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of \$1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:

U.S. Bankruptcy Court
100 State St.

Rochester, NY 14614

Website: <http://www.nywb.uscourts.gov>

Clerk of the Bankruptcy Court:
PAUL R. WARREN

DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

020304.0027.63.00111358.023

0420280.018 .3.021

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Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.
---Refer To Other Side For Important Deadlines and Notices---	

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
 TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court	U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee	George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor	DAVID G DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint	MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001 CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005 AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016 CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018 CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021 DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014 CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023 HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004 GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007 BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009 BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010 BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024 MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025 MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026 MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019 DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022 FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008 BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011 CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013 CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012 CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020 DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

AFFA

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63
TASK: 02-02-2004.00111358.N13N02

COURT: 146
DATED: 02/03/2004

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY *T. Martou*

RCM - Indicates notice served via Certified Mail

FORM B1	United States Bankruptcy Court Western District of New York	Voluntary Petition
----------------	--	---------------------------

Name of Debtor (if individual, enter Last, First, Middle): DeLano, David G.	Name of Joint Debtor (Spouse) (Last, First, Middle): DeLano, Mary Ann
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517
Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580
County of Residence or of the Principal Place of Business: Monroe	County of Residence or of the Principal Place of Business: Monroe
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

<p>Type of Debtor (Check all boxes that apply)</p> <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____ <input type="checkbox"/> Clearing Bank	<p>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)</p> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input checked="" type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding
<p>Nature of Debts (Check one box)</p> <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business	<p>Filing Fee (Check one box)</p> <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.
<p>Chapter 11 Small Business (Check all boxes that apply)</p> <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)	

Statistical/Administrative Information (Estimates only)

Debtor estimates that funds will be available for distribution to unsecured creditors.
 Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over		
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Estimated Assets	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Estimated Debts	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THIS SPACE IS FOR COURT USE ONLY

Voluntary Petition <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s): FORM B1, Page 2 DeLano, David G. DeLano, Mary Ann
---	--

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)		
Location Where Filed: - None -	Case Number:	Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)		
Name of Debtor: - None -	Case Number:	Date Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

/s/ David G. DeLano
Signature of Debtor David G. DeLano

/s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

/s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Attorney

/s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)
Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)
Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name
2400 Chase Square
Rochester, NY 14604
Address
585-232-5300
Telephone Number
January 26, 2004
Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C. § 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano,
Mary Ann DeLano

Debtors

Case No. _____

Chapter 13

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED		
			ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	98,500.00		
B - Personal Property	Yes	4	164,956.57		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		87,369.49	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	4		98,092.91	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			4,886.50
J - Current Expenditures of Individual Debtor(s)	Yes	1			2,946.50
Total Number of Sheets of ALL Schedules		16			
Total Assets			263,456.57		
			Total Liabilities	185,462.40	

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	Fee Simple	J	98,500.00	77,084.49

Sub-Total > 98,500.00 (Total of this page)

Total > 98,500.00

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

sjc:50

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand		misc cash on hand	J	35.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		M & T Checking account	J	300.00
		M & T Savings	W	200.00
		M & T Bank Checking	W	0.50
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	J	2,000.00
		computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill,	J	350.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		misc books, misc wall decorations, family photos, family bible	J	100.00
6. Wearing apparel.		misc wearing apparel	J	50.00
7. Furs and jewelry.		wedding rings, wrist watches	J	100.00
		misc costume jewelry, string of pearls	W	200.00

Sub-Total > 3,335.50
(Total of this page)

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
8. Firearms and sports, photographic, and other hobby equipment.		camera - 35mm snapshot cameras ((2) purchased for \$19.95 each new	J	10.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Xerox 401-K \$38,000; stock options \$4,000; retirement account \$17,000 - all in retirement account	W	59,000.00
		401-k (net of outstanding loan \$9,642.56)	H	96,111.07
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			
14. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15. Accounts receivable.		Debt due from son (\$10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress	J	Unknown
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.		2003 tax liability expected	J	0.00
18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			

Sub-Total > 155,121.07
(Total of this page)

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

sjc:52

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1993 Chevrolet Cavalier 70,000 miles	W	1,000.00
		1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)	H	5,500.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
Sub-Total >				6,500.00
(Total of this page)				

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total > 0.00
(Total of this page)
Total > 164,956.57

Sheet 3 of 3 continuation sheets attached
to the Schedule of Personal Property
sjc:54

(Report also on Summary of Schedules)

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

[Check one box]

- 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.
- 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Real Property			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
Household Goods and Furnishings			
Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	NYCPLR § 5205(a)(5)	2,000.00	2,000.00
Books, Pictures and Other Art Objects; Collectibles			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
Wearing Apparel			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
Furs and Jewelry			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
Xerox 401-K \$38,000; stock options \$4,000; retirement account \$17,000 - all in retirement account	Debtor & Creditor Law § 282(2)(e)	59,000.00	59,000.00
401-k (net of outstanding loan \$9,642.56)	Debtor & Creditor Law § 282(2)(e)	96,111.07	96,111.07
Automobiles, Trucks, Trailers, and Other Vehicles			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

0 continuation sheets attached to Schedule of Property Claimed as Exempt

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
		H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN					
Account No. 5687652			2001					
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	auto lien 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)				10,285.00	4,785.00
			Value \$ 5,500.00					
Account No.			fist mortgage					
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	1262 Shoecraft Road, Webster (value per appraisal 11/23/03)				77,084.49	0.00
			Value \$ 98,500.00					
Account No.								
			Value \$					
Account No.								
			Value \$					

0 continuation sheets attached

Subtotal
(Total of this page)

87,369.49

Total

87,369.49

(Report on Summary of Schedules)

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

Deposits by individuals

Claims of individuals up to \$2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

Alimony, Maintenance, or Support

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No. 5398-8090-0311-9990 AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217		H	1990 and prior Credit card purchases			1,912.63
Account No. 4024-0807-6136-1712 Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132		H	1990 and prior Credit card purchases			3,296.83
Account No. 4266-8699-5018-4134 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 prior Credit card purchases			9,846.80
Account No. 4712-0207-0151-3292 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases			5,130.80
Subtotal (Total of this page)						20,187.06

3 continuation sheets attached

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M	
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
Account No. 4262 519 982 211 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153	H					9,876.49	
Account No. 4388-6413-4765-8994 Capital One P.O. Box 85147 Richmond, VA 23276	H					449.35	
Account No. 4862-3621-5719-3502 Capital One P.O. Box 85147 Richmond, VA 23276	H					460.26	
Account No. 4102-0082-4002-1537 Chase P.O. Box 1010 Hicksville, NY 11802	W					10,909.01	
Account No. 5457-1500-2197-7384 Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116	W					2,127.08	
Sheet no. <u>1</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	23,822.19

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No. 5466-5360-6017-7176 Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115	H					4,043.94
Account No. 6011-0020-4000-6645 Discover Card P.O. Box 15251 Wilmington, DE 19886-5251	J					5,219.03
Account No. Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515	H	2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.		X	X	Unknown
Account No. 5487-8900-2018-8012 Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368	W					2,126.92
Account No. 5215-3125-0126-4385 HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627	H					9,065.01
Sheet no. <u>2</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal (Total of this page)	20,454.90

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No. 4313-0228-5801-9530 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		W	1990 and prior Credit card purchases			6,422.47
Account No. 5329-0315-0992-1928 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		H	1990 and prior Credit card purchases			18,498.21
Account No. 749 90063 031 903 MBNA America P.O. Box 15102 Wilmington, DE 19886-5102		H	1990 and prior Credit card purchases			3,823.74
Account No. 34 80074 30593 0 Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149		H	1990 - 10/99 Credit card purchases			3,554.34
Account No. 17720544 Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784		H	8/03 Credit card purchases			1,330.00
Subtotal (Total of this page)						33,628.76
Total (Report on Summary of Schedules)						98,092.91

Sheet no. 3 of 3 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

sjc:62

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP None.	AGE
EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Loan officer	
Name of Employer	M & T Bank	unemployed - Xerox
How long employed		
Address of Employer	PO Box 427 Buffalo, NY 14240	

	DEBTOR	SPOUSE
INCOME: (Estimate of average monthly income)		
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	\$ 5,760.00	\$ 1,741.00
Estimated monthly overtime	\$ 0.00	\$ 0.00
SUBTOTAL	\$ 5,760.00	\$ 1,741.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ 1,440.00	\$ 435.25
b. Insurance	\$ 414.95	\$ 0.00
c. Union dues	\$ 0.00	\$ 0.00
d. Other (Specify) Retirement Loan (to 10/05)	\$ 324.30	\$ 0.00
	\$ 0.00	\$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 2,179.25	\$ 435.25
TOTAL NET MONTHLY TAKE HOME PAY	\$ 3,580.75	\$ 1,305.75
Regular income from operation of business or profession or farm (attach detailed statement)	\$ 0.00	\$ 0.00
Income from real property	\$ 0.00	\$ 0.00
Interest and dividends	\$ 0.00	\$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ 0.00	\$ 0.00
Social security or other government assistance (Specify)	\$ 0.00	\$ 0.00
	\$ 0.00	\$ 0.00
Pension or retirement income	\$ 0.00	\$ 0.00
Other monthly income (Specify)	\$ 0.00	\$ 0.00
	\$ 0.00	\$ 0.00
TOTAL MONTHLY INCOME	\$ 3,580.75	\$ 1,305.75
TOTAL COMBINED MONTHLY INCOME	\$ 4,886.50	

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by \$1,129/month.

Retirement Loan was made to son, who was to re-pay @\$200/mon. but has been unable to do so as employed at \$10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)

sjc:64

D:44

The DeLanos Ch. 13 bankruptcy petition with Schedules A-J & Statement of Financial Affairs

In re David G. DeLano,
Mary Ann DeLano

Case No. _____

Debtors

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	\$	1,167.00
Are real estate taxes included? Yes <u>X</u> No _____		
Is property insurance included? Yes _____ No <u>X</u>		
Utilities: Electricity and heating fuel	\$	168.00
Water and sewer	\$	30.00
Telephone	\$	40.00
Other <u>Cell Phone \$62 (req. for work); cable \$55; Internet \$23.95</u>	\$	140.95
Home maintenance (repairs and upkeep)	\$	50.00
Food	\$	430.00
Clothing	\$	60.00
Laundry and dry cleaning	\$	5.00
Medical and dental expenses	\$	120.00
Transportation (not including car payments)	\$	295.00
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$	107.50
Charitable contributions	\$	50.00
Insurance (not deducted from wages or included in home mortgage payments)		
Homeowner's or renter's	\$	0.00
Life	\$	0.00
Health	\$	0.00
Auto	\$	110.00
Other _____	\$	0.00
Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	\$	0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)		
Auto	\$	0.00
Other <u>reserve for auto</u>	\$	50.00
Other <u>Parking</u>	\$	58.05
Other _____	\$	0.00
Alimony, maintenance, and support paid to others	\$	0.00
Payments for support of additional dependents not living at your home	\$	0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	0.00
Other <u>family gifts - Christmas/Birthdays</u>	\$	20.00
Other <u>Haircuts and personal hygiene</u>	\$	45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	\$	2,946.50

[FOR CHAPTER 12 AND 13 DEBTORSONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$	4,886.50
B. Total projected monthly expenses	\$	2,946.50
C. Excess income (A minus B)	\$	1,940.00
D. Total amount to be paid into plan each <u>Monthly</u>	\$	1,940.00

(interval)

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano _____
Debtor(s)

Case No. _____
Chapter 13 _____

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets [total shown on summary page plus 1], and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004 _____

Signature /s/ David G. DeLano _____
David G. DeLano
Debtor

Date January 26, 2004 _____

Signature /s/ Mary Ann DeLano _____
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
\$91,655.00	2002 joint income
\$108,586.00	2003 Income (H) \$67,118; (W) \$41,468

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
--------	--------

3. Payments to creditors

- None a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	monthly mortgage \$1,167/mon with taxes and insurance	\$5,000.00	\$77,082.49
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016	monthly auto payment \$348/mon	\$1,044.00	\$10,000.00

- None b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

- None a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano	(As against debtor) damages for inability of Cordero to recover property held in storage	US Bankruptcy Court, Western District of NY	pending

- None b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
--	-----------------	-----------------------------------

5. Repossessions, foreclosures and returns

- None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
--	--	-----------------------------------

6. Assignments and receiverships

- None a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
------------------------------	--------------------	-----------------------------------

- None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
-------------------------------	--	---------------	-----------------------------------

7. Gifts

- None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--	--------------------------------	--------------	-------------------------------

8. Losses

- None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
-----------------------------------	--	--------------

9. Payments related to debt counseling or bankruptcy

- None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher K. Werner 2400 Chase Square Rochester, NY 14604	Nov - Dec 2003	\$1,350 plus filing fee

10. Other transfers

- None List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
--	------	--

11. Closed financial accounts

- None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

- None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
M & T Bank Webster Branch	debtors	Personal papers	

13. Setoffs

- None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

- None List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

- None If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

- None If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

- None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
-----------------------	---------------------------------------	----------------	-------------------

- None c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
---------------------------------------	---------------	-----------------------

18 . Nature, location and name of business

- None a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER ID. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
------	------------------------	---------	--------------------	----------------------------

- None b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
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None b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
------	---------	-------------------------

None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED
------------------	-------------

20. Inventories

None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
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None b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
-------------------	--

21 . Current Partners, Officers, Directors and Shareholders

None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	--------------------	------------------------

None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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22 . Former partners, officers, directors and shareholders

- None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME ADDRESS DATE OF WITHDRAWAL

- None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS TITLE DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

- None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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24. Tax Consolidation Group.

- None If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

- None If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano

Debtor(s)

Case No. _____
Chapter 13

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept.....	\$	<u>1,350.00</u>
Prior to the filing of this statement I have received.....	\$	<u>1,350.00</u>
Balance Due.....	\$	<u>0.00</u>

2. The source of the compensation paid to me was:

Debtor Other (specify):

3. The source of compensation to be paid to me is:

Debtor Other (specify):

4. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

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

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

Blank

**United States Bankruptcy Court
Western District of New York**

In re David G. DeLano
Mary Ann DeLano

Debtor(s)

Case No.

Chapter

13

CHAPTER 13 PLAN

1. **Payments to the Trustee:** The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of \$1,940.00 per month for 5 months, then \$635.00 per month for 25 months, then \$960.00 per month for 6 months.
Total of plan payments: \$31,335.00
2. **Plan Length:** This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
 - a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
 - b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
 - c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

- a. Administrative Expenses
 - (1) Trustee's Fee: 10.00%
 - (2) Attorney's Fee (unpaid portion): NONE
 - (3) Filing Fee (unpaid portion): NONE

- b. Priority Claims under 11 U.S.C. § 507

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

- c. Secured Claims

- (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

Name	Proposed Amount of Allowed Secured Claim	Monthly Payment (If fixed) Prorata	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00		6.00%

- (2) Secured Debts Which Will Extend Beyond the Length of the Plan

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
-NONE-			

- d. Unsecured Claims

- (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

- (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than \$10.00 it may be paid in full.

5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

Creditor	Amount of Default to be Cured	Interest Rate (If specified)
-NONE-		

6. The Debtor shall make regular payments directly to the following creditors:

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
Genesee Regional Bank	77,084.49	0.00	0.00%

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

Name	Amount of Claim	Description of Property
-NONE-		

11. Title to the Debtor's property shall revert in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004

Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004

Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor



CREDIT FILE : May 8, 2004

Confirmation # 4129001647

Mrs. Delano's Equifax credit bureau report of May 8, 2004, produced with missing pages

Personal Identification Information (This section includes your name, current and previous addresses, and any other identifying information reported by your creditors.)

Name On File: Mary Ann Delano
Social Security # 091-36-0517 Date of Birth: September 21, 1944
Current Address: 1262 Shoecraft Rd, Webster, NY 14580
Last Reported Employment: Product Specialist; Xerox;

Please address all future correspondence to:



www.investigate.equifax.com
Equifax Information Services LLC
PO Box 740256
Atlanta, GA 30374



Phone: (800) 290-8749
M - F 9:00am to 5:00pm in your time zone.

In order to speak with a Customer Service Representative regarding the specific information contained in this credit file, you must call **WITHIN 60 DAYS** of the date of this credit file **AND** have a copy of this credit file along with the confirmation number.

Credit Account Information
(For your security, the last 4 digits of account number(s) have been replaced by *) (This section includes open and closed accounts reported by credit grantors)

Account Column Title Descriptions:

- | | |
|---|--|
| Account Number - The Account number reported by credit grantor | Amount Past Due - The Amount Past Due as of the Date Reported |
| Date Acct. Opened - The Date that the credit grantor opened the account | Date of Last Paymnt - The Date of Last Payment |
| High Credit - The Highest Amount Charged | Actual Pay Amt - The Actual Amount of Last Payment |
| Credit Limit - The Highest Amount Permitted | Sched Pay Amt - The Requested Amount of Last Payment |
| Terms Duration - The Number of Installments or Payments | Date of Last Actvty - The Date of the Last Account Activity |
| Terms Frequency - The Scheduled Time Between Payments | Date Maj Delq Rptd - The Date the 1st Major Delinquency Was Reported |
| Months Reviewed - The Number of Months Reviewed | Charge Off Amt - The Amount Charged Off by Creditor |
| Activity Description - The Most Recent Account Activity | Deferred Pay Date - The 1st Payment Due Date for Deferred Loans |
| Creditor Class - The Type of Company Reporting The Account | Balloon Pay Amt - The Amount of Final(Balloon) Payment |
| Date Reported - The Month and Year of the Last Account Update | Balloon Pay Date - The Date of Final(Balloon) Payment |
| Balance Amount - The Total Amount Owed as of the Date Reported | Date Closed - The Date the Account was Closed |

Account History	1 : 30-59 Days Past Due	5 : 150-179 Days Past Due	J : Voluntary Surrender
Status Code	2 : 60-89 Days Past Due	6 : 180 or More Days Past Due	K : Repossession
Descriptions	3 : 90-119 Days Past Due	G : Collection Account	L : Charge Off
	4 : 120-149 Days Past Due	H : Foreclosure	

Assoc/Citibank SD

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
541931041019*	06/1992	\$2,500				67						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
07/1998	\$0					04/1995						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;

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(Continued On Next Page)

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Mrs. DeLano's Equifax credit bureau report of May 8, 2004, produced with missing pages

1 Capital One PO Box 85520 Internal Zip 12030-016 Richmond, VA 23265-5520

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
486236226671*	11/2002	\$32				18						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004	\$0		02/2004			02/2004	03/2004					

Current Status - Included in Wage Earner Plan ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Involved in Chapter 13 Debt Adjustment ;

2 Chussears

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
348007430*	08/1982		\$3,140			78						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004	\$0		10/2003			12/2003						

Current Status - 60 - 89 Days Past Due ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Authorized User;

Account History with Status Codes: 02/2004 01/2004 11/1997 10/1997
2 1 1 1

3 Chase Na 100 Duff Ave Hicksville NY 11801-3639 (800) 327-2782

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
410200824002*	06/1983	\$11,651	\$7,600		Monthly	99						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	\$11,651	\$1,392	11/2003	\$450	\$233	12/2003	02/2004					

Current Status - Included in Wage Earner Plan ; Type of Loan - Credit Card ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Involved in Chapter 13 Debt Adjustment ; Account Involved in Chapter 13 Debt Adjustment ;

Account History with Status Codes: 03/2004 02/2004 01/2004 12/2003 04/2003 12/2000 07/1999 06/1999 05/1999 04/1999 03/1999 02/1999 01/1999 09/1998 07/1998 06/1998 05/1998 11/1997 09/1997
4 3 2 1 1 1 1 1 1 1 1 1 1 1 2 1 1 1 1

4 Discover Financial Services

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
601100204000*	12/1988	\$5,755			Monthly	99						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	\$0		10/2003	\$112		09/2003	04/2004					

Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Closed At Consumers Request ;

Account History with Status Codes: 12/2003 11/2003 11/2001 09/2001 10/2000 07/1999 11/1998 08/1998 07/1998 01/1998 10/1997
2 1 1 1 1 1 1 1 1 1 1

FCNB Preferred Charge

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
800491*	05/1994	\$400				27						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Rptd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
09/1996	\$0					11/1995						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Whose Account - Individual Account;

(Continued On Next Page)

CREDIT FILE : May 8, 2004

Confirmation # 4129001647

Mrs. DeLano's Equifax credit bureau report of May 8, 2004, produced with missing pages

5 Fleet National Bank												
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
548789002018*	02/1993		\$4,200		Monthly							
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date Maj. Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	\$2,184	\$297	10/2003	\$172	\$47	12/2003	04/2004	\$2,184				
Current Status - Charge Off ; Type of Account - Revolving ; Type of Loan - Credit Card ; Whose Account - Individual Account;												
Account History with Status Codes												
02/2004	01/2004	10/2001	04/1999	02/1999	12/1998	12/1997	09/1997					
2	1	1	1	1	1	1	2					

9 GMAC												
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
052-1504-1*	07/1995	\$10,326				44						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date Maj. Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
03/1999	\$0				\$191	02/1999						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ; Auto ;												

14 GMAC												
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
052-3036-0*	02/1993	\$10,793				47						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date Maj. Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
02/1997	\$0				\$224	02/1997						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Maker; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;												

JC Penney / Monogram Credit												
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
-080246*	10/1980	\$569	\$200		Monthly	80						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date Maj. Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004	\$57		04/2004	\$41	\$15	05/2004						
Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;												
Account History with Status Codes												
07/1998	01/1998	10/1997	09/1997									
1	1	2	1									

JC Penney / Monogram Credit												
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
-010699*	10/1980											
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date Maj. Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/2004						05/2004						
Current Status - Card Is Lost Or Stolen ; Type of Loan - Charge Account ;												

Kaufmann's												
Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
25243*	09/1985	\$928			Monthly	99						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Payment	Actual Payment Amount	Scheduled Payment Amount	Date of Last Activity	Date Maj. Del. 1st Pmt	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	\$0		05/1999			05/1999						
Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;												

(Continued On Next Page)

8 M.B.N.A Amer PO Box 15026 Wilmington DE 19850-5026 (800) 421-2110

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification													
43130229975*	01/1994					99															
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed									
04/2004						10/2003	02/2004														
Current Status - Account Included in Bankruptcy ; Type of Loan - Credit Card ; Whose Account - Individual Account;																					
Account History with Status Codes	03/2004	02/2004	01/2004	10/2003	05/2003	12/2002	06/2002	05/2002	03/2002	01/2002	11/2001	10/2001	07/2001	05/2001	04/2001	12/2000	11/2000	10/2000	08/2000	06/2000	02/2000
	3	2	1	1	1	1	2	1	1	1	1	1	1	1	1	3	2	1	1	1	1
	12/1999	09/1999	06/1999	02/1999	10/1998	08/1998	03/1998	09/1997													
	1	1	1	1	1	1	1	1													

9 Manufacturers & Traders Trust

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
738920*	03/1988	\$59,000				10						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/1999	\$0				\$723	04/1999						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;												

10 ONONDAGA Bank/Overdraft

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
195882002*	03/1988	\$59,000				15						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/1998	\$0				\$733	02/1998						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Transferred or Sold ;												

11 Primus Automotive

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
626*	02/1997	\$6,719		48 Months		27						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/1999	\$0					04/1999						
Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ; Auto ;												

The Bon Ton

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
8601*	12/1995	\$280	\$500			99						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	\$0					02/1997						
Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;												

Inquiries that display to companies (may impact your credit score)
 This section lists companies that requested your credit file. Credit grantors may view these requests when evaluating your credit worthiness.

Company Information	Inquiry Date(s)
Genesee Regional Bank	09/2003 06/2003
The Credit Bureau:3301 ONTARIO NATIONA	08/2002

CREDIT FILE : May 8, 2004

Inquiries that do not display to companies (do not impact your credit score)
 (This section includes inquiries which display only to you and are not considered when evaluating your credit worthiness. Examples of this inquiry type include a pre-approved offer of credit, insurance, or periodic account review by an existing creditor.)

Company Information - Prefix Descriptions:

PRM - Inquiries with this prefix indicate that only your name and address were given to a credit grantor so they can provide you a firm offer of credit or insurance. (PRM inquiries remain for twelve months)
 AM or AR - Inquiries with these prefixes indicate a periodic review of your credit history by one of your creditors. (AM and AR inquiries remain for twelve months)
 Equifax or EFX - Inquiries with these prefixes indicate Equifax's activity in response to your contact with us for a copy of your credit file or a research request.
 ND - Inquiries with this prefix are general inquiries that do not display to credit grantors. (ND inquiries remain for twelve months)

Company Information	Inquiry Date(s)											
Equifax	05/2004											
AR-Assoc/Citibank SD	04/2004	02/2004	01/2004	12/2003	11/2003	10/2003	09/2003	08/2003	07/2003	07/2003	06/2003	
PRM-At&T Wireless	03/2004 01/2004											
PRM-First Premier Bank Promo	02/2004											
AR-Capital One	02/2004	01/2004	12/2003	11/2003	10/2003	09/2003	08/2003	07/2003	07/2003	05/2003		
PRM-At&T Wireless Services	02/2004 06/2003											
AR-MBNA	12/2003 05/2003											
PRM-Evergreen Acceptance Corp.	10/2003											
PRM-Direct Lending Source Inc	10/2003 09/2003											
PRM-DM Services, Inc.	09/2003 07/2003											
PRM-Household Bank	05/2003											
PRM-Assoc Fin Ser Cons Div Promo	05/2003											

Mrs. Delano's Equifax credit bureau report of May 8, 2004, produced with missing pages

D:177

For the year Jan 1 - Dec 31, 2001, or other tax year beginning _____, 2001, ending _____, 20

Label (See instructions.)
 Your First Name MI Last Name
David G DeLano
 Your Social Security Number
077-32-3894

If a Joint Return, Spouse's First Name MI Last Name
Mary Ann DeLano
 Spouse's Social Security Number
091-36-0517

Home Address (number and street). If You Have a P.O. Box, See Instructions. Apartment No.
1262 Shoecraft Rd
 City, Town or Post Office. If You Have a Foreign Address, See Instructions. State ZIP Code
Webster NY 14580

▲ Important! ▲
 You must enter your social security number(s) above.

Presidential Election Campaign (See instructions.)
 Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ... Yes No Yes No

Filing Status
 1 Single
 2 Married filing joint return (even if only one had income)
 3 Married filing separate return. Enter spouse's SSN above & full name here ...
 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ...
 5 Qualifying widow(er) with dependent child (year spouse died ...). (See instructions.)

Exemptions
 6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a
 6b Spouse

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see instrs)	No. of boxes checked on 6a and 6b	No. of your children on 6c who:
					2	• lived with you
						• did not live with you due to divorce or separation (see instrs)
d Total number of exemptions claimed					2	Add numbers entered on lines above

Income
 7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 90,790.
 8a Taxable interest. Attach Schedule B if required 8a 427.
 b Tax-exempt interest. Do not include on line 8a 8b
 9 Ordinary dividends. Attach Schedule B if required 9 12.
 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) 10
 11 Alimony received 11
 12 Business income or (loss). Attach Schedule C or C-EZ 12
 13 Capital gain or (loss). Attach Schedule D if required. If not required, check here 13
 14 Other gains or (losses). Attach Form 4797 14
 15a Total IRA distributions 15a b Taxable amount (see instrs) 15b
 16a Total pensions & annuities 16a 3,257. b Taxable amount (see instrs) 16b 0.
 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17
 18 Farm income or (loss). Attach Schedule F 18
 19 Unemployment compensation 19
 20a Social security benefits 20a b Taxable amount (see instrs) 20b
 21 Other income 21
 22 Add the amounts in the far right column for lines 7 through 21. This is your total income 22 91,229.

Adjusted Gross Income
 23 IRA deduction (see instructions) 23
 24 Student loan interest deduction (see instructions) 24
 25 Archer MSA deduction. Attach Form 8853 25
 26 Moving expenses. Attach Form 3903 26
 27 One-half of self-employment tax. Attach Schedule SE 27
 28 Self-employed health insurance deduction (see instructions) 28
 29 Self-employed SEP, SIMPLE, and qualified plans 29
 30 Penalty on early withdrawal of savings 30
 31a Alimony paid b Recipient's SSN 31a
 32 Add lines 23 through 31a 32
 33 Subtract line 32 from line 22. This is your adjusted gross income 33 91,229.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions. Form 1040 (2001)

Label (See instructions.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See instructions.)

For the year Jan 1 - Dec 31, 2002, or other tax year beginning , 2002, ending , 20
Your first name MI Last name David G DeLano
If a joint return, spouse's first name MI Last name Mary Ann DeLano
Home address (number and street). If you have a P.O. box, see instructions. 1262 Shoecraft Road
City, town or post office. If you have a foreign address, see instructions. Webster NY 14580

OMB No. 1545-0074
Your social security number 077-32-3894
Spouse's social security number 091-36-0517
Important! You must enter your social security number(s) above.

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? You [] Yes [X] No Spouse [] Yes [X] No

Filing Status

Check only one box.

- 1 [] Single
2 [X] Married filing jointly (even if only one had income)
3 [] Married filing separately. Enter spouse's SSN above & full name here
4 [] Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
5 [] Qualifying widow(er) with dependent child (year spouse died ...).

Exemptions

If more than five dependents, see instructions.

6a [X] Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a
6b [X] Spouse
c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) [X] if qualifying child for child tax credit (see instrs)
d Total number of exemptions claimed 2

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

Table with 2 columns: Description and Amount. Rows include: 7 Wages, salaries, tips, etc. Attach Form(s) W-2 (91,655); 8a Taxable interest. Attach Schedule B if required (204); 9 Ordinary dividends. Attach Schedule B if required; 10 Taxable refunds, credits, or offsets of state and local income taxes; 11 Alimony received; 12 Business income or (loss). Attach Schedule C or C-EZ; 13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here; 14 Other gains or (losses). Attach Form 4797; 15a IRA distributions; 16a Pensions and annuities; 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E; 18 Farm income or (loss). Attach Schedule F; 19 Unemployment compensation; 20a Social security benefits; 21 Other income; 22 Add the amounts in the far right column for lines 7 through 21. This is your total income (91,859).

Adjusted Gross Income

Table with 2 columns: Description and Amount. Rows include: 23 Educator expenses (see instructions); 24 IRA deduction (see instructions); 25 Student loan interest deduction (see instructions); 26 Tuition and fees deduction (see instructions); 27 Archer MSA deduction. Attach Form 8853; 28 Moving expenses. Attach Form 3903; 29 One-half of self-employment tax. Attach Schedule SE; 30 Self-employed health insurance deduction (see instructions); 31 Self-employed SEP, SIMPLE, and qualified plans; 32 Penalty on early withdrawal of savings; 33a Alimony paid b Recipient's SSN; 34 Add lines 23 through 33a; 35 Subtract line 34 from line 22. This is your adjusted gross income (91,859).

Label (See instructions.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See instructions.)

For the year Jan 1 - Dec 31, 2003, or other tax year beginning , 2003, ending , 20
Your first name MI Last name David G DeLano
If a joint return, spouse's first name MI Last name Mary Ann DeLano
Home address (number and street). If you have a P.O. box, see instructions. 1262 Shoecraft Road
City, town or post office. If you have a foreign address, see instructions. Webster NY 14580

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? You Yes No Spouse Yes No

Filing Status

Check only one box.

1 Single 2 Married filing jointly (even if only one had income) 3 Married filing separately. Enter spouse's SSN above & full name here 4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here 5 Qualifying widow(er) with dependent child. (See instructions.)

Exemptions

If more than five dependents, see instructions.

6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a
b Spouse
c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if qualifying child for child tax credit (see instrs)
d Total number of exemptions claimed 2

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

ROLLOVER

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 96,821.
8a Taxable interest. Attach Schedule B if required 8a 17.
b Tax-exempt interest. Do not include on line 8a 8b
9a Ordinary dividends. Attach Schedule B if required 9a
b Qualified divs (See instrs) 9b
10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) 10
11 Alimony received 11
12 Business income or (loss). Attach Schedule C or C-EZ 12
13a Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here 13a
b If box on 13a is checked, enter post-May 5 capital gain distributions 13b
14 Other gains or (losses). Attach Form 4797 14
15a IRA distributions 15a b Taxable amount (see instrs) 15b
16a Pensions and annuities 16a 519. b Taxable amount (see instrs) 16b 0.
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17
18 Farm income or (loss). Attach Schedule F 18
19 Unemployment compensation 19 810.
20a Social security benefits 20a b Taxable amount (see instrs) 20b
21 Other income 21
22 Add the amounts in the far right column for lines 7 through 21. This is your total income 22 97,648.

Adjusted Gross Income

23 Educator expenses (see instructions) 23
24 IRA deduction (see instructions) 24
25 Student loan interest deduction (see instructions) 25
26 Tuition and fees deduction (see instructions) 26
27 Moving expenses. Attach Form 3903 27
28 One-half of self-employment tax. Attach Schedule SE 28
29 Self-employed health insurance deduction (see instrs) 29
30 Self-employed SEP, SIMPLE, and qualified plans 30
31 Penalty on early withdrawal of savings 31
32a Alimony paid b Recipient's SSN 32a
33 Add lines 23 through 32a 33
34 Subtract line 33 from line 22. This is your adjusted gross income 34 97,648.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see instructions.

8 **M.B.N.A Amer** PO Box 15026 Wilmington DE 19850-5026 (800) 421-2110

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
43130229975*	01/1994					99						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004						10/2003	02/2004					

Current Status - Account Included in Bankruptcy ; Type of Loan - Credit Card ; Whose Account - Individual Account;

Account History with Status Codes	03/2004	02/2004	01/2004	10/2003	05/2003	12/2002	06/2002	05/2002	03/2002	01/2002	11/2001	10/2001	07/2001	05/2001	04/2001	12/2000	11/2000	10/2000	08/2000	06/2000	02/2000
	3	2	1	1	1	1	2	1	1	1	1	1	1	1	1	3	2	1	1	1	1
	12/1999	09/1999	06/1999	02/1999	10/1998	08/1998	03/1998	09/1997													
	1	1	1	1	1	1	1	1													

9 **Manufacturers & Traders Trust**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
738920*	03/1988	\$59,000				10						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/1999	\$0				\$723	04/1999						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ;

10 **ONONDAGA Bank/Overdraft**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
195882002*	03/1988	\$59,000				15						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/1998	\$0				\$733	02/1998						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Joint Account; ADDITIONAL INFORMATION - Account Transferred or Sold ;

11 **Primus Automotive**

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
626*	02/1997	\$6,719		48 Months		27						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
05/1999	\$0					04/1999						

Current Status - Pays As Agreed ; Type of Account - Installment ; Whose Account - Individual Account; ADDITIONAL INFORMATION - Account Paid/Zero Balance ; Auto ;

The Bon Ton

Account Number	Date Opened	High Credit	Credit Limit	Terms Duration	Terms Frequency	Mths Revd	Activity Description	Creditor Classification				
8601*	12/1995	\$280	\$500			99						
Items As of Date Reported	Balance Amount	Amount Past Due	Date of Last Paymnt	Actual Paymnt Amount	Scheduled Paymnt Amount	Date of Last Activity	Date Maj. Del. 1st Pp'd	Charge Off Amount	Deferred Pay Start Date	Balloon Pay Amount	Balloon Pay Start Date	Date Closed
04/2004	\$0			02/1997		02/1997						

Current Status - Pays As Agreed ; Type of Account - Revolving ; Type of Loan - Charge Account ; Whose Account - Joint Account;

Inquiries that display to companies (may impact your credit score)
 This section lists companies that requested your credit file. Credit grantors may view these requests when evaluating your credit worthiness.

Company Information	Inquiry Date(s)
Genesee Regional Bank	09/2003 06/2003
The Credit Bureau:3301 ONTARIO NATIONA	08/2002

February 16, 2005

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

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

Dear Mr. Reiber:

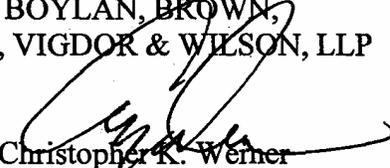
Pursuant to your request at the adjourned 341 Hearing, enclosed please find a copy of the relevant portion of Mr. and Mrs. DeLano's Abstract of Title for the period of the purchase of their home at 1262 Shoecraft Road, Penfield, New York in 1975, through their Lyndon Guaranty refinance of April 23, 1999. We also enclose the HUD-1 Settlement Statement, together with their attorney's Closing Statement.

It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of \$18,746.69 to Mr. and Mrs. DeLano. Of this cash, \$11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

Please advise what, if anything, further you require.

Very truly yours,

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


Christopher K. Werner

CKW/trm
Enclosures

cc: Richard Cordero (*w/ enclosures*)

4. Church of the Holy Spirit of Penfield New York

Warranty Deed

-To-

Dated July 16, 1975
Ack. same day
Rec. same day at 12:18 P.M.

David G. DeLano and
Mary Ann DeLano, his wife
(2nd parties not certified)

Liber ~~4865~~¹²² of Deeds, page ~~188~~

Conveys same as #1 with same interest in and to
Shoecraft Road and subject to same easements, covenants
and restrictions.

Being the same premises conveyed to first party by
Liber 3679 of Deeds, page 489.

This deed executes pursuant to a court order signed
by Hon. Joseph G. Fritsel, Justice of the Supreme Court on
July 15, 1975 and filed in Monroe County Clerk's Office
July 16, 1975.

Contains Lien Fund Clause.

Revenue Stamps for \$35.75 affixed.

Note: Order of the Supreme Court dated July 15,
1975 is recorded herewith.

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5.

David G. DeLano and
Mary Ann DeLano, his wife
Mortgage to secure \$26,000.00
Part Purchase Price

CORRECTLY DISCHARGED OF RECORD
6-13-88 1418 Dis 320

-To-

BY Wtzel

Dated July 16, 1975
Ack. same day
Rec. same day at 12:18 P.M.

Columbia Bank and Loan Association
and Loan Association

PER

CAS

Liber ~~4000~~ of Mortgages, page 196

Conveys same as #1 together with same interest
in Shoecraft Road and subject to same easements, covenants
and restrictions.

ma
3/10/88

6.

David G. DeLano

Mortgage to secure \$7,467.18

Mary Ann DeLano

CORRECTLY DISCHARGED OF RECORD

Dated November 30, 1977

-To- 6-14-88 1419 Dis 142

Ack. same day

BY Mtse

Rec. December 1, 1977 at 10:39 AM

Columbia Banking, Saving
and Loan Association
COLONY ABSTRACT CORP

Liber 4488 of Mortgages, page 152

PER CAB

Conveys same premises as No. 1.

Subject to all covenants, easements and restrictions of record, if any, affecting said premises.

Being the same premises conveyed to the first parties by deed recorded in Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

*ma
3/10/88*

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PUBLIC ABSTRACT CORPORATION

A corporation duly established under the Laws of the State of New York, in consideration of one or more dollars to it paid, hereby Certifies to the record owners of an interest in or specific lien upon the premises hereinafter referred to or described that it has examined the Grantor and Mortgagor Indexes to the Records in the office of the Clerk of the County of Monroe, in the State of New York, for Deeds of Conveyance, Wills, Powers of Attorney and Revocations thereof, Mortgages, Indexes for General Assignments, Affidavits of Foreclosure, assignments of Mortgages, Sheriff's Certificates of Sales, Homestead Exemptions, Lien Book of Welfare Commissioners, Miscellaneous Records, Orders Appointing Receivers, Mortgage Book of Loan Commissioners of the United States Deposit Fund, Leases, Contracts, Notices of Pendency of Action, State Criminal Surety Bond Liens, Individual Surety Bond Lien Docket and Index of Incompetencies, and also the indexes to estates in the office of the Surrogate of said County, against the names of the parties appearing in the foregoing Abstract of Title as owning or having an interest in the premises hereinafter described, during the record period

of such ownership respectively from and including the date October 5, 1965.....
.....
to the date hereof.

And that it finds the items set forth in the foregoing Abstract of Title, and nothing more, and that said items are correctly set forth, and that there is nothing more in said indexes which appears to affect the premises or any part thereof, described in Liber 3679.....
of Deeds....., at page 489..... in said Clerk's Office, set forth in said Abstract of Title in No. 1..... on the margin hereof (except liens or incumbrances correctly discharged of record.)

3..... NUMBERS.

And **PUBLIC ABSTRACT CORPORATION** further Certifies that no judgment appears upon the docket books to have been docketed during the last 10 years, and no Collector's Bond filed and indexed during the last 20 years, and no Financing Statements affixed to Real Property indexed during the last 5 years, and no Federal Tax Lien filed and indexed during the last six years and one month, Lien or Lien Bond filed and indexed during the last year, in said Clerk's Office, against any of the persons who appear from the foregoing Abstract of Title to have held any title to said premises during said periods, which is a lien on said premises, except as correctly set forth in said Abstract of Title; that the items set forth in the foregoing Abstract of Title, including those taken from the records and files of the office of the Surrogate of Monroe County, are correctly abstracted.

and also Certified for
Mechanics' Liens indexed
during the past year.

In Witness Whereof, the Corporation has caused these presents to be signed by an Authorized Officer, this 10th day of June..... 19 75 at 8:59 o'clock A. M.

PUBLIC ABSTRACT CORPORATION

No. 13735.....
By Donald Nastasi Authorized Officer
Abstracted by D. Nastasi.....

Continued by B.J. Fischette..... for premises at
No. 1 with Nos. 4 and 5 added......

and redated July 16,..... 19 75 at 12:18P. M..... and re-issued.

Bernard J. Fischette Authorized Officer

(over)

ABSTRACT OF TITLE

-TO-

PART LOT #45

TOWNSHIP 13, RANGE 4

EAST SIDE SHOECRAFT ROAD

TOWN OF PENFIELD

MAPS:

Hopkins Atlas, Volume 5, Plate 13

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1.

David G. DeLano and Mary Ann DeLano Mortgage to secure \$7,467.18

CORRECTLY DISCHARGED OF RECORD

-To- 6-14-88 1419 Dis 142 Dated November 30, 1977
Ack. same day
Rec. December 1, 1977

BY M. J. Jell
Columbia Banking and Loan Association, Saving and Loan Association
COLONY ABSTRACT CORP Liber 4488 of Mortgages, page 152

Conveys ~~HER1 that tract or parcel~~ of land situate in the Town of Penfield, County of Monroe and State of New York, being a part of Lot No. 45, Township 13, Range 4, commencing at a point on the east street line of Shoecraft Road a distance of 1085.36 feet northerly from a point where the north street line of State Road intersects the east street line of Shoecraft Road; thence in an easterly direction making an interior angle of 90° with the east street line of Shoecraft Road, a distance of 200 feet; thence in a southerly direction making an interior angle of 90° with the last described course, a distance of 100 feet; thence in a westerly direction making an interior angle of 90° with the last described course a distance of 200 feet to the east line of Shoecraft Road; thence in a northerly direction along the east street line of Shoecraft Road a distance of 100 feet to the point and place of beginning. X

Also hereby intending to mortgage any and all interest that the mortgagor may have in and to the bed of Shoecraft Road.

Subject to all covenants, easements and restrictions of record if any affecting said premises.

Being the same premises conveyed to the mortgagors herein by Deed dated July 16, 1975 and recorded in Monroe County Clerk's Office on July 16, 1975 in Liber 4865, page 122.

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3-30-99*

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2. David G. DeLano
Mary Ann DeLano, his wife

Mortgage to secure \$59,000.00

to

Dated: March 29, 1988

Ack: same day

Rec: same day @ 4:14 PM

Columbia Banking Federal
Savings and Loan Association

Liber 8682 of Mortgages, page
81

Conveys same premises as #1.

Subject to covenants, easements and restrictions of record.

Being same premises conveyed by deed recorded in Monroe County
Clerk's Office in Liber 4865 of Deeds, page 122.

#33516

ABSTRACT OF TITLE

- TO -

LOT #9

ROMAN CREST SUBDIVISION

1262 SHOECRAFT ROAD

TOWN OF PENFIELD

MAPS: HOPKINS ATLAS, VOLUME 5, PLATE 13

FOUR CORNERS ABSTRACT CORPORATION

1.

David G. DeLano
Mary Ann DeLano,
husband and wife

- TO -

Columbia Banking Federal
Savings and Loan Association

Mortgage
To Secure: \$59,000.00
Dated: March 29, 1988
Ack: Same Date
Rec: March 29, 1988
Liber 8682 of Mortgages, page 81
Mortgage#: CE033444

Covers [^]ALL THAT TRACT OR PARCEL OF LAND, situate in the
Town of Penfield, _vCounty of Monroe, and State of New York, being a part of
Lot No. 45, Township 13, Range 4, commencing at a point on the east street line
of Shoecraft Road a distance of 1085.36 feet northerly from a point where the
north street line of State Road intersects the east street line of Shoecraft Road;
thence in an easterly direction making an interior angle of 90° with the east street
line of Shoecraft Road, a distance of 200 feet; thence in a southerly direction
making an interior angle of 90° with the last described course, a distance of 100
feet; thence in a westerly direction making an interior angle of 90° with the last
described course a distance of 200 feet to the east line of Shoecraft Road; thence
in a northerly direction along the east street line of Shoecraft Road a distance of
100 feet to the point and place of beginning. _x

Subject to all covenants, easements and restrictions of record, if any, affecting said premises.

Being the same premises conveyed to the Mortgagors herein by Deed dated July 16, 1975 and recorded in the Monroe County Clerk's Office in Liber 4865 of Deeds, page 122.

2.

David G. DeLano
Mary Ann DeLano

Mortgage
To Secure: \$29,800.00
Dated: September 13, 1990
Ack: Same Date
Rec: September 14, 1990
Liber 10363 of Mortgages, page 38
Mortgage#: CH016334

- TO -

Central Trust Company
BY *[Signature]*
FOUR CORNERS ABSTRACT
BY *[Signature]*
Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

3.

Columbia Banking Federal
Savings and Loan Association

Assignment of Mortgage
Dated: November 26, 1991
Ack: Same Date
Rec: December 27, 1991
Liber 893 of Assignments of Mortgages,
page 402
Mortgage#: N/A

- TO -

Federal Home Loan Mortgage
Corporation

Assigns mortgage at #1.

4.

David G. DeLano
Mary Ann DeLano

- TO -

Manufacturers and Traders Trust
Company

Mortgage
To Secure: \$46,920.60
Dated: December 13, 1993
Ack: Same Date
Rec: December 27, 1993
Liber 12003 of Mortgages, page 507
Mortgage#: CK039604

Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

5.

David G. Delano and
Mary Ann Delano

- TO -

Lyndon Guaranty Bank of New
York

Mortgage
To Secure: \$95,000.00
Dated: April 23, 1999
Ack: Same Date
Rec: April 28, 1999 @ 10:31 a.m.
Liber 14410 of Mortgages, page 132
Mortgage#: CQ002917

Covers same as #1.

FOUR CORNERS ABSTRACT CORPORATION

MORTGAGE CLOSING STATEMENT

Date: April 23, 1999

File No: LYN05-0125

Property: 1262 Shoecraft Road, Town of Penfield

Mortgagors: David G. Delano and Mary Ann Delano

Amount of Mortgage: \$95,000.00

Rate: 8.5%

LOAN CLOSING EXPENSES

To: Lyndon Guaranty Bank of New York

Interest for 4/28/99 - 4/30/99	\$ 67.29
Flood Certification Fee	22.50
Tax Service Fee	75.00
Tax and Insurance Escrow	1,527.24

\$1,692.03

To: Monroe County Clerk

Mortgage Tax	\$ 687.50*
Record Mortgage	55.00
Record Discharge of Mortgages (3)	49.50

\$ 792.00

To: Four Corners Abstract

Title Insurance	\$ 485.00
Redate Abstract	75.00

\$ 560.00

To: Gullace & Weld

Attorney fees	\$ 400.00
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(2)

To: M&T Bank	
Payoff Home Equity #23764242001	\$20,032.14
To: M&T Mortgage Corp.	
Mortgage Payoff #920182-3	<u>\$52,777.14</u>
	TOTAL
	\$76,253.31

We Acknowledge Receipt of the Proceeds of said Loan and direct that they be disbursed as follows:

<u>As above</u>	\$76,253.31
<u>David G. Delano and Mary Ann Delano</u>	<u>18,746.69</u>
TOTAL	<u><u>\$95,000.00</u></u>

David G. Delano

Mary Ann Delano

***Mortgagee Tax \$237.50**

**U.S. Department of Housing and Urban Development
Optional Form for Transactions without Sellers**

Name & Address of Borrower: DAVID G. DELANO MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	Name & Address of Lender: LYNDON GUARANTY BANK OF NEW YORK 3670 MT. READ BOULEVARD ROCHESTER NY 14616
Property Location: (if different from above) 1262 SHOECRAFT ROAD PENFIELD, NY 14580	Settlement Agent: GULLACE & WELD Place of Settlement: 1800 MAR MDLND PLZ ROCHESTER, NY 14604
Loan Number:	Settlement Date: APRIL 23, 1999

L. Settlement Charges	M. Disbursement to Others
800. Items Payable In Connection with Loan	
801. Loan Origination Fee 0.000 %	1501. M&T BANK - PAYOFF MO 52,777.14
802. Loan Discount 0.000 %	1502. M&T BANK - HOME EQUI 20,032.14
803. Appraisal Fee to \$ (POC)	1503.
804. Credit Report to \$ (POC)	1504.
805. Lender's Inspection Fee to:	1505.
806. Mortgage Insurance Application Fee to:	1506.
807. Assumption Fee	1507.
808. Tax Service Contract to: 75.00	1508.
809. Underwriting Fee	1509.
810. Administration Fee	1510.
811. Application Fee 0.00	1511.
812. Commitment Fee	1512.
813. Warehouse Fee/Interest Differential	1513.
814. Yield Spread Premium \$ (POC)	1514.
815. Service Release Premium \$ 0.00 (POC)	1515.
816. Origination Fee Due Broker 0.00	1520. TOTAL DISBURSED (enter on line 1603) 72,809.28
817. FHA Upfront MIP/VA Funding Fee	
818. FLOOD CERTIFICATION FEE 22.50	
819.	
820.	
821.	
822.	
823.	
824.	
825.	
900. Items Required by Lender to be Paid in Advance	
901. Interest from 4/28/99 to 4/30/99 @ \$ 22.43 per day 67.29	
902. Mortgage Ins. Premium for months to	
903. Hazard Ins. Premium for year(s) to	
904. Flood Ins. Premium for year(s) to	
905.	
1000. Reserves Deposited with Lender	
1001. Hazard Insurance 2 months @ \$ 29.92 per month 59.84	
1002. Mortgage Insurance months @ \$ per month	
1003. City Property Taxes months @ \$ per month	
1004. County Property Taxes 7 months @ \$ 77.88 per month 545.16	
1005. Annual Assessments months @ \$ per month	
1006. Flood Insurance months @ \$ 0.00 per month 0.00	
1007. SCHOOL 10 months @ \$ 138.38 per month 1,383.80	
1008. months @ \$ per month	
1009. Aggregate Analysis Adjustment -461.56	
1100. Title Charges	
1101. Settlement or Closing Fee to	
1102. Abstract or Title Search to FOUR CORNERS ABST 75.00	
1103. Title Examination to	
1104. Title Insurance Binder to	
1105. Document Preparation to	
1106. Notary Fees to	
1107. Attorney's Fees to GULLACE & WELD 400.00	
1108. Title Insurance to FOUR CORNERS ABSTRACT 485.00	
1109. Lender's Coverage \$	
1110. Owner's Coverage \$	
1111.	
1112.	
1200. Government Recording and Transfer Charges	
1201. Recording Fees; Deed \$;Mtg \$ 55.00 ; Rel \$ 49.50 104.50	
1202. City/County Tax/Stamps; Deed \$;Mtg \$	
	N. NET SETTLEMENT

818. FLOOD CERTIFICATION FEE	22.50		
819.		1510.	
820.			
821.		1511.	
822.			
823.		1512.	
824.			
825.		1513.	
900. Items Required by Lender to be Paid in Advance			
901. Interest from 4/28/99 to 4/30/99 @ \$ 22.43 per day	67.29	1514.	
902. Mortgage Ins. Premium for months to			
903. Hazard Ins. Premium for year(s) to		1515.	
904. Flood Ins. Premium for year(s) to			
905.		1520. TOTAL DISBURSED (enter on line 1603)	72,809.28
1000. Reserves Deposited with Lender			
1001. Hazard Insurance 2 months @ \$ 29.92per month	59.84		
1002. Mortgage Insurance months @ \$ per month			
1003. City Property Taxes months @ \$ per month			
1004. County Property Taxes 7 months @ \$ 77.88per month	545.16		
1005. Annual Assessments months @ \$ per month			
1006. Flood Insurance months @ \$ 0.00per month	0.00		
1007. SCHOOL 10 months @ \$ 138.38per month	1,383.80		
1008. months @ \$ per month			
1009. Aggregate Analysis Adjustment	-461.56		
1100. Title Charges			
1101. Settlement or Closing Fee to			
1102. Abstract or Title Search to FOUR CORNERS ABST	75.00		
1103. Title Examination to			
1104. Title Insurance Binder to			
1105. Document Preparation to			
1106. Notary Fees to			
1107. Attorney's Fees to GULLACE & WELD	400.00		
1108. Title Insurance to FOUR CORNERS ABSTRACT	485.00		
1109. Lender's Coverage \$			
1110. Owner's Coverage \$			
1111.			
1112.			
1200. Government Recording and Transfer Charges			
1201. Recording Fees; Deed \$;Mtg \$ 55.00;Rel\$ 49.50	104.50		
1202. City/County Tax/Stamps: Deed \$;Mtg \$		N. NET SETTLEMENT	
1203. State Tax/Stamps: Deed \$;Mtg \$ 687.50	687.50		
1204.		1600. Loan Amount	95,000.00
1300. Additional Settlement Charges			
1301. Survey to		1601. Plus Cash/Check from Borrower	\$ 0.00
1302. Pest Inspection to			
1303. Architectural/engineering services to		1602. Minus Total Settlement Charges (line 1400)	\$ 3,444.03
1304. Building Permit to			
1305.		1603. Minus Total Disbursements to Others (line 1520)	72,809.28
1306.	0.00		
1307.		1604. Equals Disbursements to Borrower (after expiration of any applicable rescission period required by law)	\$ 18,746.69
1308 WEBSTER	0.00		
1400. Total Settlement Charges (enter on line 1602)	3,444.03		

Borrower(s) Signature(s)
 x David P. DeLano

DM

x May Grudle-Lano

Form HUD-1A (2/95)
 ref. RESPA

Dr. Richard Cordero

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

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

February 22, 2005

Mr. George M. Reiber
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

Re: Documents produced by Att. Werner for DeLanos, dkt. no. 04-20280

Dear Trustee Reiber,

I received a copy of the cover letter of 16 instant that Att. Christopher Werner sent you together with some documents. The latter failed to answer the question that was asked at the adjourned 341 meeting on 1 February and that the DeLanos were supposed to answer through document production, namely:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

The table below presents the information discussed at the 341 meeting:

The DeLanos' Mortgages

	Source of data	Account holder	Lender	Account no.	Year loan		Amount borrowed
					taken	refinanced	
1.	DeLanos at 341 meeting on 1 Feb 05	D=David D Mary D=M	Monroe Bank	?	1976	1985	\$32,000
2.	Equifax 7/23/4; pg 6	M	M&T Bank	7389 20	03/1988	last activity April 99	\$59,000
3.	Equifax 7/23/4; pg 6	M	ONONDAGA Bank Overdraft:	1958 8200 02	03/1988	last activity Feb 98	\$59,000
4.	Equifax 7/23/4;pg 6	D	Genesee Regional Bank	7732 3892 0006 0002	April 1999	\$70K+ still outstanding	\$95,000

Where did all the money paid go or is?

Far from answering this question, the documents produced only raise many more questions. To begin with, those documents are incomplete, just as were the documents that Att. Werner produced on behalf of the DeLanos on June 14, 2004. In fact, Att. Werner admits their incompleteness when in his cover letter he states that he has produced only "a copy of the *relevant portion* of Mr. DeLano and Mrs. DeLano's Abstract of Title" (emphasis added). Since he is the one making the production and is presumed to know the best evidence rule of Rule 1002 of

the Federal Rules of Evidence, he should know better than to try to prove anything with writings that not only are not the originals, but are also not complete. Consider the following:

1. The first document in the stapled bundle is untitled and begins with “4. Church of the Holy Spirit of Penfield New York”. Thus, it is referred to here as the Church document. It bears the words “Public Abstract Corporation” printed vertically on its left margin. On a second page there is paragraph 6, after which there are no signatures or any other indication that that page is the last one of the document. One can reasonably expect that if the mortgagee wants to enforce this document against the mortgagors, the former would require the latter to sign it somewhere. What this document shows is that somebody wrote the names of the DeLanos on two sheets of paper. This document can hardly be complete. In addition, note that:
 - a) The relation of the Church of the Holy Spirit to the mortgages referred to in paragraphs 5 and 6 is not stated. This is particularly intriguing because paragraph 4 states that “This deed executes pursuant to a court order signed by Hon. Joseph G. Fritsel, Justice of the Supreme Court on July 15, 1975”. Why was a court involved in this transaction and what kind of transaction does this document bear witness to? Where is that court order and what are its terms?
 - b) In paragraph 4 it is printed “Dated July 16, 1975”, but in the left margins of this and the following page it is handwritten “ona 3/10/88”. To add more confusion, in paragraph 6 it is printed “Dated November 30, 1977”. When was this document first and last used and what was it used for?
 - c) Paragraph 5 states “Mortgage to secure \$26,000.00 Part Purchase Price Dated July 16, 1975”, and the other part?, that is, what is the whole of which this is a part? Was there a down payment and, if so, what was its amount and where did the money come from?
 - d) Moreover, paragraph 6 states “Mortgage to secure \$7,467.18 Dated November 30, 1977”. It is quite obvious that paragraphs 5 and 6 refer to two different transactions that took place more than two years apart. Hence, paragraph 5 refers to “Liber 4000 of Mortgages, page 196”, while paragraph 6 refers to “Liber 4488 of Mortgages, page 152”. In addition, how was a mortgage amount arrived at that includes 18¢?
 - e) While at the 341 meeting on February 1, Mr. DeLano stated that it was Monroe Bank that lent the \$32,000 of the mortgage taken in 1976, paragraphs 5 and 6 of this document refers to Columbia Bank, Saving, and Loan Association, yet another party that had never been mentioned previously. So what was the role of Monroe Bank in all these transactions and since when?
2. The document titled “Public Abstract Corporation” –PAC hereinafter- states at the bottom “over” but the back of that page is empty and its continuation is nowhere else. That document is incomplete too.
 - a) PAC refers to “Liber 3679 of Deeds, at page 489”. This is the reference found in paragraph 4 of the Church document, which concerns a “Warranty Deed” and involves the Church of the Holy Spirit. However, there is no express relationship between these two documents.
 - b) This lack of relationship becomes even more pronounced upon noting that PAC was signed on July 16, 1975, while there is written in the margins of the Church document “ona 3/10/88”.

- c) PAC states at the bottom of its single page “for premises at No. 1 with Nos. 4 and 5 added”. What are the premises at No. 1? Where are presumably paragraph “No. 1” and Nos. 2 and 3?
- d) Moreover, since paragraph 6 of the Church document refers to a mortgage “Dated November 30, 1977” and PAC was signed on July 16, 1975, where are paragraph 6 and who knows what other paragraphs of the Church document as it stood all the way to its end on that date of 1975? What kind of mix and match of incomplete documents is this?!
3. There is another document whose first printed line is “U.S. Department of Housing and Urban Development”. It is referred to here as the HUD document and appropriately enough, for how did HUD the institution become involved in any of these mortgages at all? That cannot be fathomed from this document, whose first sequential section is “L. Settlement Charges” and its last is “N. Net Settlement”. This document most likely forms part of something else which was not produced. As a matter of fact, it is titled “Optional Form for Transactions without Sellers”. “Optional” in what kind of standard “Transactions”? Hence, this document is incomplete. It is nonetheless very interesting.
- a) Indeed, the HUD document introduces yet another party that was not mentioned at the 341 meeting, to wit, Lyndon Guaranty Bank of New York, as lender. So when and how did the present holder of the mortgage contract, Genesee Regional Bank, as stated in Schedule D of the DeLanos’ petition, come into the picture? If Genesee was formerly known as Lyndon, where is the document that attests to that change of name so as to exclude that there was a refinancing by Genesee of a mortgage loan originally made by Lyndon?
- b) Something else comes in through the HUD document, for the box “Name & Address of Borrower:” is filled in thus:

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

However, the box “Property Location: (if different from above)” is filled in differently:

David G. DeLano
 Mary Ann DeLano
 1262 Shoecraft Road
Penfield, NY 14580 (emphasis added)

It is reasonable to ask how the DeLanos live in Webster but the property that is the subject of the mortgage is located in Penfield. This brings to mind the Church document, whose first line is “4. Church of the Holy Spirit of Penfield New York”.

- c) The HUD document also shows a quite strange 3.75” square of white space in the middle of the right column. What was that space left empty for? Was it always empty?
- d) The HUD document concerns a loan for \$95,000. Financial institutions, however, rarely make a mortgage loan for 100% of the value of the property that secures it; rather, they make it for less, and depending on the credit rating of the borrower and other debts, even for considerably less. Given the deplorable credit history of the DeLanos as portrayed by each of the credit bureau reports already produced, at what value was this property located in Penfield appraised for this “Settlement” dated “April 23, 1999”?

- e) In this vein, what was being 'settled' by this HUD document?
- f) Neither the HUD document nor the other documents make any reference to the loan of \$59,000 from ONONDAGA Bank.

The above analysis should suffice to show that the documents produced are incomplete. Why their production was made thus needs to be investigated and determined. Obviously, the DeLanos must produce the missing parts; but this time not just as photocopies of what Att. Werner considers "relevant". Rather, the whole **originals** of the documents bearing on mortgages on, and title to, any and all of their real property must be produced and then we make the copies.

The other two documents in the stapled bundle, one by Colony Abstract Corporation consisting of two pages and the other by Four Corners Abstract Corporation with four pages; and the single loose page document titled "Mortgage Closing Statement" raise many more questions. However, the evidence shows that you are neither willing nor able to find the answer to them.

The fact is that for weeks you pretended to be investigating the DeLanos while, as it turned out undisputedly, you were not and first asked for documents by your letter of April 20, 2004, sent at my instigation. You allowed the DeLanos not to produce any documents for months and then conveniently moved to dismiss on June 15, 2004. You have refused to subpoena any documents and have even claimed that you do not know whether you have power to subpoena. When the DeLanos untimely moved to disallow my claim in a transparent attempt to eliminate me from the case, you gave your tacit approval, for handling this case would be so much easier for you too if I were not around requesting that you investigate it, as you are required to do and I am entitled to request that you do under 11 U.S.C. §§704(4) and (7).

When Judge John C. Ninfo, II, suspended every other court proceeding in the case until the DeLanos' motion to disallow is determined and all its appeals are resolved, you pretended to have been thereby forbidden to conduct the adjourned 341 meeting. It took me a lot of effort, time, and money to appeal to all your superiors to get you to agree to hold it; yet you wanted to limit it to one hour, thus disregarding the series of meetings implied by §341. Nor did you object to Judge Ninfo's court proceedings suspension, although it not only lacks any basis in law, but also redounds to the detriment of each and all the other 20 creditors in this case, whose interests you are supposed to represent. Were you true to your duty to them, you would be advocating for me to remain on the case because through my efforts the other creditors stand the chance of being paid 100% of their claims if assets concealed by the DeLanos are found, while without me the creditors will at best get the meager 22¢ on the dollar that the DeLanos propose to pay under their debt repayment plan, with which you are satisfied, for a saving to them of \$144,660 plus all the interest that will not accrue and that they will not have to pay. On whose side are you?

That question is warranted by your attitude at the 341 meeting. There the DeLanos were supposed to be examined by answering the questions of the creditors. Instead, you allowed Att. Werner to force himself to be heard as much as both of the DeLanos, although neither he nor you could provide any basis in law for such conduct, let alone for his micromanaging the meeting under the threat of walking out of it together with the DeLanos if I did not limit myself to shooting questions at the pace he wanted. Nonetheless, you must know, as certainly as Att. Werner does, that a 341 meeting is neither a deposition nor a court proceeding subject to the Federal Rules applicable to an examination in court, nor is it a "341 Hearing", as he mistakenly but revealingly calls it in his February 16 letter.

In fact, creditors are mostly lay people that know little and are not required to know anything about the Federal Rules to attend and participate in such a meeting. They are there just to ask questions as they would in any other setting, except that they are legally entitled to distrust the debtors and treat them as if they had committed fraud. As for you, who are supposed to work “for the benefit of general unsecured creditors whom the trustee represents”, as stated under §704 and its Legislative Report, you were required to adopt that inquisitorial attitude toward the debtors, as is unequivocally provided under §343 in its Statutory Note thus:

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

Far from adopting that legally required attitude, you once more allowed Att. Werner to refuse to produce any documents to account for the scores of thousands of dollars that the DeLanos have charged since “1990 and prior card purchases”, a phrase that they used 15 times in their Schedule F. Incidentally, the word “purchase” is normally used when one buys goods rather than when one pays for services. Since the DeLanos stated that they have not taken a vacation in two years and anyway do not go on expensive vacations or eat out expensively, it is all the more pertinent to ask what goods they bought and where they are. It sounds like a question that stands to reason. They can answer it by producing their credit card statements for the period that they themselves put in play. But you refused my request that they produce them.

Nor is your curiosity as a trustee that must look for ‘improperly disposed of or concealed assets’ any better. It is not piqued by even the fact that for over 15 years the DeLanos have made such credit card purchases without restraint and accumulated a credit card debt of a whopping \$98,092, but at the end of their two worklives, including Mr. DeLano’s 32 years as a bank officer and, as stated in Schedule I, currently as a *loan* officer at M&T Bank, who as such is an expert in managing borrowed money, they claimed in Schedule B that their household goods are worth just \$2,810! That claim defies common sense and should have intrigued you enough to investigate. It is even ludicrous given that the DeLanos earned more than 100 times that amount in just three years, that is, \$291,470 in the 2001-03 fiscal years, according to their petition and the 1040 IRS forms that they produced. Nonetheless, you would not ask them to produce checking and savings account statements of even those recent years to determine their earnings’ whereabouts. You refused my request although today many banks make account statements for the last few years available online and some even accompany them with the images of the cancelled checks, so that it would have been quite easy for the DeLanos to produce and for you to obtain them, not to mention that they have an obligation to keep the statements that they have received.

What is more, you allowed Att. Werner to say repeatedly at the meeting that if I want any such documents, I have to subpoena them myself. However, it is patently obvious that since the DeLanos are petitioning to be permitted to escape having to pay all their debts to the detriment of the creditors, it is their obligation, not the creditors’, to prove that they deserve that permission because their claims in the petition are true and supportive of bankruptcy relief. In addition, it is not my legal responsibility to conduct any investigation of the debtors. It is yours. And how could you have failed to take issue with Att. Werner’s admission that he destroyed documents that the DeLanos provided him for the preparation of their petition? That is a felony so serious that under 18 U.S.C. §1519 it carries a maximum sentence of 20 years in prison! Is it because he destroyed documents that he cannot produce them now?

Likewise, you accepted uncritically the testimony of the DeLanos at the 341 meeting that at present they have only one credit card, namely, the one issued by First Premier Bank that Mr. DeLano uses every three months to pay for his medication, whereas Mrs. DeLano has none at all. However, for more than 15 years they have had scores of credit cards and have used them in a skip and pay pattern so that they have failed to make their minimum payments a staggering 279 times at least. It is highly unlikely that people like them would all of a sudden give up their habit of using credit cards as means of payment, let alone that Mrs. DeLano now pays cash for all her expenses. The implausibility of those statements is corroborated by the facts: The last credit bureau reports requested on July 23 and 26, 2004, show that as of that very month the DeLanos made payments on more than one credit card.

Credit Cards on Which the DeLanos Made Payments Between Just January and July 2004

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of last payment & amount if stated in the report
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	January 2004
2.				Capital One Bank	4862 3621 5719*	February 2004
3.			D	Genesee Regional Bank		June 2004
4.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	February 2004
5.	Experian	July 26, 04	D	Bank of Ohio	4266 8699 5018	May 2004: \$197
6.			D	Bk I TX	4712 0207 0151...	May 2004: \$205
7.			D	Fleet M/C	5487 8900 2018...	May 2004: \$172
8.			D	HSBC Bank USA	5215 3170 0105...	February 04: \$160
9.			D	MBGA/JC Penney	80246...	July 2004: \$57
10.			D	First Premier Bank	4610 0780 0310...	July 2004: \$48
11.	Experian	July 26, 04	M	Fleet M/C	5487 8900 2018...	May 2004: \$172
12.			M	MBGA/JC Penney	80246...	July 2004: \$57
13.	TransUnion	July 26, 04	M	JC Penney/MBGA	1069 9076 5	July 2004

Given that the stay that became effective upon the DeLanos filing their petition in January 2004, barred the credit card issuers from undertaking collection efforts, there would be no reason for the DeLanos to pay old charges. They must have made those payments to their credit cards to keep them current so that they can continue using them.

Now Att. Werner submits these documents, though **1)** incomplete due to his self-serving determination of their relevancy; **2)** incapable of explaining the flow of mortgages over the years and their sediment of equity in the DeLanos' home; and **3)** at odds with information provided by the DeLanos previously. He too should have known better than to submit them, for according to his own statement at the hearing on July 19, 2004, he 'has been in this business for 28 years'. By the same token, he should know that he is subject to the constraints of FRBkrP Rule 9011(b) and to the NY Code of Professional Responsibility: Canons and Disciplinary Rules, in particular DR 7-102, all the time.

So what could possibly have led Att. Werner to think that these documents would pass muster with you, Trustee Reiber? Did he know that you just humored me at the 341 meeting on February 1, but that in the end you would not make on him any requirement other than what could be met with this pretense of a document production? Is he aware that you have a conflict of interests, for on March 8, 2004, you vouched in open court for the good faith of the DeLanos' petition before you ever requested them any supporting document, and now you would incriminate yourself if you were to conduct a proper investigation that demonstrated that the DeLanos have committed fraud, particularly concealment of assets, and that you could have suspected that if only you had read critically their petition, let alone requested of them proof for their implausible and intriguing claims?

If you can assess the character and determination of a person, you must know that, if you do not, I will find evidence for my assertions. It will indict your competency and due diligence, to begin with. This is the moment for you to cut your losses; otherwise, you will dig yourself into a deeper hole from which you will be unable to come out. Therefore, I respectfully request that you:

1. recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; if you refuse to do so,
2. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that are unrelated to the parties and with whom neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to **a)** establish a chronologically unbroken title to any such property; **b)** determine the value of their equity and outstanding debts; and **c)** *follow the money!*, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" to date;
3. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:
 - a) current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion; and
 - b) the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks;
4. request that the DeLanos:
 - a) produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date, the period that they put in play in Schedule F,
 - b) state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;
 - c) attend a 341 meeting in the afternoon of Monday, February 28, or the morning of March 1, where they must produce the originals of all the title and mortgage documents that they have and answer questions about those that Att. Werner produced. Please note that the evidentiary hearing on the motion to disallow is scheduled for March 1, at 1:30 p.m.

I would appreciate it if you would call me as soon as possible to discuss this letter and let me know where you stand on the issues raised here and the requests that I have made.

Sincerely,

Dr. Richard Cordero

GEORGE M. REIBER

CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

February 24, 2005

585-427-7225
FAX 585-427-7804

Christopher K. Werner, Esq.
2400 Chase Square
Rochester, NY 14604

Dear Mr. Werner,

Re: David & Mary Ann Delano BK #04-20280

Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage.

Thank you for your cooperation and consideration.

Very truly yours,

GEORGE M. REIBER

GMR/mb
XC: Dr. Richard Cordero (FAX)

March 10, 2005

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

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

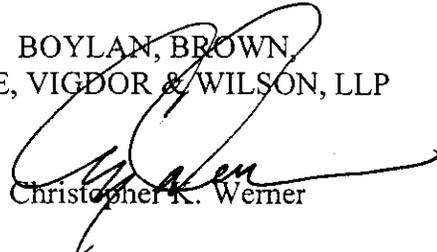
Dear Mr. Reiber:

In response to your letter dated February 24, 2005, we enclose herewith the County Clerk's records of discharge of Columbia Banking mortgages as filed June 13, 1988 and June 14, 1998, together with Discharges of Mortgage by M&T Bank filed April 28, 1999, September 1, 1999 and April 10, 2000, to the extent they may also be relevant.

I have not reviewed the actual documents themselves, but only the electronic records index with the County Clerk. If you think it's necessary, a complete title search will have to be obtained to establish the outstanding liens. Please advise.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosures

cc: David G. and Mary Ann DeLano
Mr. Richard Cordero

Dr. Richard Cordero

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

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

March 19, 2005

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

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

Dear Mr. Werner,

I have received a copy of your letter to Trustee George Reiber of 10 instant. However, I did not receive the enclosures. I trust you remember what Trustee Reiber told you in his letter to you of June 16, 2004:

I notice that you did not copy Dr. Cordero in on your correspondence. I will be forwarding him copies of everything you have sent me. In the future, please make sure Dr. Cordero is copied on everything. I do not intend to be a conduit for information being passed between parties in interest.

It is appropriate to note that:

- 1) you refused for months to provide the Trustee and me any documents concerning the DeLanos, so much so that he moved to dismiss "for unreasonable delay";
- 2) subsequently, you failed to produce all the documents requested by Trustee Reiber, as I showed in Table 1 of my letter to you of September 29, 2004;
- 3) you also failed to produce the documents that I requested from you pursuant to his letter to both of us of March 12, 2004; and
- 4) you refused to provide me with even a single document that I requested to defend against your motion to disallow my claim against Mr. DeLano.

Do you think that an objective observer informed of all the facts may find it reasonable to be concerned that you may still be reluctant and even fail to provide me with a copy of all the documents that you or the DeLanos have or that you send to the Trustee?

In this vein, it is appropriate to ask you whether you think that an impartial trier of facts may deem your failure to copy me in on enclosures to the Trustee despite his express instruction for you to do so as evidence that you might not copy your clients on correspondence that I send you.

Therefore, I respectfully request that you send me a list of all the documents that you have sent to Trustee Reiber in connection with his request at the examination of the DeLanos on February 1, including those referred to in the above-mentioned letter to him of March 10, and that you also send me a copy of all such documents themselves.

Sincerely,

Dr. Richard Cordero

March 24, 2005

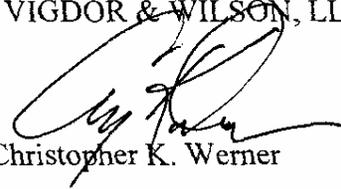
Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208

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

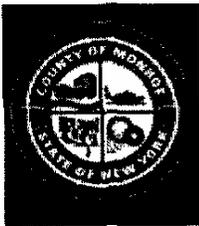
Dear Dr. Cordero:

Enclosed please find copies of the enclosures to our letter to Trustee Reiber of March 10, 2005, which were apparently omitted from your copy of the correspondence. These documents are also a matter of public record and are accessible to the public at the website indicated at the bottom of the documents.

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
cc: David G. and Mary Ann DeLano



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Select one of the options below to Process Information

Name	Party Desc	Party Type	RECORD DT	Parties	Property	Notations	Refers To	More Entries	View Image/Purcha	Reference #1	Reference #2	C
COLUMBIA BANKING FEDERAL SAVIN	DSCHARGOR	1	19880614	N	N							
Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?							
DSCHG OF MTG	S04	1	S014190142	Y								

DeHano



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Name	Party Desc	Party Type
COLUMBIA BANKING FEDERAL SAVIN	DSCHARGOR	1
DELANO DAVID G	DSCHARGE	2
DELANO MARY ANN	DSCHARGE	2

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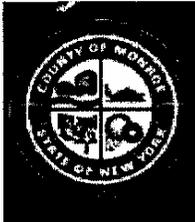
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Prop Type	Description
4	* L4488 P152



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Parties		Property	Notations	Refers To	More Entries	View Image/Purcha	
Name	Party Desc	Party Type	RECORD DT			Reference #1	Reference #2
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Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	1	S014180320	Y			



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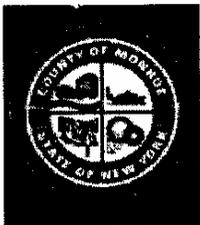
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Name	Party Desc	Party Type
COLUMBIA BANKING FEDERAL SAVIN	DSCHARGOR	1
DELANO DAVID G	DSCHARGEE	2
DELANO MARY ANN	DSCHARGEE	2

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Prop Type	Description
4	* L 4000 P 196



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		Parties	Property	Notations	Refers To	More Entries	View Image/Purcha
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Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	2	S023420479	Y	N		



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Name	Party Desc	Party Type
DELANO DAVID G	DSCHARGE	2
DELANO MARY ANN	DSCHARGE	2
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1

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Prop Type	Description
1	00WYC 19990428



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Parties		Property	Notations	Refers To	More Entries	View Image/Purcha	
Name	Party Desc	Party Type	RECORD DT			Reference #1	Refe #
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1	20000410	N	N	M#CK 039604	
Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?		
DSCHG OF MTG	S04	2	S024240500	Y	N		



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Name	Party Desc	Party Type
DELANO DAVID G	DSCHARGE	2
DELANO MARY ANN	DSCHARGE	2
MANUFACTURERS AND TRADERS TRUS T COMPANY	DSCHARGOR	1

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1	00LAC 20000410



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		Parties	Property	Notations	Refers To	More Entries	View Image/Purcha	
Name	Party Desc	Party Type	RECORD DT			Reference #1	Refe #	
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Doc Description	Doc Type	Pages	Book/Page	VER?	CHG?			
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Prop Type	Description
1	00WYC 19990901

Dr. Richard Cordero

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

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

March 29, 2005

Trustee George M. Reiber [copied to Trustees Martini & Schmitt]
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

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

Dear Trustee Reiber,

I received a copy of the letter that Christopher Werner, Esq., sent you on 10 instant. However, he failed to send me the enclosures. So I wrote to him on March 19 and let him know that by not sending them to me, he had disregarded what you had told him in your letter to him of June 16, 2004:

I notice that you did not copy Dr. Cordero in on your correspondence. I will be forwarding him copies of everything you have sent me. In the future, please make sure Dr. Cordero is copied on everything. I do not intend to be a conduit for information being passed between parties in interest.

Now I have received a letter from him, dated March 24, containing 14 printouts of screenshots of index pages on the website of the Monroe County Clerk's Office, of which I am sending you a copy. I can only assume that they represent a copy of everything in the enclosures that he sent you. But even Att. Werner can realize that they have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement in the mortgage of the U.S. Department of Housing and Urban Development (HUD), etc. They are useless to prove anything!

Mr. Werner may have realized it, which would explain why he wrote in his letter to you:

I have not reviewed the actual documents themselves, but only the electronic records index with the County Clerk.

That statement does not secure for Att. Werner plausible deniability. What he did send show that those documents are objectively incapable of providing the information that you requested from him. Indeed, in your letter of last February 24 you wrote to him thus:

Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage. Thank you for your cooperation and consideration.

In light of your concerns thus expressed, how could Att. Werner think that by not checking the documents and instead sending useless screenshots he was making a reasonably calculated effort to provide the necessary information to put your concerns to rest? Did he expect you to do his homework for him by going to the County Clerk's website to look for "the actual documents themselves" and determine whether they contained the information concerning the mortgage to Columbia and HUD's involvement?

Hence, it is most intriguing that you did not protest to Att. Werner for having sent you those useless screenshots. Did you even look at the documents that he sent you? Did you ever intend to look at them when you expressed your concerns about the DeLanos' mortgages? The foundation for these questions is that 1) only after I faxed to you my letter of February 22 where I pointed out the insufficiency of the documents that Att. Werner had produced with his letter of February 16 did you write to him to express those concerns on February 24; 2) only after I stated my objections of March 4, 2004, to the confirmation of the DeLanos' debt repayment plan and had to keep insisting on the basis of 11 U.S.C. §704(4) and (7) that you obtain supporting documents from them did you ask Att. Werner for any documents whatsoever in your letter of April 20, months after they had filed their petition of January 26, 2004; 3) only after I had to appeal all the way to the Trustees' Office in Washington, D.C; to exercise my right to examine the DeLanos did you give up your refusal to hold such examination; etc. There is a pattern here: Only if I keep pushing you to obtain information do you ask for it. Would it appear to a reasonable person informed of all the circumstances that you rubberstamped the DeLanos' petition and now are asking for documents just to humor me but with no intention to find out what their financial situation is? Are you wasting my effort, time, and money by dragging me through a charade?

These circumstances beg the question whether Att. Werner sent you but not me those documents on March 10 because he expected you not to look at them, let alone notice their uselessness, while he knew that I would. This is supported by the fact that it was I who raised the question about mortgages at the examination of the DeLanos on February 1, 2005, in your office. Then you asked for documents from them and Att. Werner. Mr. DeLano stated that he had those documents at home. You gave them two weeks to produce them. So why do they take two months not to produce them? Why did they send you useless screenshots when they could have sent you copies of the documents that Mr. DeLano admitted he had at home? The answer is that this is part of their pattern of refusal to produce documents and so much so that months after you requested, at my instigation, documents from them and received none, you moved for dismissal on June 15, 2004, for "unreasonable delay".

By now it should be obvious to you too that the delay is not just unreasonable, it is intentional. If the DeLanos were in real financial difficulty so as to justify their filing for bankruptcy and they could establish the good faith of their petition by producing documents that they even admit having at home, it would be irrational for them to be throwing away thousands of dollars in legal fees to have Att. Werner for more than a year withhold those documents and others that you have requested, not to mention all those that I have requested. Their conduct, however, is rational if those documents are so incriminating that out of self-preservation they feel they must conceal them. In so doing, they are only managing to violate time and again the provision at 18 U.S.C §152(8) on 'the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor'.

Just as the DeLanos have chosen to keep compounding their initial fraud in what they chose to state in their petition rather than cut their losses by admitting what they did and bargain for a plea, you, Trustee Reiber, must choose your stance toward the indisputable fact of their concealment of documents. Therefore, I ask once more the same question that I asked at the examination last February:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage

loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

The answer is in the documents that they are so intent on not producing. However, the answering documents are not just those relating to mortgages, but also those that show the whereabouts of the money that the DeLanos have earned for so many years, including the \$291,470 in the 2001-03 fiscal years alone, and that today should be reflected in their all but 100% equity in their home at 1262 Shoecraft Road in Webster. If in the 29 years since their 1976 mortgage they have barely managed to acquire ownership of one fifth of their home appraised at \$98,500 in November 2003, what else have they instead managed to acquire?

Therefore, I respectfully request that you:

1. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that is unrelated to the parties and with whom neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to **a)** establish a chronologically unbroken title to **any** such property; **b)** determine the value of their equity and outstanding debts; and **c)** *follow the money!*, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" -the period that they put in play 15 times in Schedule F- to date;
2. request that the DeLanos:
 - a) produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date; and
 - b) state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;
3. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:
 - a) the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks; and
 - b) current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion;
4. if you are not willing or able not just to ask for, but also obtain the necessary documents, including those already requested but still not produced, recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; and
5. send me copies of documents that Att. Werner may send you, without prejudice to his obligation to send them directly to me.

I look forward to receiving a written response from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

April 19, 2005

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
55 Whitehall Street, 21st Floor
New York, NY 10004

faxed to (212) 668-2255

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

Dear Trustee Martini,

Please find herewith a copy of my Designation of Items and a Statement of Issues relating to my appeal to the District Court from Judge Ninfo's decision of 4 instant in the DeLano case. Through the appellate process I will argue the suspicious circumstance that neither Judge Ninfo, Trustee Reiber, nor Trustee Schmitt wants to investigate Mr. David DeLano, a 32 year veteran of the banking industry and currently a loan officer who files for bankruptcy after earning together with his wife in just the 2001-03 fiscal years \$291,470, whose whereabouts nobody wants to find out. Must Mr. DeLano be protected lest he talk about compromising bankruptcy goings-on?

Now there is the issue of the DeLanos' mortgages, about which Trustee Reiber appears not to want to learn too much. Indeed, at the examination of the DeLanos, which took place only after overcoming the Trustee's opposition, I raised the following question:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

Only at my instigation did Trustee Reiber ask for clarification after the DeLanos' attorney provided incomplete mortgage information. His response was even more unsatisfactory: printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office that have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc.

Despite my request, the Trustee has not commented on such useless documents, which I faxed to you on March 29. I am still entitled to an answer from him for the same reasons that he held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how he, or for that matter you, as an officer of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057(a). Not to do so would aid and abet fraud.

Thus, I respectfully request that you replace Trustee Reiber by a trustee capable of investigating this matter or report it under §3057 to the DoJ in Washington, not Rochester or Buffalo. Please let me know what you intend to do.

Sincerely,

Dr. Richard Cordero

Add:682

Dr. Cordero's letter of April 19, 2005, to Region 2 Trustee Martini

Dr. Richard Cordero

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

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

April 21, 2005

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

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

Dear Trustee Reiber,

Please find herewith a copy of my Designation of Items and a Statement of Issues relating to my appeal to the District Court from Judge Ninfo's decision of 4 instant in the DeLano case.

By contrast, I have not received your response to my letter of March 29, where I requested that you comment on the submission to you at your request by Att. Werner of information about the DeLanos' mortgages. What he submitted with his letter of March 24 consisted of printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office. If you are satisfied with his submission, I would like to know why, for those index pages, as I pointed out, have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc. If, on the contrary, you are not satisfied, I would also like to know why and what you intend to do about securing the information that you requested when in your February 24 letter you asked him thus:

Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage. Thank you for your cooperation and consideration.

I am still entitled to an answer from you for the same reasons that you held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how you, as an officer working on behalf of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057. Not to do so would aid and abet fraud. In the DeLanos' case, there is evidence of their fraud, beginning with the \$291,470 that they earned in just the 2001-03 fiscal years and whose whereabouts nobody knows, particularly since you have refused to ask them for documents, such as bank account statements, that could show where that money is.

In addition, you have the question of their mortgages, which remains unanswered and as relevant to the issue of their concealment of assets, on which Judge Ninfo's decision has no bearing whatsoever, as it was when I asked it at the examination last February 1, to wit:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage

loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

The facts contained in that question, which the DeLanos admitted at their February 1 examination or provided in their bankruptcy petition, and the fact that they have obstructed finding its answer by refusing to produce documents, so much so that you moved to dismiss their case, constitute credible evidence for the belief that they have committed bankruptcy fraud. That belief is strengthened by the fact that in the 29 years since their 1976 mortgage they have barely managed to acquire ownership of one fifth of their home appraised at \$98,500 in November 2003. So where have they put the hundreds of thousands of dollars that they have earned since?, a most pertinent question because at their examination they stated that they have lived a modest life, have not taken expensive vacations, eaten at fancy restaurants, or made luxury purchases.

Therefore, I respectfully request that you:

1. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that is unrelated to the parties and with which neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to **a)** establish a chronologically unbroken title to **any** such property; **b)** determine the value of their equity and outstanding debts; and **c)** *follow the money!*, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" -the period that they put in play 15 times in Schedule F-to date;
2. request that the DeLanos:
 - a) produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date; and
 - b) state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;
3. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:
 - a) the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks; and
 - b) current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion;
4. if you are not willing or able not just to ask for, but also obtain the necessary documents, including those already requested but still not produced, recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; and
5. send me copies of documents that Att. Werner may send you, without prejudice to his obligation to send them directly to me.

I look forward to receiving a written response from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

April 21, 2005

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
Federal Office Building
100 State Street, Room 6090
Rochester, NY 14614

faxed to (585) 2635862

Re: §341 examination of the DeLanos, dkt. no. 04-20280

Dear Trustee Schmitt,

I have not received your answer to my request in my letters to you of March 1, 10, and 21 that you state your position on my letter to Trustee Reiber of February 22. It is quite suspicious that neither you, Trustee Reiber, nor Judge Ninfo want to investigate Mr. David DeLano, a 32 year veteran of the banking industry and currently a bank loan officer who files for bankruptcy after earning together with his wife in just the 2001-03 fiscal years \$291,470, whose whereabouts nobody wants to find out. Must Mr. DeLano be protected lest he talk about compromising bankruptcy goings-on?

Now there is the issue of the DeLanos' mortgages, about which Trustee Reiber appears not to want to learn too much. Indeed, at the examination of the DeLanos, which took place only after overcoming Trustee Reiber's opposition, I raised the following question:

If the DeLanos obtained a mortgage loan of \$32,000 from Monroe Bank in 1976; and another mortgage loan of \$59,000 from M&T Bank in 1988 as well as another mortgage loan of \$59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for \$95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only \$21,416 and still owe a mortgage debt of \$77,084, as they declared in Schedule A of their petition?

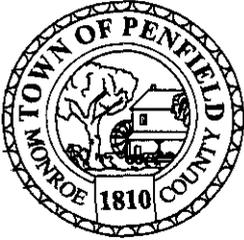
Only at my instigation did Trustee Reiber ask for clarification after the DeLanos' attorney provided incomplete mortgage information. His response was even more unsatisfactory: printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office that have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc.

Despite my request, the Trustee has not commented on such useless documents, which I faxed to you on March 29. I am still entitled to an answer from him for the same reasons that he held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how he, or for that matter you, as an officer of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057(a). Not to do so would aid and abet fraud.

Hence, I respectfully request that you replace Trustee Reiber by a trustee capable of investigating this matter or report it under §3057 to the DoJ in Washington. Please do reply to this letter.

Sincerely,

Dr. Richard Cordero



TOWN OF PENFIELD

Assessor's Office

1587 Jackson Road, Penfield, NY 14526

August 16, 2007

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

Dear Dr. Cordero:

Pursuant to our telephone conversation, I am sending you the information we have on file for 1262 Shoecraft Road, i.e.:

- the assessed value of the property is \$116,000 as of the 2005 town-wide revaluation
- the property sold April 23, 2007, for \$135,000

In reference to your questions (Nos. 1 through 12) regarding mortgages, we do not carry mortgage filing here. For that you will need to contact the County Clerk's Office:

Cheryl Dinolfo, County Clerk
101 County Office Building
39 West Main Street
Rochester, NY 14614

tel: (585) 753-1600
fax: (585) 753-1624

If you have any questions, please feel free to contact this office at (585) 340-8610.

Respectfully,

Ann Buck, IAO
Sole Assessor

AB:ja

cc: Cassie Williams, Town Clerk

APN:264200-094-020-0001-012-000

REAL PROPERTY TAX ASSESSOR RECORD

Tax Roll Certification Date:07-01-2006
Owner Information Current Through:04-12-2007
County Last Updated:05-04-2007
Current Date:05/31/2007
Source:TAX AS-
SESSOR

MONROE, NEW YORK

OWNER INFORMATION

Owner(s): **DELANO DAVID G**
DELANO MARYANN
Property Address:**1262 SHOECRAFT RD**
WEBSTER, NY 14580-8954
Mailing Address:**1262 E SHOECRAFT S RD**
WEBSTER, NY 14580
Phone:585-671-8833

PROPERTY INFORMATION

County:MONROE
Assessor's Parcel Number:264200-094-020-0001-012-000
Property Type:SINGLE FAMILY RESIDENCE - TOWNHOUSE
Land Use:SINGLE FAMILY RESIDENCE
Zoning:2
Homestead Exempt:HOMEOWNER EXEMPTION
Lot Size (acres or square feet):20037
Lot Acreage:0.4600
Width Footage:100
Depth Footage:200
Municipality:PENFIELD
Legal Description:0045-13-04 ROMAN CR 1 L9
01360000000018162
Block Number:1
Lot Number:12

TAX ASSESSMENT INFORMATION

Tax Year:0000
Land Value:\$36,700.00
Improvement Value:\$79,300.00
Total Value:\$116,000.00
Valuation Method:ASSESSED
Tax Code Area:264200

BUILDING/IMPROVEMENT CHARACTERISTICS

Number of Buildings:1
Year Built:1956
Living Square Feet:1249
Number of Bedrooms:3
Number of Bathrooms:1.00
Full Baths:1
Fireplace:YES
Garage Type:ATTACHED
Number of Stories:100
Style/Shape:RAN
Exterior Wall Type:ALUMINUM/VINYL
Electricity:TYPE UNKNOWN
Heat:HA0
Fuel:OIL
Water:COMMERCIAL
Sewer:PRIVATE

ADDITIONAL PROPERTIES POSSIBLY CONNECTED TO OWNER have been located. The owner's mailing address is associated with other properties as indicated by tax assessor records. Additional charges may apply.

Call Westlaw CourtExpress at 1-877-DOC-RETR (1-877-362-7387)
to order copies of documents related to this or other matters.
Additional charges apply.

END OF DOCUMENT

(as of 8/19/7)

**The DeLanos' String of Eight Known Mortgages
and the Valuation of their Only Real Property
and its Real Market Value**

David Gene DeLano, born on September 1, 1941, and his wife, Mary Ann DeLano, born on September 21, 1944, bought on July 16, 1975, the property on 1262 Shoecraft Road, Town of Penfield, by taking out a mortgage for \$26,000. That was the first of eight known mortgages that the DeLanos took on that same property and through which they obtained a known total of \$382,187.

Preparing for retirement, they filed a bankruptcy petition on January 27, 2004, when Mr. DeLano was a 39-year veteran of the banking and financing industries, working precisely as an officer in the bankruptcy department of M&T Bank, and Ms. DeLano was a Xerox technician. They listed that property in [Schedule A](#) as their only real property, had it appraised two months earlier at \$98,500, and declared that their mortgage was still \$77,084 and their equity only \$21,416...after making monthly mortgage payments for 30 years!

Question 1: Where did \$382,187, the proceeds of those eight mortgages, and their mortgage payments go, particularly since the DeLanos listed in [Scheduled B](#) that they had in cash and on account only \$535, although they reported in their [Statement of Financial Affairs](#) and their [1040 IRS forms](#) for the three years preceding their filing that they had earned \$291,470? Were assets concealed and, if so, which and where?

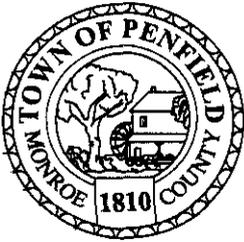
Moreover, a public record obtained through [WestLaw](#) puts the value of the same property at 1262 Shoecraft Road, Webster, NY 14580-8954, assessed by the County of Monroe and updated as of May 4, 2007, at \$116,000.

Question 2: How could that property increase in value in 3.5 years by \$17,500, i.e., 18%, in a market going down for years? Was the valuation declared in Schedule A fraudulent?

The DeLanos have submitted some [mortgage documents](#), though incomplete. They can be found below together with their [bankruptcy petition](#), their [1040 IRS forms](#), the [WestLaw](#) public record, and an [Equifax credit report](#) concerning what are deemed to be two of the eight mortgages. The most salient data on these documents is presented on the [table](#) of their income, receipts, and borrowings below.

Nevertheless, those documents contain with respect to both that property and the mortgages some technical references that may be useful in searching the property records to find the answer to the above questions. A summary of those references is as follows: (D:# is the page number of the documents in this file.)

1. (D:345) property on Shoecraft Road, Liber 3679 of Deeds, page 489;
2. (D:342) sold by the Church of the Holy Spirit of Penfield, NY, to David Gene and Mary Ann DeLano by warranty deed on July 16, 1975, Liber 4865 of Deeds, page 122;
3. (D:342) mortgaged on July 16, 1975, Liber 4000 of Mortgages, page 196;
4. (D:343, 345) mortgaged on November 30, 1977, Liber 4488 of Mortgages, pages 152;
5. (D:346-347) mortgaged on March 29, 1988, Liber 8682 of Mortgages, page 81, Mortgage # CE033444;
6. (D:176/9) the DeLanos borrowed \$59,000 in March 1988 from Manufacturers & Traders Trust Bank;
7. (D:176/10) the DeLanos obtained \$59,000 in March 1988 from ONODAGA Bank/Overdraft;
8. (D:348) mortgaged on September 13, 1990, Liber 10363 of Mortgages, page 38, Mortgage # CH016334;
9. (D:348) mortgage assigned on November 26, 1991, Liber 893 of Assignment of Mortgages, page 402;
10. (D:349) mortgaged on December 13, 1993, Liber 12003 of Mortgages, page 507, Mortgage # CK039604;
11. (D:350-352) mortgaged on April 23, 1999, Liber 14410 of Mortgages, page 132, Mortgage # CQ002917
12. (D:353-354) involvement of the U.S. Department of Housing and Urban Development in a settlement dated April 23, 1999



TOWN OF PENFIELD

Assessor's Office

1587 Jackson Road, Penfield, NY 14526

August 16, 2007

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

Dear Dr. Cordero:

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- the property sold April 23, 2007, for \$135,000

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39 West Main Street
Rochester, NY 14614

tel: (585) 753-1600
fax: (585) 753-1624

If you have any questions, please feel free to contact this office at (585) 340-8610.

Respectfully,

Ann Buck, IAO
Sole Assessor

AB:ja

cc: Cassie Williams, Town Clerk

July 7, 2005

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

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

Dear Mr. Reiber:

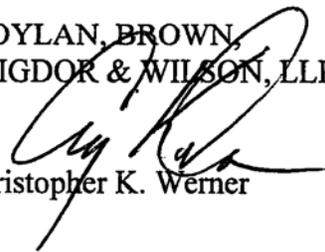
As per our prior correspondence, you have indicated that our application for payment of attorney's fees from the bankruptcy estate could be considered at the currently scheduled July 25, 2005 confirmation hearing at 3:30 p.m. at Bankruptcy Court. As you have suggested, we enclose herewith our statement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

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

We look forward to the hearing on July 25th.

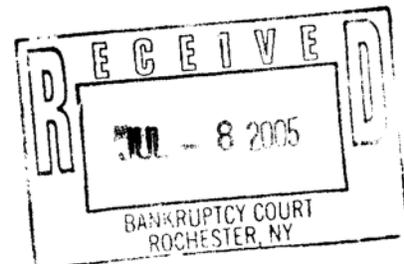
Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP


Christopher K. Werner

CKW/trm
Enclosure

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





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

ATTORNEYS AT LAW

2400 Chase Square
Rochester, NY 14604

June 23, 2005

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

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

030633-00001 Chapter 13

PROFESSIONAL SERVICES

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

Add:872 Att. Werner's list of 6/23/05 of services mostly for DeLanos not to produce documents to Dr. Cordero

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

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

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

\$16,294.50

EXPENSES

Federal Express	13.84
Copy Charges	346.32
	<hr/> \$360.16

BILLING SUMMARY

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

TOTAL NEW CHARGES FOR THIS INVOICE

\$16,654.66

TOTAL BALANCE NOW DUE

\$16,654.66

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

TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

1. Debtor(s) **DAVID G DELANO** Bk.# 04-20280
MARY ANN DELANO

2. Attorney **CHRISTOPHER K WERNER, ESQ** Filing Fees: \$ 185 Paid
 Plan:

A. Summary: \$ 1940 per month by wage order
 \$ 14145* annually **R**

Repayment to secured creditors \$ 6900
 Repayment to priority creditors \$ 16,655
 Repayment to unsecured creditors \$ 4646 ~5% specific estimated

Classification of unsecured creditors None
 Class _____ % \$ _____
 Class _____ % \$ _____

Rejection of executory contracts None

92,920 TOTAL

Other: * Payments decrease to \$635/month in July, 2004; then increase to \$1940/month in August, 2006. Plus proceeds of accounts receivable.

B. Feasibility: **why then returned loan paid**

Total Indebtedness	\$ <u>185462</u>	including mortgages
Monthly Income (net)	\$ <u>4886.50</u> 2946.50	(gross) \$ <u>7501.</u>
Less Estimated Expenses	\$ <u>2946.50</u>	
Excess for Wage Plan	\$ <u>1940.</u>	
Duration of Plan	<u>3</u>	years

why End of Sec a Unemployment

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:
 Interest rate unless otherwise stated: 8 1/4 %

Name of Creditor	Amount of Security	Security Claimed	Perfectured	341 Valuation	Disputed
Capital One Auto	\$ <u>10,285</u>	<u>198 Chevy Blazer</u>	<u>Yes</u>	<u>\$6900</u>	<u>STIP</u>

3. Best interest of creditors test:

A. All assets were listed.

B. Total market value of assets: \$ 256,562

Less valid liens \$ 83734
Less exempt property \$ 171732
Available for judgment liens \$ 2666
Less priority claims \$ 16,655
(Support \$)

C. Total available for unsecured creditors in liquidation \$ 1096 0

D. Amount to be distributed to unsecured creditors \$ 4646

E. Nature of major non-exempt assets:

4. Debtor(s) states that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) states that to the best of his/her/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income - 1) IRA available; 2) loan payment available; 3) pension loan ends 10/35.

8. Debtor requests no wage order because, (+) 2 concerns (1)

9. Other comments: 1) Best Interest \$1255, Attorney fees (OK) AFIS BUT COURT RECALCULATED COMMITMENT CONFIRM ORDER

10. Converted from Chapter 7 because (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: \$ 1350

Additional fees Anticipated? Yes \$ 16,655

Signature of GEORGE M. REIBER TRUSTEE

IN RE:

DeSousa David & MaryAnn

BK. #

04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- Lost employment *(Wife) Age 59*
- Hours or pay reduced *(Husband 62) To delay retirement to complete plan*
- Matrimonial
- Garnishments
- Medical problems
- To receive a Chapter 13 discharge
- Filed a previous bankruptcy proceeding within six (6) years
- Owe priority (example: tax) claims
- Reconstruct credit rating
- To pay back creditors as much as possible *w/ 3 yrs prior to retirement*
- To stop creditor harassment
- To stop foreclosure or other legal proceedings
- To cram down secured liens
- To avoid contracts
- Overextension of credit
- Decline in income from business, commissions or business failure
- Overspending
- Student loans
- Children's college expenses *pre-1990 when wages reduced \$30,000 → 19,000*
- Avoid Chapter 7 substantial abuse charge
- Protect debtor's property
- Others: _____

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

IN RE:

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

**ORDER CONFIRMING
CHAPTER 13**

BK #04-20280

**S.S. #xxx-xx-3894
#xxx-xx-0517**

A Petition was filed by Debtor(s) under Chapter 13 of the Bankruptcy Code, and a meeting of creditors conducted upon due notice pursuant to 11 U.S.C. §341 at which the Chapter 13 Trustee, Debtor(s), and attorney for Debtor(s) were present and creditors or representatives of creditors were afforded an opportunity to be heard.

A hearing on confirmation of the Plan has been held upon due notice pursuant to 11 U.S.C. §1324. The Court has heard and determined all objections to confirmation and to Debtor's Schedules and has considered the Plan as proposed or modified, the Trustee's Report and the testimony of Debtor.

THE COURT THEREFORE FINDS:

- (1) The Plan complies with the provisions of Chapter 13, Title 11, United States Code, and other applicable provisions of Title 11;
- (2) The contents of the plan comply with 11 U.S.C. Section 1322 where applicable;
- (3) The Plan represents the Debtor's reasonable effort and has been proposed in good faith and not by any means forbidden by law;
- (4) The Plan complies with the standards required by 11 U.S.C. Section 1325 for confirmation; and
- (5) Any objections to the plan have been disposed of, and there is presently pending no objection to confirmation of the instant Plan or Debtor's Schedules.

It is accordingly, ORDERED that

- (1) Debtor's Plan under Chapter 13 of the Bankruptcy Code, as proposed or modified, is confirmed.
- (2) Debtor is stayed and enjoined from incurring any new debts in excess of \$500.00 except such debts as may be necessary for emergency medical or hospital care without the prior approval of the Trustee or the Court unless such prior approval was impractical and therefore cannot be obtained.
- (3) Except as provided by specific order of this Court, all entities are and continue to be subject to the provisions of 11 U.S.C. §362 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against Debtor, as the same is defined by §362, and subject to the provisions of 11 U.S.C. §1301 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against a co-debtor, as the same is defined by §1301.

The provisions of the Plan bind the Debtor(s) and each creditor, whether or not such creditor has objected to, has accepted, or has rejected the plan.

The Debtor(s) shall forthwith and until further order of the Court pay to the Trustee in good funds the sum of **\$1940.00 per month by wage order. Payments decrease to \$635.00 monthly in July, 2004; then increase to \$960.00 monthly in August, 2006 when pension loan ends; plus proceeds of mother's annuity.**

(4) A fee of **\$18,005.00** is allowed the attorney for the debtor(s) herein for all services rendered in connection with this Plan, except as otherwise ordered and allowed by the Court.

(6) All of the Debtor(s) wages and property, of whatever nature and kind and wherever located, shall remain under the exclusive jurisdiction of this Court; and title to all of the debtor's property, of whatever nature and kind and wherever located is hereby vested in the debtor during pendency of these Chapter 13 proceedings pursuant to the provisions of 11 U.S.C. §1327.

(7) From the Debtor(s) funds the Trustee is directed to make payments in the following order:

- a. Filing fee to the Clerk of the Court, U.S. Bankruptcy Court (if unpaid);
- b. Retain at all times sufficient funds to pay all other accrued administrative expenses;
- c. The unpaid balance of the above described fee to the debtor's attorney;
- d. Priority payments in full as allowed by the Court, except where priority claims are deferred until payment of the secured claims;
- e. Secured claims shall retain their liens as hereinafter set forth:

<u>CREDITOR</u>	<u>SECURITY</u> <u>VALUE</u>	<u>SECURITY</u>	<u>RATE</u>
Capital One Auto	\$6,900.00	'98 Chevy	8.25%

Until the secured claim is paid in full, the secured creditor shall retain its lien. After the secured claim has been paid in full, the Debtor(s) will be entitled to an immediate lien release. Any timely and properly filed claim which alleges a security interest and is filed subsequent to the Confirmation Hearing shall be allowed as unsecured only for purposes of payment under the plan, except as may otherwise be agreed to by the Debtor(s) and the Court.

f. The balance of funds not retained for administrative expenses or used for payment of secured or priority claims shall be accumulated and distributed to unsecured creditors, as follows.

g. Classified unsecured claims as hereinafter set forth:

<u>CREDITOR</u>	<u>AMOUNT</u>	<u>CLASSIFICATION</u>	<u>DIVIDEND</u>
NONE			

h . General unsecured creditors shall be paid a **pro rata share** of their claims as are finally determined by the Court; notwithstanding the above, the plan will not be deemed completed until the debtor(s) pay(s) three years worth of plan payments, unless allowed unsecured claims are paid in full. No claims shall be allowed unless the creditor shall file a proof of claim within 90 days of the first date set for the First Meeting of Creditors; payment to unsecured creditors as allowed by the Court will be made in monthly installments of not less than \$15.00. **Plan to run 3 years.**

i. Any temporary reduction in, or suspension of installment payments under this plan, for a period not to exceed ten (10) weeks may be granted upon application of the debtor, without notice to creditors, as the Court or Trustee deems proper.

(8) The debtor has rejected as burdensome the following executory contract(s) of the debtor:

NONE

Any claim timely and properly filed by a creditor arising from rejection of such executory contract(s) shall be allowed as if such claim had arisen before the date of the filing of the petition, subject to the right of the debtor or the Trustee to object to the amount of the claim.

(9) The following secured creditors will be paid by the debtor directly. Said secured claims are either being paid pursuant to their original contract or pursuant to new agreements reached between the parties. To the extent that any such new agreements exist, the parties are hereby ordered to execute any and all documents necessary to reflect the new notes and obligations which exist between the parties. In the event of a dismissal of the plan, the secured creditors may reinstate the terms of the original obligations, subject to the further order of this court. All parties will promptly execute any and all documents necessary to be filed. To the extent that the new arrangements reflects an extension of the obligations secured by valid liens filed prior to the filing of the petition, said liens will continue in existence as of the date of the filing of the lien, and not as of the date of the new arrangement between the parties, unless this court orders otherwise or the parties so stipulate otherwise.

<u>CREDITOR</u>	<u>SECURED CLAIM</u>	<u>SECURITY</u>	<u>BASIC TERMS</u>
Genesee Regional	\$76,300.71	Mortgage	Original Contract

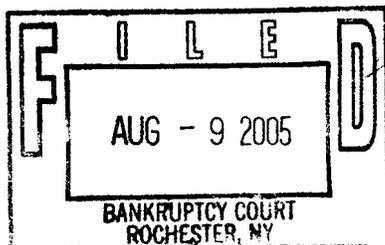
(10) Upon conversion of this case to a case under another chapter, the failure of the debtor to honor bad funds negotiated by the Chapter 13 Trustee shall be deemed a willful failure to obey an order of this Court.

Dated:

8/9/05

Rochester, New York

HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE



United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

IN RE: DAVID G DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

SSN #1: XXX-XX-3894
SSN #2: XXX-XX-0517

MOTION TO ALLOW CLAIMS

Pursuant to 11 U.S.C. 704(5), the trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

Claim #	Name and Address of Creditor	Amount	Forgive %	Classification
001	SHERMAN ACQUISITIONS LP / D/B/A/RESURGENT CAPITAL SERVI PO BOX 10587 / GREENVILLE, SC 29603	1,991.00	87.3900%	Unsecured
002	BANK OF AMERICA / P O BOX 970 NORFOLK, VA 23501	3,335.08	87.3900%	Unsecured
003	B-FIRST, LLC / % WEINSTEIN TREIGER & RILEY, P.S. 2101 FOURTH AVE., STE. 900 / SEATTLE, WA 98121	10,203.24	87.3900%	Unsecured
004	B-FIRST, LLC / % WEINSTEIN TREIGER & RILEY, P.S. 2101 FOURTH AVE., STE. 900 / SEATTLE, WA 98121	5,317.97	87.3900%	Unsecured
005	BANK ONE / CARD MEMBER SERVICE P O BOX 15153 / WILMINGTON, DE 19886-5153	None	87.3900%	Not Filed .00
006	BANK ONE/FIRST USA BANK / PO BOX 517 RECOVERY DEPT / FREDERICK, MD 21705-0517	None	87.3900%	Not Filed .00
007	CAPITAL ONE / P O BOX 85147 RICHMOND, VA 23285	None	87.3900%	Not Filed .00
008	CAPITAL ONE / P O BOX 85147 RICHMOND, VA 23285	None	87.3900%	Not Filed .00
009	CAPITAL ONE AUTO FINANCE / P O BOX 260848 PLANO, TX 75026	6,900.00	8.2500% From 07/25/2005	Secured
009	CAPITAL ONE AUTO FINANCE / P O BOX 260848 PLANO, TX 75026	3,853.28	87.3900%	Unsecured
010	CAPITAL ONE / C/O TSYS DEBT MANAGEMENT P.O. BOX 5155 / NORCROSS, GA 30091	None	87.3900%	Not Filed .00
011	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	11,616.06	87.3900%	Unsecured
012	CHASE MANHATTAN BANK USA / JP MORGAN CHASE 1820 E SKY HARBOR CIRCLE SOUTH / PHOENIX, AZ 85034-9701	None	87.3900%	Not Filed .00
013	CITIBANK/CHOICE / P O BOX 6305 EXCEPTION PYMT PROCESSING / THE LAKES, NV 88901-6305	None	87.3900%	Not Filed .00
014	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	2,227.57	87.3900%	Unsecured
015	SHERMAN ACQUISITIONS LP / D/B/A/RESURGENT CAPITAL SERVI PO BOX 10587 / GREENVILLE, SC 29603	4,170.45	87.3900%	Unsecured
016	DISCOVER FINANCIAL SERVICES / P.O. BOX 8003 HILLIARD, OH 43026	5,755.97	87.3900%	Unsecured
017	DISCOVER FINANCIAL SERVICES / P.O. BOX 8003 HILLIARD, OH 43026	None	87.3900%	Not Filed .00
018	DR RICHARD CORDERO / 59 CRESCENT STREET BROOKLYN, NY 11208-1515	None	87.3900%	Unsecured
019	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	2,137.64	87.3900%	Unsecured
020	GENESEE REGIONAL BANK / F/K/A LYNDON GUARANTY BANK 3380 MONROE AVE. / ROCHESTER, NY 14618			DirectPay 76,300.71
021	HSBC BANK USA / P.O. BOX 4215 BUFFALO, NY 14273-4215	9,447.80	87.3900%	Unsecured
022	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	6,812.31	87.3900%	Unsecured

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United States Bankruptcy Court

For The
Western District of New York

Date: 12/7/2005

Case No: 04-20280

IN RE: DAVID G DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

MARY ANN DELANO
1262 SHOECRAFT ROAD
WEBSTER, NY 14580

SSN #1: XXX-XX-3894
SSN #2: XXX-XX-0517

MOTION TO ALLOW CLAIMS

Pursuant to 11 U.S.C. 704(5), the trustee has examined the proofs of claim filed in this case and objected to the allowance of such claims as appeared to be improper except where no purpose would have been served by such objection. After such examination and objections, if any, the trustee states that claims should be deemed allowed, or "not filed" as indicated below.

Claim #	Name and Address of Creditor	Amount	Forgive %	Classification
023	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	19,272.56	87.3900%	Unsecured
024	ECAST SETTLEMENT CORPORATION / P.O. BOX 35480 NEWARK, NJ 07193-5480	3,931.23	87.3900%	Unsecured
025	CITI CARDS / PO BOX 20363 ATTN: BK DEPT / KANSAS CITY, MO 64195-0363	3,970.30	87.3900%	Unsecured
026	CITI CARDS / PO BOX 20363 ATTN: BK DEPT / KANSAS CITY, MO 64195-0363	None	87.3900%	Not Filed .00
027	WELLS FARGO FINANCIAL NY INC / 4137 121ST STREET URBANDALE, IA 50323	980.22	87.3900%	Unsecured
028	THE RAMSEY LAW FIRM / P.O. BOX 201347 ARLINGTON, TX 76006	None	87.3900%	Unsecured
029	GULLACE & WELD / 500 FIRST FEDERAL PLAZA ROCHESTER, NY 14614	None	87.3900%	Unsecured
030	BECKET AND LEE LLP / P.O. BOX 35480 NEWARK, NJ 07193	None	87.3900%	Unsecured
	Total	101,922.68		

CHRISTOPHER K WERNER, ESQ
BOYLAN, BROWN, ET AL
2400 CHASE SQUARE
ROCHESTER, NY 14604-0000

9,948.00

Debtor's Attorney

Your Trustee has examined the claims and recommends to the Court that they be deemed allowed for the amounts claimed, payable in the manner classified subject to the provisions of the plan and other Court orders.

WHEREFORE, the Trustee prays that the foregoing claims be allowed as set forth above.

/s/ George M. Reiber

George M. Reiber
Standing Chapter 13 Trustee

NOTICE

At Rochester, NY

PLEASE TAKE NOTICE that the above claims are allowed as recommended by the Trustee and payable as provided by the debtor's plan. The debtor and debtor's attorney of record are hereby advised that written application for modification of this notice must be made within 30 days from the date of the certificate of mailing of this notice. The motion to allow claims is deemed approved without a separate order of this Court, absent a written application for modification.

CLERK /s/ Paul R. Warren

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Notice was sent electronically or by ordinary US Mail, postage prepaid on _____ to the debtor and attorney for the debtor.

/s/

TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

1. Debtor(s) **DAVID G DELANO** Bk.# 04-20280
MARY ANN DELANO

2. Attorney **CHRISTOPHER K WERNER, ESQ** Filing Fees: \$ 185 Paid
 Plan:

A. Summary: \$ 1940 per month by wage order
 \$ 14145* annually **R**

Repayment to secured creditors \$ 6900
 Repayment to priority creditors \$ 16,655
 Repayment to unsecured creditors \$ 4646 ~5% specific estimated

Classification of unsecured creditors None
 Class _____ % \$ _____
 Class _____ % \$ _____

Rejection of executory contracts None

Other: * Payments decrease to \$635/month in July, 2004; then increase to \$1940/month in August, 2006. Plus proceeds of accounts receivable.

B. Feasibility: **Why then returned loan paid**
 Total Indebtedness \$ 185462 including mortgages
 Monthly Income (net) \$ 4886.50 ~~2946.50~~ (gross) \$ 7501.
 Less Estimated Expenses \$ 2946.50
 Excess for Wage Plan \$ 1940.
 Duration of Plan 3 years

92,920 TOTAL

Why End of Sec a Unemployment

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:
 Interest rate unless otherwise stated: 8 1/4 %

Name of Creditor	Amount of Security	Security Claimed	Perfectured	341 Valuation	Disputed
Capital One Auto	\$ 10,285	198 Chevy Blazer	Yes	\$ 6900	STIP

3. Best interest of creditors test:

A. All assets were listed.

B. Total market value of assets: \$ 256,562

Less valid liens \$ 83,734

Less exempt property \$ 17,732

Available for judgment liens \$ 2,666

Less priority claims \$ 16,655

(Support \$)

C. Total available for unsecured creditors in liquidation \$ 1,976 0

D. Amount to be distributed to unsecured creditors \$ 4,646

E. Nature of major non-exempt assets:

4. Debtor(s) states that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) states that to the best of his/her/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income - 1) IRA available; 2) loan payment available; 3) pension loan ends 10/35.

8. Debtor requests no wage order because, (+) 2 concerns (1)

9. Other comments: 1) Best Interest \$ 1255, Attorney fees (OK) AFIS BUT COURT REJECTED CONSENT CONFIRM ORDER

10. Converted from Chapter 7 because (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: \$ 1350

Additional fees Anticipated? Yes \$ 16,655

GEORGE M. REIBER TRUSTEE

IN RE:

DeLana David - MaryAnn

BK. #

04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- Lost employment *(Wife) Age 59*
- Hours or pay reduced *(Husband 62) To delay retirement to complete plan*
- Matrimonial
- Garnishments
- Medical problems
- To receive a Chapter 13 discharge
- Filed a previous bankruptcy proceeding within six (6) years
- Owe priority (example: tax) claims
- Reconstruct credit rating
- To pay back creditors as much as possible *w/ 3 yrs prior to retirement*
- To stop creditor harassment
- To stop foreclosure or other legal proceedings
- To cram down secured liens
- To avoid contracts
- Overextension of credit
- Decline in income from business, commissions or business failure
- Overspending
- Student loans
- Children's college expenses *pre-1990 when wages reduced \$30,000 → 19,000*
- Avoid Chapter 7 substantial abuse charge
- Protect debtor's property
- Others: _____

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

IN RE:

**ORDER TO EMPLOYER
TO PAY TRUSTEE**

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

BK# 04-20280

**EMPLOYEE: DAVID G. DELANO
S.S. #~~xxx-xx-3894~~**

Upon representation of the Trustee or other interested party, the Court finds that:

The above-named debtor has pending in this Court a proceeding for the adjustment of debts by an individual with regular income under Chapter 13 of the Bankruptcy Code (Title 11 U.S.C.) and pursuant to the provisions of said statute and the debtor's plan the debtor has submitted all future earnings and wages to the exclusive jurisdiction of this Court for the execution of debtor's plan; and

That under the provisions of 11 U.S.C. §1306 this Court has exclusive jurisdiction of the earnings from service performed by the debtor during the pendency of this case and may require the employer of the debtor, upon the order of this Court, to pay over such portion of the wages or earnings of the debtor as may be needed to effectuate said plan, and that such an order is necessary and proper, now therefore,

IT IS ORDERED, that until further order of this Court the employer of said debtor:

M&T BANK

deduct from the earnings of said debtor the sum of **\$293.08 bi-weekly** to begin on the next payday following the receipt of this order and deduct a similar amount for each pay period there-after, including any period for which the debtor receives periodic or lump sum payment for or on account of vacation, termination, or other benefits arising out of present or past employment of the debtor, and to forthwith remit the sum so deducted to: **GEORGE M. REIBER, TRUSTEE, Chapter 13 Trustee, PO Box 490, Memphis, TN 38101-0490; (585)427-7225; (PLEASE INCLUDE THE DEBTOR'S FULL NAME AND CASE NUMBER ON THE CHECK REMITTED)** and

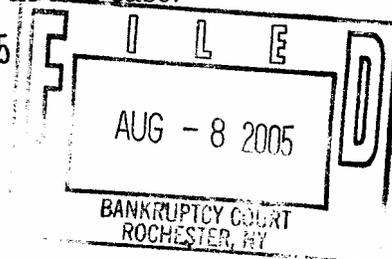
IT IS FURTHER ORDERED, that said employer notify said Trustee if the employment of said debtor be terminated and the reason for such termination; and

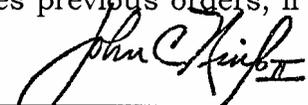
IT IS FURTHER ORDERED, that all earnings and wages of the debtor, except the amount required to be withheld by the provisions of any laws of the United States or laws of any State or political subdivision, or by an insurance, pension, pension loans, current maintenance or support payments or by the order of this Court, be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures; and

IT IS FURTHER ORDERED, that no deductions for or on account of any garnishment, wage assignment, credit union or other purpose not specifically authorized by the Court be made from the earnings of said debtor; and

IT IS FURTHER ORDERED, that this order supersedes previous orders, if any, made to the debtor or employer in this case.

Dated: AUG - 8 2005




**HON. JOHN C. NINFO, II
BANKRUPTCY JUDGE**

Add:940

Judge Ninfo's order of 8/8/5 for M&T Bank to deduct from Mr. DeLano's earnings and pay Trustee

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

IN RE:

**DAVID G. & MARY ANN DELANO,
Debtor(s),**

**ORDER CONFIRMING
CHAPTER 13**

BK #04-20280

**S.S. #xxx-xx-3894
#xxx-xx-0517**

A Petition was filed by Debtor(s) under Chapter 13 of the Bankruptcy Code, and a meeting of creditors conducted upon due notice pursuant to 11 U.S.C. §341 at which the Chapter 13 Trustee, Debtor(s), and attorney for Debtor(s) were present and creditors or representatives of creditors were afforded an opportunity to be heard.

A hearing on confirmation of the Plan has been held upon due notice pursuant to 11 U.S.C. §1324. The Court has heard and determined all objections to confirmation and to Debtor's Schedules and has considered the Plan as proposed or modified, the Trustee's Report and the testimony of Debtor.

THE COURT THEREFORE FINDS:

- (1) The Plan complies with the provisions of Chapter 13, Title 11, United States Code, and other applicable provisions of Title 11;
- (2) The contents of the plan comply with 11 U.S.C. Section 1322 where applicable;
- (3) The Plan represents the Debtor's reasonable effort and has been proposed in good faith and not by any means forbidden by law;
- (4) The Plan complies with the standards required by 11 U.S.C. Section 1325 for confirmation; and
- (5) Any objections to the plan have been disposed of, and there is presently pending no objection to confirmation of the instant Plan or Debtor's Schedules.

It is accordingly, ORDERED that

- (1) Debtor's Plan under Chapter 13 of the Bankruptcy Code, as proposed or modified, is confirmed.
- (2) Debtor is stayed and enjoined from incurring any new debts in excess of \$500.00 except such debts as may be necessary for emergency medical or hospital care without the prior approval of the Trustee or the Court unless such prior approval was impractical and therefore cannot be obtained.
- (3) Except as provided by specific order of this Court, all entities are and continue to be subject to the provisions of 11 U.S.C. §362 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against Debtor, as the same is defined by §362, and subject to the provisions of 11 U.S.C. §1301 insofar as they are stayed or enjoined from commencing or continuing any proceeding or matter against a co-debtor, as the same is defined by §1301.

The provisions of the Plan bind the Debtor(s) and each creditor, whether or not such creditor has objected to, has accepted, or has rejected the plan.

The Debtor(s) shall forthwith and until further order of the Court pay to the Trustee in good funds the sum of **\$1940.00 per month by wage order. Payments decrease to \$635.00 monthly in July, 2004; then increase to \$960.00 monthly in August, 2006 when pension loan ends; plus proceeds of mother's annuity.**

(4) A fee of **\$18,005.00** is allowed the attorney for the debtor(s) herein for all services rendered in connection with this Plan, except as otherwise ordered and allowed by the Court.

(6) All of the Debtor(s) wages and property, of whatever nature and kind and wherever located, shall remain under the exclusive jurisdiction of this Court; and title to all of the debtor's property, of whatever nature and kind and wherever located is hereby vested in the debtor during pendency of these Chapter 13 proceedings pursuant to the provisions of 11 U.S.C. §1327.

(7) From the Debtor(s) funds the Trustee is directed to make payments in the following order:

a. Filing fee to the Clerk of the Court, U.S. Bankruptcy Court (if unpaid);

b. Retain at all times sufficient funds to pay all other accrued administrative expenses;

c. The unpaid balance of the above described fee to the debtor's attorney;

d. Priority payments in full as allowed by the Court, except where priority claims are deferred until payment of the secured claims;

e. Secured claims shall retain their liens as hereinafter set forth:

<u>CREDITOR</u>	<u>SECURITY</u> <u>VALUE</u>	<u>SECURITY</u>	<u>RATE</u>
Capital One Auto	\$6,900.00	'98 Chevy	8.25%

Until the secured claim is paid in full, the secured creditor shall retain its lien. After the secured claim has been paid in full, the Debtor(s) will be entitled to an immediate lien release. Any timely and properly filed claim which alleges a security interest and is filed subsequent to the Confirmation Hearing shall be allowed as unsecured only for purposes of payment under the plan, except as may otherwise be agreed to by the Debtor(s) and the Court.

f. The balance of funds not retained for administrative expenses or used for payment of secured or priority claims shall be accumulated and distributed to unsecured creditors, as follows.

g. Classified unsecured claims as hereinafter set forth:

<u>CREDITOR</u>	<u>AMOUNT</u>	<u>CLASSIFICATION</u>	<u>DIVIDEND</u>
NONE			

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
IN RE:
DAVID G. & MARY ANN DELANO**

CHAPTER 13

BK 04-20280

ORDER DISCHARGING DEBTOR AFTER COMPLETION OF CHAPTER 13 PLAN

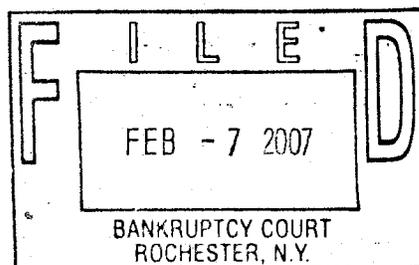
The Court finds that the debtor filed a petition under title 11, United States Code, on January 27, 2004, that the debtor's plan has been confirmed, and that the debtor has fulfilled all requirements under the plan.

IT IS ORDERED THAT:

1. Pursuant to 11 U.S. C. §1328(a), the debtor is discharged from all debts provided for by the plan or disallowed under 11 U.S.C. §502, except any debt:
 - a. provided for under 11 U.S.C. §1322(b)(5) and on which the last payment is due after the date on which the final payment under the plan was due;
 - b. in the nature of alimony to, maintenance for, or support of a spouse, former spouse, or child of the debtor in connection with a separation agreement, divorce decree or other order of a court of record, or property settlement agreement, as specified in 11 U.S. C. §523(a)(5);
 - c. for a student loan or educational benefit overpayment as specified in 11 U.S. C. §523 (a)(8) in a case filed on or after November 15, 1990; or
 - d. for a death or personal injury caused by the debtor's unlawful operation of a motor vehicle while intoxicated from using alcohol, a drug, or another substance, as specified in 11 U.S. C. §523(a)(9),
 - e. for restitution included in a sentence on the debtors conviction of a crime, in a case filed on or after November 15, 1990;
 - f. for a fine included in a sentence on the debtor's conviction of a crime, in a case filed on or after October 22, 1994.
2. Pursuant to 11 U.S. C. §1328(d), the debtor is not discharged from any debt based on an allowed claim filed under 11 U.S.C. §1305(a)(2) if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.
3. Notwithstanding the provisions of title 11, United States Code, the debtor is not discharged from any debt made non-dischargeable by 18 U.S. C. §3613(f), by certain provisions of titles 10,37,38,42 and 50 of the United States Code, or by any other applicable provision of law.
4. All creditors are prohibited from attempting to collect any debt that has been discharge in this case.

DATED: 2/7/07
Rochester, NY


**JOHN C. NINPO, II
BANKRUPTCY JUDGE**



Blank

612 S. Lincoln Road
East Rochester, N.Y. 14445
November 4, 2005

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

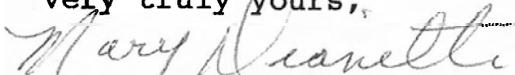
Dear Dr. Cordero:

I received on November 2, 2005 your letter dated October 24, 2005, together with your bank money order for \$650.00 sent by certified mail, wherein you request the transcript of the evidentiary hearing which was held on March 1, 2005.

I am filing the transcript in the Bankruptcy Clerk's office this date and forwarding to you by first-class mail a copy with a PDF copy of the transcript on a CD-Rom and also a money order in the amount of \$26.30.

I am providing a copy of this letter together with your letter of October 24, 2005, to the U.S. Bankruptcy Court and U.S. District Court so that their file may be complete.

Very truly yours,



Mary Dianetti
Bankruptcy Court Reporter

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

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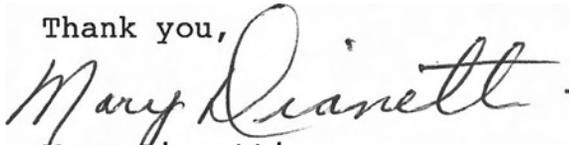
S T A T E M E N T

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

From: Mary Dianetti, Bankruptcy Court Reporter
612 South Lincoln Road
East Rochester, New York 14445

Amount: \$623.70

For transcript of proceedings held on the 1st day
of March, 2005, before The Honorable John C. Ninfo, II,
Bankruptcy Court Judge of the Western District of
New York, in the matter of David & Mary Ann DeLano,
Debtors, BK No. 04-20280.

Thank you,

Mary Dianetti

Bankruptcy Court Reporter

1 UNITED STATES BANKRUPTCY COURT

2 WESTERN DISTRICT OF NEW YORK

3 -----X

4 In re:

5 David & Mary Ann DeLano

6 Debtors. :

7 -----X

8
9 BK No. 04-20280

10
11 Transcript of Proceedings

12 Before The Honorable John C. Ninfo, II

13 United States Bankruptcy Court Judge

14
15 Tuesday

16 March 1, 2005

17 Rochester, New York

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19
20
21 Reported by:

22 Mary Dianetti

23 Bankruptcy Court Reporter

24 612 South Lincoln Road

25 East Rochester, New York 14445

(585) 586-6392

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APPEARANCES:

BOYLAN, BROWN, CODE, VIGDOR & WILSON, LLP
Of counsel: Christopher K. Werner, Esq.
2400 Chase Square
Rochester, New York 14604

UNDERBERG & KESSLER, LLP
Of counsel: Michael J. Beyma, Esq.
1800 Chase Square
Rochester, New York 14604

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

1 THE COURT: Good afternoon. Please be
2 seated.

3 All right. We're here this afternoon for a
4 hearing on the Debtors' July 19th - filed July 22nd -
5 objection to Proof of Claim No. 19 of Richard Cordero
6 in the David and Mary Ann DeLano Chapter 13 case,
7 04-20280. So the first thing I will do is I'll take
8 appearances. It's your claim objection - first of
9 all, let me put your appearance on first.

10 MR. WERNER: Chris Werner, Boylan, Brown
11 attorney for the Debtors.

12 THE COURT: You can remain seated as the
13 microphones work well.

14 MR. BEYMA: Mike Beyma, Underberg & Kessler
15 and M&T Bank.

16 DR. CORDERO: Dr. Richard Cordero, Creditor.

17 THE COURT: Okay, with regard to your
18 appearance Dr. Cordero, are you in fact a licensed
19 attorney in the state of New York?

20 DR. CORDERO: Yes, your Honor, but I'm not,
21 not appearing as attorney. I'm appearing as Creditor.

22 THE COURT: That may be the case, but are
23 you, in fact, a lawyer, No. 2269389?

24 DR. CORDERO: I do not know, your Honor.

25 THE COURT: Admitted in the 2nd Department?

1 DR. CORDERO: Yes, but I'm not a practicing
2 attorney.

3 THE COURT: But you're currently registered,
4 aren't you?

5 DR. CORDERO: Yes.

6 THE COURT: Were you formerly a practicing
7 attorney in New York State?

8 DR. CORDERO: May I ask your Honor a - this
9 case I'm appearing pro se, I do not have to be an
10 attorney.

11 THE COURT: No, I think - but to be quite
12 frank with you, Attorney Cordero, I think throughout
13 these various proceedings, including your petition to
14 several - to the United States Supreme Court, although
15 it may be somewhat carefully crafted I think, many
16 times already almost purposely misleading with respect
17 to your status as a pro se litigant. Yes, you can be
18 a pro se litigant but constantly seem to talk about
19 being a pro se litigant as if you're disadvantaged, as
20 if you don't have the same advantages as a practicing
21 attorney, don't have the same knowing knowledge as an
22 attorney, and so forth.

23 So I think when you take the totality
24 of the circumstances, something you used in your
25 motion for recusal, I would think that you clearly

1 have given this Court, the District Court, the 2nd
2 Circuit and even now the Supreme Court the impression
3 that you're not an attorney, that you just a private
4 citizen, not with any legal training and without, in
5 fact, being registered in New York State as an
6 attorney. That's the relevance.

7 DR. CORDERO: Well, your Honor, I think -
8 at the beginning I stated I was an attorney back in
9 2002. Because I was not a practicing attorney I made
10 the statement that I was a pro se. I am not being held
11 as attorney in doing this and I have never stated
12 that because I am a pro se litigant that I am - had
13 a - and had a disadvantage in terms of knowledge. I am
14 not disadvantaged in terms of not being a member of
15 your local practice of not being a local party, and
16 in terms of why it is that you have shown some bias,
17 because as a pro se litigant it would be easier for you
18 to show that bias and that is the reason why I have
19 said that --

20 THE COURT: Are you now or were you formerly
21 ever associated with the law firm of Heller, Jacobs &
22 Kamlet, LLP?

23 DR. CORDERO: Again, your Honor, I ask what
24 is the relevance of that you are interrogating, you are
25 asking me?

1 THE COURT: I'm asking you questions.

2 DR. CORDERO: Well, I would like to know
3 the basis for those questions.

4 THE COURT: I'd like to have you answer the
5 the question. Are you now or have you ever been
6 associated with Heller, Jacobs & Kamlet?

7 DR. CORDERO: Please, your Honor, since
8 this is a U.S. Court that must proceed according to
9 the rules of law, I request that you state the basis
10 for your interrogating me, asking me these questions.

11 THE COURT: First of all, I'm not
12 interrogating. I'm simply asking you a question so we
13 can clarify that, in fact, you're not a practicing
14 attorney and that you never have been practicing for
15 some period of time, so we can verify the representa-
16 tion you just made to this federal court that you're
17 not a practicing attorney and you haven't been a
18 practicing attorney since you first appeared here in
19 2002. Is that, in fact, the case?

20 DR. CORDERO: That is, in fact, the case.

21 THE COURT: So that you are not now and
22 have not been associated with Heller Jacobs & Kamlet
23 even though the Westlaw lists you as being associated
24 with that firm?

25 DR. CORDERO: I have never been a

1 practicing attorney at - I have never been associated
2 with that firm and I state my objection to your
3 examination.

4 THE COURT: Okay, good. With that said,
5 I do have a recusal motion under 28 U.S.C. 455(a), that
6 was I believe filed with the Court on February 22nd.
7 I can't always tell when things are actually filed.
8 With the ECMF I have the statements that day, so it
9 must have been roughly around that date, although it
10 was dated February 17th, and I don't have all of the
11 papers with respect to it.

12 But did you see a copy of this, Mr. Werner?

13 MR. WERNER: Yes, I did, at least thirty
14 pages.

15 THE COURT: I have read it in detail and
16 so I am thoroughly familiar, Attorney Cordero, with
17 your allegations and your motion.

18 So do you have anything that you would
19 like to put on record, Mr. Werner, with respect to this
20 motion?

21 MR. WERNER: Your Honor, other than a
22 proposal.

23 THE COURT: This seems to be a motion for the
24 Court to recuse himself, not only from this contested
25 matter but also from the prior Chapter 13 case with

1 Mary Ann DeLano.

2 The Court, of course, has previously
3 entertained and denied a motion to recuse itself from
4 the Premier Van Lines case for many of the same
5 reasons I'm going to deny your motion in respect to
6 this motion.

7 With regard to this recusal motion as
8 with the previous one, I do not believe that any
9 person fully familiar with the facts and circumstances,
10 this Chapter 13 case or this contested matter and other
11 related proceedings and correspondence would, any
12 statements and decisions that have been made by me in
13 this case or in the Premier Van Lines case would
14 question my impartiality or believe that I'm biased
15 against you, based on the various decisions and
16 statements I have made in connection with these cases,
17 whether orally or in writing. I don't believe a
18 reasonable person would conclude, and/or any of them
19 demonstrate actual bias or prejudice or impartial
20 or even the appearance of such.

21 I will deny your motion and I will give you
22 a written decision and reserve the right to supplement
23 anything I've said on record or will say now with
24 respect to this, because I read the motion and there
25 are a number of items that seem to be covered. One

1 is a concern that you have with regard to the
2 Section 341 meeting in the DeLano case, and my
3 discussion with you later that day about your practice,
4 and the reality, of course, Attorney Cordero, as you
5 very well know as an attorney, Section 341's are not
6 conducted by the Bankruptcy Court, strictly conducted
7 by the Department of Justice, so how they proceed, how
8 they're managed is not the Court's responsibility.

9 The discussion I had with you in regard to
10 the local practice was nothing more than that, trying
11 to help you, so that you would understand that in the
12 future kinds of situations like that, it's always
13 important, as you know as an attorney, to understand
14 the best, so I was only trying to help you. The
15 reality, local practice are not local practice with
16 regard to Section 341 meetings. It's not the Court's
17 responsibility. It's the Department of Justice's
18 responsibility.

19 With regard to the Discovery Order that
20 you've raised some concerns with, I think I have said
21 this in other decisions that I have written in this
22 case, the Discovery Order that I signed tracked
23 perfectly the July 19 - I believe it was hearing
24 decision that I made. I made a determination as to
25 the breath of discovery I thought you were entitled

1 to that at that time, and even attached a copy of the
2 docket. So with respect to that discovery issue, I
3 had basically ruled on it at the hearing and the order
4 you submitted did not reflect the Court's instruction
5 and discovery after the hearing and the Court did
6 order - didn't reflect that with respect to the claim,
7 and timeliness of the claim objection.

8 Once again, I already addressed that in one
9 of the Court's prior decisions in the case, but
10 certainly the claim objection roughly within seven
11 months of the filing of the case is not in any way
12 untimely, and the Court had previously found there was
13 no laches or waiver with respect to that, with
14 respect to the claim objection, especially when as the
15 Court said in its prior decision there were no
16 indication in the filing of the Proof of Claim that
17 you had any factual or legal basis for a claim against
18 Mr. DeLano.

19 With regard to the severance issue on
20 discovery, the Court once again addressed that in a
21 previous decision on the prior Discovery Order of
22 October 16, 2003, Premier Van Lines case, and entered,
23 and at the time Mr. DeLano had not filed chapter 13
24 and there was no indication he wouldn't file Chapter 13
25 at any point in the future, but once he did file that,

1 he became entitled to have his case proceed into the
2 extent there was something on that prior order in his
3 right to go forward and have his claim objection heard
4 and decided. That claim objection and to have it
5 decided, superseded, and the Court is again to make a
6 written decision on that, because the Court had
7 ruled that what we were going to go forward with, with
8 the claim objection only.

9 The concerns you had about the discovery
10 documents that weren't provided by Mr. Werner or
11 Mr. DeLano because of they're alleging bankruptcy fraud
12 of the Debtors is really irrelevant to the claim
13 objection hearing.

14 As I said, there is no evidence whatsoever
15 that I've seen to date to either the Premier Van Lines
16 case or this case, would indicate that we would have a
17 valid claim.

18 You do have the ultimate burden of proof to
19 prove your claim. Under the Bankruptcy Code even
20 though there is an initial presumption of litany in
21 that in the Court's opinion has been rebutted by, by
22 the sparsity of any facts and circumstances the proof
23 of claim would indicate that you have a claim, so for
24 those various reasons and any other included in my
25 decision, which I will give a written decision on your

1 motion to recuse myself.

2 So with that said, with that said do you
3 want to go forward Attorney Cordero with meeting your
4 burden to prove that you have a valid allowable claim
5 in the DeLano Chapter 13 case?

6 DR. CORDERO: If - first of all, your Honor,
7 I would - Attorney Cordero - that is the way I have
8 always presented me --

9 THE COURT: Your name is Dr. Cordero?

10 DR. CORDERO: Yes, please.

11 THE COURT: How is that you're on your
12 birth certificate?

13 DR. CORDERO: That is the name that I have
14 now since I obtained my degree, my PhD degree. Yes.
15 And Ms. Dianetti, I was going to state that I'm going
16 to speak very slowly so that if you do not understand
17 me, to ask me, because in that way we can eliminate the
18 need for you to state unintelligible, and I would like
19 you to ask also any other party that may say something
20 that you do not understand to repeat himself or herself
21 so that we can keep an accurate record of these, and
22 if you were kind enough to state, whether there is any
23 marking on your stenographic tape for the beginning of
24 this time. Is there any marking in way of referencing
25 where this hearing?

1 (Response was negative.)

2 DR. CORDERO: And thank you very much.

3 And I'm going - beginning now, 1:47, by the
4 clock on the wall of the courtroom.

5 Your Honor, I would like to respond to your
6 decision upon the motion to recuse.

7 THE COURT: I don't think you have a right to
8 respond to the Court's decision. The Court has made
9 its decision. I'll give you a written decision. If
10 you wish to deal with it, you can deal with. We don't
11 have time today for you to respond to the Court's
12 decision. We need to move forward with the claim
13 objection.

14 DR. CORDERO: Very well. At this time I
15 would like to ask a - questions of Mr. DeLano on
16 record.

17 THE COURT: Call him as your witness.

18 Mr. DeLano, take the stand.

19 D A V I D D E L A N O, called herein as a witness, first
20 being duly sworn, testified as follows:

21 THE COURT: You can adjust that microphone.

22 You don't have to reach like into, you can adjust so we
23 can all hear you.

24 DIRECT EXAMINATION

25 BY DR. CORDERO:

1 Q. Mr. DeLano, please state again your name.

2 A. David DeLano.

3 Q. And can you state your current address?

4 A. 1226 Shoecraft Road, Webster, New York.

5 Q. Is that also where you live?

6 A. Yes.

7 Q. You just took an oath to state the truth. Do you
8 regard yourself as a truthful person?

9 A. Very much so.

10 Q. Do you intend to tell the truth and the whole
11 truth in response to any questions?

12 A. Yes.

13 Q. Would you tell the truth if unfavorable to you or
14 to your wife or to your children? Would you tell the truth
15 even if it is unfavorable, it is against your interests or
16 the interests of your wife, of your children?

17 A. Yes, I would.

18 Q. In many oaths that people take they say so help me
19 God.

20 THE COURT: Are you making a statement or
21 asking a question?

22 DR. CORDERO: I'm going to ask a question,
23 your Honor.

24 BY DR. CORDERO:

25 Q. Do you - will abide by that statement, so help me

1 God in telling the truth?

2 A. Yes.

3 Q. Very well. So we understand that you take the
4 oath so seriously that you are telling the truth in the
5 presence of God?

6 A. Yes.

7 Q. Very well. Thank you.

8 What is your current job?

9 A. I am a Relationship Manager at M&T Bank in credit
10 administration.

11 Q. Are you also known as a loan officer?

12 A. No.

13 Q. Did you not state in any of the papers that you a
14 bank officer and also a loan officer?

15 A. I - I'm a bank officer. I'm a loan servicing
16 officer.

17 Q. And when did you begin to work at M&T?

18 A. 1989.

19 Q. 1989?

20 A. That's correct.

21 Q. And for how long have you held your current job
22 there?

23 A. Fifteen years.

24 Q. For how long have you worked as a bank's --

25 A. Thirty-two years.

1 Q. Have you always been a loan servicing officer at
2 M&T?

3 A. Yes.

4 Q. And what prepared you to be a loan servicing
5 officer?

6 A. My background in finance in lending.

7 Q. And will you please state what this background is?

8 A. Worked with financing companies for like seven
9 years before I went into banking and was a lending officer
10 in banking for probably seventeen years.

11 Q. With what company?

12 A. Marine Midland First National Bank.

13 Q. And did you work at that bank for the seventeen
14 years before moving on to M&T?

15 A. Yes.

16 Q. Did you have any academic qualifications for
17 working in banks?

18 A. No.

19 Q. Could you please then state what is your highest
20 academic degree?

21 A. High school.

22 Q. So you have obtained all your knowledge through
23 experience rather than through education?

24 A. Yes.

25 Q. And what is the maximum amount of money that you

1 could approve on say loan servicing officer?

2 MR. WERNER: Your Honor, I object to that
3 line of questioning. I do not see the relevance to
4 the claim of Dr. Cordero.

5 THE COURT: His answer was he had none, so
6 we'll see where we go from here. At some point you
7 will have to tell us where you're going.

8 BY DR. CORDERO:

9 Q. And what is the maximum amount of --

10 THE COURT: He said none.

11 THE WITNESS: As a loan servicing officer,
12 none.

13 BY DR. CORDERO:

14 Q. So as a loan servicing officer what do you do?

15 A. If there's a loan which is - seems to be having a
16 problem in the commercial loan department or any reason it's
17 sent down to my group and credit administration and we
18 service the loan. Do - we either collect the money,
19 liquidate the company, or whatever.

20 Q. When you say you approve, are you saying that
21 there are other people that work for you or that you work
22 for a group?

23 A. I work for a group.

24 Q. You work for a group but you're not head of the
25 group?

1 A. I am not.

2 Q. So you did not have any people that work for you?

3 A. Correct.

4 Q. And how many clients do you deal with at any point
5 in time?

6 A. Maybe seventy-five.

7 Q. And you're in charge of servicing those loans in
8 trouble?

9 A. They don't necessarily have to be in trouble, but,
10 yes, I'm in charge of servicing those loans.

11 Q. And when one of those loans is in trouble, was
12 this of what happens that to David Palmer?

13 A. What institution is associated with?

14 Q. Well, I was going to ask you the question. Did
15 you do - you know David Palmer?

16 A. I met him once.

17 Q. When did you meet him?

18 A. 2002. Probably 2002/2001.

19 Q. But you cannot be more specific than that?

20 A. No.

21 Q. And under what circumstances did you meet David
22 Palmer?

23 A. I went to the meeting because of a collection
24 problem related to his company loan with the bank.

25 Q. And do you know when that took place?

1 A. I can't tell you exactly.

2 Q. Did you know the name of his company?

3 A. Premier Van Lines.

4 Q. If you know the name of the company, may I ask
5 of - why did you ask me to state the name of the company?
6 Do you know the name of the company?

7 A. Because I normally relate companies with
8 individuals.

9 Q. Thank you. Do you know when the loan was made to
10 Mr. Palmer?

11 A. I do not.

12 Q. So if you do not know the amount of that you were
13 trying to collect, why do you say you were trying to
14 collect?

15 A. I wouldn't necessarily know the original amount of
16 the loan. When a loan got to our group it was for ex-amount
17 of dollars that were remaining on debt.

18 Q. So by the time the loan went to your group and to
19 you there was a certain amount that was outstanding?

20 A. A certain amount outstanding, that's correct.

21 Q. Would you, please, what that amount was?

22 A. I can't tell exactly what. I can't tell you
23 exactly, but approximately thirty thousand.

24 Q. And over what period of time was this debt
25 supposed to be paid?

1 A. I can't remember.

2 Q. Wouldn't that be a factor in determining how much
3 pressure you would put on the borrower, to know - does it
4 make any difference whether the loan was supposed to be paid
5 within three years as opposed to thirty years?

6 A. Sometimes.

7 Q. And this, in this case would it make any
8 difference?

9 A. I would say actually I don't remember.

10 Q. So in this case what were you trying to do with
11 Mr. Palmer?

12 A. Collect the debt.

13 Q. And you say that the debt at that time was thirty
14 thousand dollars?

15 A. Correct.

16 Q. How did you go about trying to collect the debt?

17 A. In the normal situations and in most situations we
18 would ask for financial statements, to give us a concept of
19 what, what the cash flow of the company is to see what they
20 can afford to pay.

21 Q. And did you regard them yourself competent to do
22 that type of work?

23 A. Myself, very competent.

24 Q. Very competent. Does it mean that you are never
25 negligent?

1 A. I'm never what?

2 Q. Never negligent.

3 MR. WERNER: I object, your Honor, I don't
4 see the relevance of this line of questioning. I'd
5 appreciate some background.

6 THE COURT: I sustain your objection. I
7 think the question never, never negligent, about his
8 personal life, job, about what? That is much too broad
9 of a question for any witness to give an answer.

10 DR. CORDERO: Very well.

11 BY DR. CORDERO:

12 Q. I'm asking, you already stated that you regard
13 yourself as a competent bank officer?

14 A. Correct.

15 Q. I'm asking if as a bank officer have you ever been
16 negligent?

17 MR. WERNER: Your Honor, again renew my
18 objection as to relevance. The focus here is
19 Dr. Cordero's -- objection to claim.

20 THE COURT: He can answer the question.

21 THE WITNESS: I'm not going to respond
22 to the word negligent. You make a mistake
23 occasionally. I made a mistake.

24 BY DR. CORDERO:

25 Q. Well, Mr. DeLano --

1 THE COURT: Counselor, why don't you define
2 for the witness what negligent means.

3 DR. CORDERO: Yes.

4 THE COURT: With respect to the term that
5 you're using.

6 DR. CORDERO: Very well.

7 THE COURT: It will help him answer the
8 question.

9 BY DR. CORDERO:

10 Q. The term of negligent, a person - when a
11 defendant's conduct imposes a reasonable risk upon another,
12 resulting in injury to that or and whatever you were
13 thinking at that time is completely irrelevant so --

14 A. Can you repeat the last part of it because I don't
15 think I got it?

16 Q. Yes. The mental state of the defendant is
17 irrelevant. It is irrelevant whether you wanted to be
18 negligent or you knew that you were being negligent. The
19 only form that, the term of negligence takes into account is
20 that you, your conduct imposes a reasonable risk upon
21 another person. So can you either answer as a bank officer
22 a conduct imposed a reasonable risk on other people?

23 A. No.

24 Q. Very well. And in your - in the rest of - apart
25 from your capacity as a bank officer have you been --

1 MR. WERNER: Objection, your Honor.

2 THE COURT: It's irrelevant.

3 BY DR. CORDERO:

4 Q. Actually, the claim that has been made against
5 you by me, Mr. DeLano, does it have to do with negligence?

6 THE COURT: Why don't you tell him what the
7 claim is, because I'm not sure he knows what it is,
8 Counselor.

9 WITNESS: What was - what is the claim?

10 DR. CORDERO: Your Honor, it seems to me that
11 your statement is out of line.

12 THE COURT: Normally, Counselor, in a hearing
13 like this, if you wanted to refer to the claim, I would
14 expect someone to have a - copies of your proof of
15 claim that you would then show to the witness so that
16 he would know what you're talking about. I don't know
17 exactly what you're talking about. If you're talking
18 as of a claim assertion and allegation, a proof of
19 claim. If you're talking about your 5/14/04 proof of
20 claim. Why don't you show the witness a copy so he can
21 answer questions with respect to that. This is a very
22 broad term, Counselor. You know that.

23 DR. CORDERO: Again, your Honor, I requested
24 that address me as Dr. Cordero, not as Counselor.

25 BY DR. CORDER:

1 Q. Mr. DeLano --

2 THE COURT: Counselor, this is my court and I
3 will address you as I see fit.

4 DR. CORDERO: Actually, your Honor, this is
5 not your court. This is a court of the United States
6 and what applies here is not your local practice of
7 laws and rules of the United States and I do not see --

8 THE COURT: There - was there a law of - or
9 rules that tells a judicial officer how he's supposed
10 to address a lady? If I intend to - refer to
11 Mr. Werner as Counselor also today.

12 DR. CORDERO: But you know that I have always
13 presented myself as Dr. Richard Cordero, pro se. So
14 now --

15 THE COURT: But quite frankly, was the first
16 time it had been brought to my attention that you were
17 a licensed attorney, that you were registered and
18 licensed in the 2nd Department. I didn't know that.

19 Now you've made an allegation that you said
20 that back in 2002, and I'm not disputing you said it,
21 but quite frankly I didn't keep up on it and so it was
22 only yesterday that I became aware of it. So until
23 then, I do note that did not know that you were an
24 attorney or - so I intend to refer to you and intend
25 to refer to Mr. Werner as Counselor. That is the way

1 we work it.

2 DR. CORDERO: I'm not appearing here as a
3 practicing attorney, I'm appearing here as pro se.

4 THE COURT: You're still an officer of the
5 Court, aren't you? You're registered in the state of
6 New York, Aren't you an officer of the Court? Aren't
7 you a registered attorney licensed in the state of
8 New York? Doesn't that make you an officer of the
9 Court?

10 DR. CORDERO: I resigned that position,
11 which means that right now, I am not a practicing
12 attorney. I have filed claims for several years, with
13 the state officer whenever they can to renew the
14 license that I have retired from that position, so I
15 do have a degree.

16 THE COURT: But you're licensed up to
17 April of 2005 according to information. Is that
18 information incorrect that you are, in fact, currently
19 registered through April of 2005? The last registra-
20 tion was in 2003. Well, after 2002, when you first
21 started litigating.

22 DR. CORDERO: Yes, but not as a practicing
23 attorney.

24 THE COURT: What are you registered as?

25 DR. CORDERO: I registered --

1 THE COURT: What are you registered as?
2 You have a number, registration number, what are you
3 registered as, a PhD?

4 DR. CORDERO: I'm registered, yes, as PhD
5 Dr. Richard Cordero.

6 THE COURT: With the Unified Court System as
7 a PhD. They take registration from non-attorneys? I
8 never heard that.

9 DR. CORDERO: I do not say that --

10 THE COURT: Let's move on.

11 BY DR. CORDERO:

12 Q. Mr. DeLano, did I serve you with a third-party
13 complaint on November the 1st, 2002?

14 MR. WERNER: Objection, your Honor, as to
15 form. Might we have a little better identification,
16 what manner claim was filed in, for Mr. DeLano, for
17 M&T Bank or otherwise? The Debtor counsel has
18 copy to me.

19 DR. CORDERO: You're so predictable.

20 MR. WERNER: I object, your Honor.

21 DR. CORDERO: Yes, Attorney Werner, I pointed
22 to you in meeting of February the 1st that I had served
23 on Mr. DeLano with a claim. At that time I have stated
24 in my papers, in papers that I have filed that you
25 yourself could --

1 THE COURT: Counselor, Counselor, you
2 shouldn't be pointing fingers.

3 DR. CORDERO: I'm sorry.

4 THE COURT: We don't do that here.

5 DR. CORDERO: I'm sorry. I did not intend to
6 offend Mr. DeLano or the Court. I was just making -
7 I'm sorry.

8 BY DR. CORDERO:

9 Q. What I'm saying, Mr. DeLano, is that I did serve
10 you with a claim in 2002, as third party in the Pfuntner
11 versus Gordon, and docket number is 02-2230. In that
12 Pfuntner case I served you, Mr. DeLano, with a claim, on
13 November 21st of 2002.

14 A. As an officer of the M&T Bank?

15 Q. That is yes, as an officer and personal, and - and
16 it was because of that it - that wasn't the only reason,
17 Mr. DeLano. Did you put my name on your bankruptcy
18 petition? Did you list me as the creditor in your
19 bankruptcy petition?

20 A. That's correct, and by law --

21 The COURT: Just answer the question.

22 Just answer the question. Don't --

23 BY DR. CORDERO:

24 Q. So you had by law do that and you were aware that
25 I made a claim against you, were you not?

1 A. Yes, but what's the claim?

2 Q. Well, Mr. DeLano, it seems to me - it's not for
3 you to ask questions, it's for you to answer questions.
4 Okay?

5 Q. Did the claim voluntarily in your bankruptcy
6 petition assert you were aware of what claim was - you can
7 not just put my name and said, well, I want more creditors
8 on my bankruptcy petition, did you, Mr. DeLano, you were
9 aware of my claim? Don't look at Mr. Werner, he cannot --

10 A. I'm not looking at him.

11 Q. Very well.

12 A. I'm confused with you.

13 Q. Very well, I will explain myself. You - were you,
14 Mr. DeLano, - this is an improper - I saw a sign from the
15 part of my - Michael Beyma, who is in the audience who - who
16 is now instructing Mr. DeLano. Do not look at any of your
17 two counsels here.

18 A. I can't take my eyes off you.

19 Q. Very well. In that case --

20 DR. CORDERO: Otherwise, your Honor, if I
21 have to, I will stand in front of him and then I
22 will --

23 THE COURT: You're entitled to ask your
24 questions either from where you're sitting, Counselor,
25 or from the podium. The Court allows attorneys to

1 ask questions from either place. So that is up to you.

2 DR. CORDERO: Very well, I will stay here so
3 that you can focus on me and I will ask you,
4 Mr. DeLano, not to look at your counsel.

5 BY DR. CORDERO:

6 Q. The question is very clear. Did I serve you with
7 a third-party claim on November --

8 THE COURT: I'm going to interject. You did
9 not serve with a third-party claim, you served him with
10 a third-party complaint which alleged that he had
11 implied liability to you. That is in fact what you,
12 you served him.

13 And I think it's important today that we
14 make a distinction between a bankruptcy proof
15 of claim and a claim in a general sense, so I wouldn't
16 use the word claim unless you're talking about your
17 proof of claim.

18 If you want to talk about assertions
19 of liability, causes of action, any of these kinds of
20 things, but not confuse the whole record and every-
21 thing today by using the word claim in a interchange-
22 able way. Let's use in terms of proof of claim and
23 everything else you can use in terms of causes of
24 action, allegation of liability, whatever you're
25 familiar with, all these different things.

1 BY DR. CORDERO:

2 Q. The complaint establishes the claim. The
3 complaint based on claim. The distinction between claim and
4 complaint is irrelevant. The complaint brings to the
5 attention of the defendant a claim made by a claimant. In
6 that case I wasn't a third-party plaintiff. I served you
7 with a complaint that made a claim. It was only from that
8 basis, was it not that, Mr. DeLano, that you put your name
9 in - in the bankruptcy petition that you filed on January 15
10 - January 27, 2004, was it on that basis that you put my
11 name on your petition?

12 A. That's correct.

13 Q. Very well. So you knew, you knew what my claim
14 was at that time?

15 A. No.

16 Q. So did Mr. Beyma on - upon whom I - I served my
17 claim, did he bring to your attention that I was making a
18 claim upon you at that time?

19 A. No.

20 Q. So how did you learn of my claim so that you could
21 put it on your bankruptcy petition?

22 A. Your claim was made before my bankruptcy petition.

23 Q. Mr. Beyma, that is not - I'm sorry. Mr. DeLano,
24 that's not the question put before you. The question is
25 very clear, you were aware of the claim that I made against

1 you in the Pfuntner case.

2 MR. WERNER: Objection. Objection as to
3 form, your Honor. Again --

4 THE COURT: First of all, it's not a
5 question.

6 BY DR. CORDERO:

7 Q. Were you aware --

8 THE COURT: Put this way. Did you ever read
9 the complaint he filed in the Premier Van Lines case
10 that made the allegations against both M&T and you and
11 a number of others?

12 WITNESS: Yes, sir.

13 THE COURT: So he read the complaint, so he
14 knew there was some allegations against him in the
15 complaint. So the answer is yes.

16 BY DR. CORDERO:

17 Q. And it was on that basis you put my name as a
18 creditor in your bankruptcy petition, is it not?

19 THE COURT: He already answered.

20 DR. CORDERO: I would like him to state it
21 clearly so there is no doubt.

22 BY DR. CORDERO:

23 Q. So you put my name on your bankruptcy petition.

24 MR. WERNER: Your Honor, as to form. I
25 believe the petition states for itself and that again

1 styling himself as a creditor I think would be
2 misleading that, in fact, he asserted a cause of action
3 against Mr. DeLano on that basis. Clearly his name is
4 on the petition and petition also specifically
5 indicates that the claim or complaint is contingent -
6 excuse me, is unliquidated and disputed. The petition
7 speaks for itself, your Honor.

8 BY DR. CORDERO:

9 Q. Does that mean that you put my name as a creditor
10 because of the claim that I had made against you in the
11 Pfuntner case?

12 A. I used - is as because of the bank I was named as
13 a third-party defendant by - now in the bankruptcy petition
14 it says if there are any outstanding judgments, etc.,
15 against you, you will have to name the individuals or
16 corporations, etc.. That's the reason you were named in the
17 bankruptcy petition. It has nothing to do with the known
18 claim.

19 Q. Well, Mr. DeLano, what you're saying is that even
20 though you knew that there was a claim against you that you
21 did not worry about finding out what the claim was in more
22 than two years.

23 MR. WERNER: Objection, your Honor. Worried
24 about it or not, that is a very inappropriate --

25 THE COURT: Sustained.

1 BY DR. CORDERO:

2 Q. The question goes, to negligence. You put my name
3 in that bankruptcy petition and you did not care to find out
4 what the claim was; is that true?

5 A. Right.

6 Q. So you did not care to find out what the claim was
7 that you put in the bankruptcy petition.

8 MR. WERNER: Objection, your Honor, as to
9 relevance, whether Mr. DeLano made any effort or not to
10 discern or investigate the nature this - with about the
11 claim.

12 THE COURT: I'll overrule.

13 DR. CORDERO: Was it overruled? So you may
14 answer.

15 WITNESS: As far as I'm concerned the
16 judgment against me by you in a third party sense is as
17 an officer of M&T Bank, not as an individual.

18 BY DR. CORDERO:

19 Q. I'm sorry, Mr. DeLano, that is not the question
20 put before you. The question is whether you were aware of
21 the claim?

22 THE COURT: No, now you're asking something
23 different. That is not the question you asked. I can
24 have it read back. He's been through - he was aware of
25 the claim, that is why he scheduled, and we know from

1 Counselor, his attorney, that it was listed as
2 disputed and liquidated. You've asked him whether he
3 was worried, okay, that he didn't know all the details
4 of your claim. That is the question that he should
5 answer. Was he worried about the fact when you
6 filed your petition that he didn't know all the details
7 of the allegations made against you by Mr. Cordero?

8 WITNESS: No.

9 THE COURT: Fine. Now you've answered the
10 question.

11 BY DR. CORDERO:

12 Q. So I'm asking you, do you think that a competent
13 person writes the name of a creditor in a bankruptcy
14 petition knowing that that creditor may assert --

15 MR. WERNER: Objection again, your Honor. A
16 competent person does I find --

17 THE COURT: Sustained. He's not qualified to
18 answer that.

19 BY DR. CORDERO:

20 Q. Mr. DeLano, is it your testimony here that you did
21 not know what basis was of the claim that I made upon you,
22 you drew to the March 8, 2004, section 341 meeting of
23 creditors, your attorney in the case of Pfuntner versus
24 Gordon, that is Mr. Michael Beyma who is also here today, so
25 by his presence there you knew that there was a link between

1 you and the claim that I had asserted against you in the
2 Pfuntner case.

3 THE COURT: Are you asking a question?

4 DR. CORDERO: Yes.

5 BY DR. CORDERO:

6 Q. Were you aware of the link between the Pfuntner
7 case and the claim that you made in the bankruptcy petition?

8 A. No.

9 Q. So how did you know my name and put in the
10 bankruptcy petition? You can't have it both ways,
11 Mr. DeLano, you have to have it one way. Either you knew
12 that the claim arose in the Pfuntner case or you didn't
13 know, which is it?

14 A. I would say no. Certainly Mr. Beyma was there
15 representing M&T Bank that day, not representing me.

16 Q. Mr. DeLano, I never served Mr. Beyma in this case
17 at that point in time that I went to the March 8th meeting
18 of creditors. The only way that Mr. Beyma could possibly
19 have known about this is if you had informed him.

20 MR. WERNER: Your Honor, I object. all of
21 this line of questions. Simply the reason why
22 Mr. DeLano listed Dr. Cordero as a - with creditor
23 in this case because he was served in the Premier
24 Van Lines case and his answer was yes.

25 He's asking about three or four different

1 ways. I think confusing Mr. DeLano asking about
2 Mr. Beyma's presence and so forth. What I believe
3 he's trying to answer regarding Mr. Beyma's presence,
4 but the link and so forth, this is all reflective of
5 the fact that Mr. DeLano included Mr. Cordero in his
6 petition because he had been sued in the Premier Van
7 Lines case.

8 THE COURT: I agree.

9 MR. WERNER: Otherwise, I object to this
10 continued --

11 THE COURT: Let's move on.

12 DR. CORDERO: It's important Mr. DeLano is
13 claiming now that he's not aware of the nature of the
14 claim against him and the nature of the claim which
15 Mr. DeLano is, is only reason why you put my name on
16 your bankruptcy petition.

17 THE COURT: I disagree with you. Because in
18 the reality is, is someone could file papers against
19 you, that are totally spurious and claim any kind of
20 things that they want to, okay, and file a lawsuit in
21 state court, and if the next day you filed bankruptcy,
22 you would be obligated to list that lawsuit and you
23 would have a right to list it as disputed, spurious,
24 and whatever you want. You still have an obligation,
25 as you know, Counsel, to list all claims made against

1 you, whether they're valid or not valid. So I think
2 that is all we're talking about here, quite frankly.

3 You know, the point is that, yes, you had
4 listed, said that, because you had filed this cross-
5 claim against him, for a third-party complaint
6 against him, and that is why you listed.

7 What else do you want to ask him?

8 BY DR. CORDERO:

9 Q. Mr. DeLano, did you include in your bankruptcy
10 petition that you disputed my claim?

11 A. No.

12 MR. WERNER: If I might clarify that?

13 THE COURT: He answered the question.

14 MR. WERNER: I believe the petition speaks
15 for itself.

16 THE COURT: You have the right to cross
17 examine.

18 MR. WERNER: Thank you.

19 BY DR. CORDERO:

20 Q. Well, after having been improperly given the
21 answer to that question, Mr. DeLano, do you want to refresh
22 your memory or do you want to restate your answer? Did you
23 write in your bankruptcy petition that you were disputing my
24 claim?

25 WITNESS: May I respond to that, your Honor?

1 You're - now I will respond. You asked the question,
2 I will respond. My response is basically that your
3 claim against me as a third party in your judgment, I
4 take that to be as an officer of M&T Bank. I do not
5 take it to be as an individual, so I'm - am I going to
6 dispute your claim? I dispute it only because of the
7 fact that that claim against me is as an officer of
8 M&T and not personally.

9 BY DR. CORDERO:

10 Q. So how did you know it was against you as a person
11 and not as an M&T officer if you did not read the claim?

12 MR. WERNER: Objection again. This is
13 repeating the same question again. Only reason
14 Dr. Cordero --

15 THE COURT: Overruled. You can question him
16 in cross examination.

17 BY DR. CORDERO:

18 Q. Mr. DeLano, the question is: Why, at the bottom
19 of the page, were you aware of the claim, that is the bottom
20 question? Since you're reluctant to answer is because you
21 know you're going to commit yourself to this answer may -
22 that we have all these series of questions to try to make it
23 clear to you that you have to answer the question, and I
24 have here, your bankruptcy petition where you stated some
25 things about my claim, the claim that you listed

1 voluntarily, on your petition. I'm asking you what the
2 claim, if you knew what the claim was?

3 A. And I told you my feeling was it had to be listed
4 according to the bankruptcy petition because I was named
5 personally as a third-party defendant, however, and that's
6 it.

7 Q. Very well. How did you know that I listed you
8 personally?

9 A. I did not. My feeling is that you did not, as I
10 was listed as an officer of M&T Bank.

11 Q. Very well. How did you know I listed you as an
12 officer of M&T Bank?

13 A. I cannot read your mind. If you did, you did.

14 THE COURT: Just answer the question.

15 WITNESS: I didn't know.

16 BY DR. CORDERO:

17 Q. You didn't know?

18 A. Right.

19 Q. So does that mean that you assumed that I had
20 listed you as a bank officer and not personally?

21 A. Yes.

22 Q. And on what basis did you assume that?

23 A. There was no other reason that you would list me,
24 because I owe you no money, and you are not a creditor.

25 Q. Mr. DeLano, so that means that on the basis of an

1 assumption you disputed the claim that you voluntarily
2 listed on your petition?

3 A. Yes.

4 Q. On basis of an assumption?

5 A. Uh-huh.

6 Q. Do you think that is what a competent person does?

7 MR. WERNER: Objection, your Honor.

8 THE COURT: Sustained.

9 BY DR. CORDERO:

10 Q. What you're saying, Mr. DeLano, is that on the
11 basis of an assumption you disputed my claim, without
12 finding out exactly?

13 A. Yes.

14 Q. Okay. Is that the way you proceed as a bank
15 officer, on assumptions?

16 A. No.

17 MR. WERNER: Objection, your Honor,
18 relevance. Objection, your Honor.

19 BY DR. CORDERO:

20 Q. So how do you proceed when a matter comes to your
21 attention and you have to make a decision as to whether a
22 client owes money to the bank, do you proceed on
23 assumptions?

24 A. No, I do not. What I do is, I get the documents
25 and make sure that the notes were signed with the bank, we

1 have collateral for the loans, and then I move forward. And
2 on your claim I moved forward the same way, Dr. Cordero.
3 You show me the notes, you show me the collateral and you
4 are a creditor.

5 Q. Is that the way the other nineteen creditors,
6 showed you their claim?

7 A. I'm sorry?

8 Q. You - did you indicate that is the way for you to
9 put my name --

10 A. That's the only way I can enforce a claim.

11 Q. Exactly. Okay, that that is to the clients of
12 M&T.

13 A. The client of any bank or any court.

14 Q. So that means that, what you do before making a
15 decision is to ask for the documents and review them?

16 A. That's correct.

17 Q. Why did you know - not ask for documents that were
18 served upon you upon which you found out that there was a
19 claim that you should make on your petition? Why?

20 A. It is not a claim. What it is, I was named as a
21 judgment, in a judgment. It's not a claim, understand this.

22 Q. Please, Mr. DeLano, there is no judgment. In that
23 case, the case has not come to trial. There was only a
24 complaint that stated a claim against you. That is all
25 there was. There was no judgment. There is no judgment,

1 so, so the question that we're trying to find out the answer
2 to is whether you were aware that you had to find out the
3 documents that stated the basis for the claim. Did you do
4 so?

5 A. That is what we're doing here today. Where is the
6 document for the claim against me?

7 Q. So how did you know that I have a claim against
8 you?

9 MR. WERNER: Objection, your Honor, asked
10 and answered.

11 DR. CORDERO: No, it's not answered.

12 THE COURT: It has been. He said he knew
13 that you had asserted a claim against him because you
14 filed a third-party complaint against him. He has
15 answered that at least three times, if not more.

16 DR. CORDERO: And he is pretending not to
17 know the basis of the claim and what I am trying to
18 ascertain is, ascertain is that the - that is only way
19 for to dispute the claim and to label it the way you
20 did in your own petition. Should not have to remind
21 you of the statement that you made in your own petition
22 is that you knew the claim, that is --

23 MR. WERNER: He asked a question?

24 BY DR. CORDERO:

25 Q. The question is: Did you know the content of the

1 claim?

2 A. No, I did not.

3 Q. So how did you dispute it? That means you
4 disputed the claim without knowing the content. Can you --

5 A. What claim are you relating to, yours?

6 Q. The proof of claim that was --

7 A. That I dispute?

8 Q. Mr. DeLano, we're way past that question now. We
9 have already established that the claim that you made that
10 basically that you stated in your bankruptcy petition
11 concerns me, related to the claim that I made in 2003, 2, in
12 the Pfuntner versus Gordon case. We have already
13 established that. It was the judgment or broader issue of
14 the proof of claim which is completely irrelevant at this
15 point in time when we're only trying to ascertain whether --

16 THE COURT: I don't think it's completely
17 irrelevant, Counsel, because your proof of claim
18 actually had attached to it some of the pages from the
19 complaint that we're talking about, so I take issue
20 with you saying it's irrelevant. Your proof of claim
21 had, in fact, attached to it some of the pages from the
22 third-party complaint.

23 DR. CORDERO: You're completely correct. The
24 point in time is crucial here. Mr. DeLano did not
25 learn of my claim because I filed a proof of claim.

1 Mr. DeLano knew about my claim because he had been
2 served a - in 2002, with a claim from the Pfuntner
3 versus Gordon case.

4 THE COURT: I agree with that.

5 DR. CORDERO: Exactly.

6 BY DR. CORDERO:

7 Q. And you had more than a year and a half to learn
8 the content of that claim, that is the only reason for you
9 disputed it, is it not?

10 A. Yes.

11 Q. Very well. Did you read the claim?

12 A. Some of it.

13 MR. WERNER: Objection. I wonder if I could
14 be - if he's asking about the claim or the complaint.

15 DR. CORDERO: The claim was in the complaint.
16 That is the only way he filed a legal claim. You make
17 a complaint and serve it with a summons.

18 THE COURT: The answer. Did you ever read
19 the third-party complaint?

20 WITNESS: Not all of it, your Honor.

21 BY DR. CORDERO:

22 Q. Did you read the part that concerned me?

23 A. Yes, I think I did.

24 Q. Very well. So, what did you learn about it?

25 A. What did I - I'm sorry?

1 Q. What did you learn about my claim when you
2 read --

3 A. This is in reference to Pfuntner?

4 Q. Yes.

5 A. Only that supposedly the reason for me being named
6 in that claim was that I had said that I had seen your
7 cartons, possibly at Jefferson Road, possibly.

8 Q. Very well. So --

9 A. And that's it.

10 Q. And that's it. That's at - so where did you get
11 this idea between - of this difference between me suing you
12 as a bank officer as opposed to me suing you personally?

13 A. Because I was the servicing officer for Premier
14 Van Lines.

15 Q. Very well. So after all these back and forth
16 questions and answers, you were aware of my claim?

17 A. What claim, the claim in court today? As far as
18 your proof of claim in my bankruptcy, no. The reason for
19 it, if I recall, your cartons were involved in the
20 bankruptcy two years ago were stored in Avon. M&T Bank
21 showed you where they were. You went to see them. I don't
22 think they have ever been removed from that location, so as
23 far as I'm concerned, what claim did you have? You had your
24 cartons. There is no dollar amount and no claim.

25 Q. I'm going to ask you so that you did not continue

1 going back and forth as to which claim we're talking about.
2 We're talking about at this point only about the claim that
3 I brought to your attention Michael, my claim of
4 November 21, 2002. Please forget for the time being any
5 proof of claim, judgment brought up, forget about that.
6 We're not talking about that. Can we do that, Mr. DeLano?

7 A. For about five minutes.

8 Q. If you're going to bring - keep bringing it up
9 when there is no point in bringing it up, only if I bring it
10 up, because I'm the one questioning. We're going to get
11 involved in this muddle all the time so you have to make a
12 decision whether you're going to --

13 MR. WERNER: Objection, your Honor. I don't
14 think it's for counsel to instruct the witness.

15 THE COURT: What counsel wants to talk about
16 is the allegations listed in his third-party complaint
17 against you individually. He also made allegations
18 against M&T Bank that were very similar, but he made
19 allegations directly against you individually in that
20 complaint, and he's correct in saying that when you
21 filed your bankruptcy, that's the only basis you could
22 have scheduled him as a contingent creditor and a
23 disputed creditor, so he wants to talk about those
24 allegations and the best of your recollection of them.

25 And forget about the proof of claim issue,

1 because he's right, we're beyond that, because that
2 proof of claim wasn't filed for another seven months or
3 so or six months after you filed your Chapter 13. So
4 just get your thinking cap on for the complaint that
5 you read. At least in part, as you testified, that
6 deals with at least that allegation that you just
7 talked about, about identifying the container.

8 Now we can continue on for the next three
9 minutes for the - whatever questions he has, and then
10 I'm going to take a break for the court reporter.

11 About fifteen minutes.

12 BY DR. CORDERO:

13 Q. What was the content of that claim?

14 A. With reference to me only that it was mentioned
15 that your goods were at the Jefferson Road location, I
16 believe, of where Premier Van Lines stored their goods, or
17 we thought they were, based only on your name being on a box
18 at that time. We found out later they were not there, that
19 they were located in Avon.

20 Q. Very well. And --

21 A. And that's it. That was the whole thing.

22 Q. Thank you Mr. DeLano. Did you know then the
23 nature of the legal claim, those are facts that you are
24 stating and then I made a claim on a legal basis, do you
25 know what that legal basis was?

1 A. No.

2 Q. So - so you filed a bankruptcy claim with my name
3 only as a creditor and you had no idea of what the legal
4 basis was for the claim?

5 A. No.

6 Q. So how could you dispute it?

7 A. Why would you be a creditor?

8 Q. Please don't ask me the questions.

9 A. I would dispute it just as I said before, because
10 as far as I'm concerned, a creditor with me is an individual
11 who I either owe money to, services, or goods, etc., and in
12 your particular case, Dr. Cordero, I owe nothing to you as
13 an individual. The only way I could be named in the Premier
14 Van Lines deal was that I was the loan servicing officer on
15 a deal M&T Bank was also named on that. Were they not, yes?

16 THE COURT: Don't ask him questions.

17 BY DR. CORDERO:

18 Q. So, Mr. DeLano, that means - are you a lawyer?

19 A. Am I a lawyer?

20 Q. Yes.

21 A. No, I'm not.

22 Q. Very well. So how did you reach that conclusion
23 that you in your lay person judgment thought that you did
24 not have to be responsible to another person and you did not
25 have to find out the basis of that other person to make a

1 claim against him?

2 A. Based on my experience, and it's a lot of
3 experience. I'll be honest with you, I've never had
4 anything like this occur before in thirty-two years, and I
5 dealt with a lot of people and in a lot of counties.

6 THE COURT: Okay, we're going to take a break
7 and we'll come back.

8 (Recess taken.)

9 (Court reconvened.)

10 THE COURT: We'll return to the stand.
11 You're still under oath Mr. DeLano.

12 All right, proceed.

13 DR. CORDERO: It is one minute before 3, and
14 Judge Ninfo, I would like to bring to your attention
15 that during the recess Attorney Werner came into the
16 courtroom with Mr. DeLano and asked the assistance
17 whether they had a copy of the complaint. Then he
18 turned around whether I had the copy of the complaint
19 and I said yes, and he asked me to - that he let me see
20 it and I said no that - thank you, and he asked the
21 assistance again to provide that. I told him that that
22 it was improper in the middle of the hearing to supply
23 Mr. DeLano with the answers that were answers to the
24 questions that I had asked before. It is most improper
25 in the middle of a hearing to take advantage of a

1 recess for the attorney to provide answers to the
2 witness that is on the witness stand.

3 THE COURT: I don't know. Are you saying
4 that in a recess an attorney and a witness who is also
5 the debtor in the case can't be helped with each
6 other?

7 DR. CORDERO: No, that cannot provide
8 answers to specific questions that he knows I have
9 been asking to - of Mr. DeLano.

10 THE COURT: I don't know anything about that.

11 DR. CORDERO: But you're bringing - I'm
12 bringing to your attention.

13 THE COURT: That he gave him answers?

14 DR. CORDERO: That he was intending to do
15 that. He claimed I should not be lecturing him because
16 he had been practicing for a very long time.

17 THE COURT: Let's move on and start asking
18 questions.

19 DR. CORDERO: Judge Ninfo, I will assign
20 those as a violation of bankruptcy, Rule 9011. This
21 is improper conduct on Attorney Werner to supply
22 answers to the witness who he knows has some
23 difficulty precisely of those questions. This is not
24 the time for Mr. Werner, or Attorney Werner or for
25 Mr. DeLano to find the answers to my questions.

1 THE COURT: So he will answer your questions.
2 Ask the questions and we'll see what and --

3 MR. WERNER: I asked for a copy of the
4 complaint filed by Mr. Cordero.

5 THE COURT: You should have brought --

6 MR. WERNER: Quite so, your Honor.

7 BY DR. CORDERO:

8 Q. Actually, Mr. DeLano, do you think you should have
9 read that complaint before disputing my claim?

10 A. I guess.

11 Q. Are you prepared to do that?

12 THE COURT: Look, we have got to move this
13 on. He already answered that he read the complaint.
14 He didn't read all of it but he read the parts that
15 were privy to him, or most of it. He already testified
16 to that. I don't want to be repetitive. If we're not
17 going to get anywhere today in terms of moving this
18 along - he testified he did read the complaint as
19 pertaining to him.

20 DR. CORDERO: No, that is not what said. He
21 said he read the statements of fact, that he in his
22 judgment, he decided that the - that the only way for
23 me to bring a claim against him was if I was bringing
24 that claim in his capacity as a bank officer.

25 THE COURT: He also said that, but he also

1 said he read the complaint. Let's move on. The record
2 will reflect what Mr. DeLano said.

3 BY DR. CORDERO:

4 Q. Mr. DeLano, were you not aware that of the legal
5 basis for the complaint?

6 MR. WERNER: Objection, your Honor. I
7 believe it, on part of the conclusion on part of the
8 legal basis.

9 THE COURT: He can answer the question. He
10 can say yes or no.

11 WITNESS: Yes, I was being sued certainly as
12 a third-party defendant.

13 BY DR. CORDERO:

14 Q. My question is not that - my question is that you
15 said the only way I could bring a claim against you was in
16 your capacity as a bank officer, and not personally, and I
17 asked whether you were a lawyer and you said no, and then I
18 asked you whether you had read the legal basis that I had
19 stated in my complaint for bringing a claim against you. Is
20 your answer no?

21 A. My answer against me personally would be no.

22 Q. That is not my question, Mr. DeLano. That is not
23 my question. My question is very clear. My question is
24 whether you read the legal basis that I stated in the claim?

25 THE COURT: Do you know what he's talking

1 about, about a legal basis?

2 WITNESS: No.

3 THE COURT: Then why don't you explain to him
4 what you mean by legal basis, because the witness,
5 obviously, doesn't understand what you're saying.

6 DR. CORDERO: Well, why don't you allow him
7 to do - to say so. You're standing in for him.

8 THE COURT: Because it's not his job to ask
9 questions, but it's obvious to anybody in the courtroom
10 that he's confused about the terminology that you're
11 using.

12 DR. CORDERO: Well, don't you think that he
13 can say I'm confused about that instead of you
14 providing him with an escape to the question? I'm
15 trying to pin him down on an answer to a specific
16 question and now, and now you're testifying for
17 Mr. DeLano. I would appreciate it if Mr. DeLano has
18 any confusion --

19 THE COURT: We'll take that as your
20 permission for him to get into argument with you about
21 your question and ask you follow-up questions. If that
22 is the way you prefer it, Counselor, that is the way
23 we'll do it. So proceed.

24 DR. CORDERO: Judge Ninfo, that is not what
25 I have said. What I have said is that you're confused

1 as clarifying the question, that's all.

2 THE COURT: Yes, I am.

3 DR. CORDERO: Well, I will explain to
4 myself.

5 BY DR. CORDERO:

6 Q. My question is: You were aware of the statement
7 of fact that I included in my claim?

8 A. Yes.

9 Q. Very well. Did you read in the - did you read on?

10 A. I did not read the total complaint.

11 Q. Very well. So that means by necessity that you
12 did not reached the section which I - where I stated legal
13 basis for my claim?

14 A. No.

15 Q. Very well. We're clear about that. We won't
16 come - have to come back to that. You read the statement
17 of fact but you did not read on?

18 A. Correct.

19 Q. Very good. So how did you dispute the fact
20 that I made a claim to you on whether you were a bank
21 officer or whether you were sued personally, did - if you
22 did not read on?

23 A. Because personally I have no obligation. The
24 only way that I could valuate it was to say that the bank -
25 I had to look at it as being myself as, as a bank officer,

1 not as an individual.

2 Q. So, without knowing whether I was in dispute and
3 thereafter alleging that, you wrote my name in the
4 bankruptcy petition that you filed in January of 2004?

5 A. That's correct. That's correct.

6 Q. Very well. What did you say about my claim in
7 that bankruptcy petition?

8 A. I said nothing about your claim, only that I had
9 been named as a third-party defendant in a lawsuit.

10 Q. So did you not qualify that at all?

11 A. I'm sorry?

12 Q. So you did not qualify that, the claim?

13 A. No.

14 Q. You did not qualify that at all, no?

15 A. No.

16 Q. So you just put my name there as another creditor?

17 A. Not as a creditor, as an outstanding judgment.

18 There's a difference.

19 Q. Please, Mr. DeLano, I have already explained that
20 there is no judgment there. There is no - there has not
21 been a trial. There is no judgment. The only thing that is
22 there was my claim stated in the complaint of November 2002.
23 That is all there is.

24 A. Okay. Well, as - as a complainant. You were
25 listed as a complainant. You were not listed as a claimant

1 in my bankruptcy.

2 Q. Yes, Mr. DeLano. Did you include my name under
3 schedule (f), creditors only unsecured on priority claims?

4 A. I did not. Possibly my bankruptcy attorney did.

5 Q. That is very interesting. That is a very
6 interesting answer. Mr. DeLano, did you sign your petition?

7 A. Did I sign it? Yes.

8 Q. So you are responsible for everything that is in
9 that petition?

10 A. Yes.

11 Q. Does that mean that you signed a bankruptcy
12 petition without knowing why, that you were stating there?

13 A. No.

14 Q. So why do you not know about whether you wrote
15 anything concerning me in your petition?

16 A. The only thing that was in the petition, and I
17 have no idea what schedule it's under your - you were named
18 in the petition as a complainant, but there was a zero
19 balance as to monies owed.

20 Q. Actually, Mr. DeLano, there is no way of stating
21 in the petition that a person is a complainant. That that
22 is not one of the options in your petition. Would be fair
23 to say that you're not familiar with your own bankruptcy
24 petition?

25 A. Probably true.

1 Q. But you signed it?

2 A. When I signed it but I read it.

3 Q. I'm sorry?

4 A. I signed it.

5 Q. And you read it?

6 A. Yes, I did.

7 Q. Very well. So you should know what is the debt
8 listed concerning me?

9 A. Again?

10 Q. You should know then if you signed your petition,
11 you read your petition, you should know what it said, that
12 you said about me?

13 A. Very little was said about you in the petition.

14 Q. What was said about me?

15 A. The only thing that was said in the petition to
16 begin was under outstanding judgments or complaints. You
17 were named there. You were named I believe in the - another
18 schedule, and I don't remember the letter of the other
19 schedule, and that's it.

20 DR. CORDERO: Your Honor, I believe

21 Mr. DeLano indicated he doesn't remember. I believe it
22 would be appropriate to refresh his recollection to
23 simply show him the copy of the petition. Perhaps that
24 would refresh his recollection that --

25 THE COURT: Usually that is the case but --

1 DR. CORDERO: The point is here --

2 MR. WERNER: They're conducting a guessing
3 game.

4 THE COURT: -- it's not necessary.

5 BY DR. CORDERO:

6 Q. The point is that you have known now for more than
7 a year that you had a claim listed in your petition under my
8 name. We had a whole day of examination of you and your
9 wife on February the 1st at 2005. You knew about it,
10 today's hearing since December 15, 2004, when Judge Ninfo
11 set the date for this hearing, and you are so unprepared
12 that you do not even know what it is that you said in your
13 own petition. That, let alone what I said in my claim
14 against - does that strike you as the conduct of a competent
15 person?

16 MR. WERNER: Objection, your Honor, that is
17 hardly necessary.

18 THE COURT: Sustained.

19 BY DR. CORDERO:

20 Q. Why did you not prepare for this?

21 THE COURT: His competency is not at issue in
22 this claim objection here and standing objection it's -
23 it's irrelevant.

24 DR. CORDERO: I am not asking - I'm sorry,
25 your Honor.

1 THE COURT: I thought you were looking for
2 clarification.

3 DR. CORDERO: Yes. I'm not asking whether
4 Mr. DeLano is competent in terms of that. I'm asking
5 that is not - I apologize if I gave you that
6 impression.

7 BY DR. CORDERO:

8 Q. That is the - of competency is whether you were a
9 competent bank officer. That is what I - your attention to
10 at the beginning. That is the only way in which I use the
11 word competent, whether you were a competent bank officer.
12 And you in your own appearance, let alone in the appearance
13 of other parties, you dispute a claim that you yourself
14 voluntarily list in your bankruptcy petition. You treat me
15 as a creditor for six months and then on July 19, 2004, you
16 came up with the idea that I actually was not a creditor.
17 And I have now reason to repeat again that your motion to
18 disallow there is in bad faith, Mr. DeLano. If you did not
19 not know what claim I have brought to your attention, why
20 did you file a motion to disallow?

21 A. No. I, as far as I'm concerned personally, I owe
22 you nothing. Personally you are not a creditor. You are
23 only listed in the bankruptcy I will say for the last time
24 because I was named as a third-party defendant in an old
25 bankruptcy case two years ago.

1 Q. And that means that you don't know anything about
2 the claim that I have made against you or why you are
3 disputing?

4 THE COURT: No, he actually told you why he
5 has objected to your claim, because he owes you
6 nothing.

7 DR. CORDERO: Your Honor, you are --

8 THE COURT: No, I'm repeating what testified.

9 DR. CORDERO: I can hear it a hundred times.

10 THE COURT: But if you don't get the answer
11 to questions, ask the question again. It's been asked
12 and answered. He answered your question. Now you're
13 being argumentative. He answered your direct question.
14 He said I owe you nothing and I was listed, so you were
15 listed solely because he was a third party in an old
16 bankruptcy. I mean, he's answered the question. Move
17 on.

18 BY DR. CORDERO:

19 Q. The question is whether you took the trouble as a
20 competent bank officer trained for two years in examining
21 documents from your clients, you said that you asked for
22 documents from your clients in a case that concerns you to
23 find out what was it that was being claimed against you, did
24 not - did you?

25 A. I did not.

1 Q. Very well. Thanks again, sir. Now we now find
2 out that you moved to disallow my claim without having the
3 faintest idea of what was the basis for my claim.

4 A. What is it?

5 Q. Very good. Mr. DeLano, very good, you are asking
6 me what is it. That means you didn't know. It is that what
7 establishes the bad faith of your motion to disallow. It
8 was a subterfuge to eliminate me from the claim. You have
9 no good faith here to file that motion. You did not even
10 know what it is that you were disputing there, because you
11 did not know what it is that I was claiming against you or
12 the basis of it; is that so?

13 A. That's true.

14 Q. Very well. Very well. So, at this point in time
15 why are we here, just because you want to get rid of me,
16 from the case?

17 A. I have no idea why I'm here, because I owe you
18 personally nothing. As an officer - I'm not done, I'm not
19 done. And as an officer of M&T Bank, M&T Bank owes you
20 nothing.

21 Q. You are saying that - you are stating that M&T
22 Bank does not owe me anything, you are stating that as a
23 lawyer?

24 A. I'm stating that as a - as a bank officer.

25 Q. Okay. And what is the basis for you - for your

1 statement?

2 A. We have abandoned any interest we ever had in any
3 of your personal goods with which were collateral for the
4 old loan from 2002, on Premier Van Lines. We have abandoned
5 them three years ago and as such we have no interest, in
6 your goods or - or you personally.

7 DR. CORDERO: Your Honor, I at this point in
8 time I move for a dismissal of the motion to disallow
9 on the basis that in bad faith without knowing what
10 legal basis there was whatsoever.

11 THE COURT: The interesting thing, that may
12 be some question that you had - of course, the
13 objection to the proof of claim was filed by Counsel,
14 on behalf of Mr. DeLano, and Counsel prepared this.

15 Mr. Werner clearly set forth the basis and
16 you knew exactly what was going on, and Mr. DeLano has
17 every right to rely on. His counsel filed this for
18 him, so I'm going to deny your motion.

19 I don't believe it's a bad faith objection.
20 In fact, the objection is quite clear and extensive
21 with respect to the basis, and I'm looking at it right
22 now, and so it may be as very frequently the case in
23 this court, that individual debtors don't always
24 understand all of the legalities and procedures,
25 and he believes that he use - unfortunately, far too

1 much in the court system, and that is why they rely on
2 their attorney. And, obviously, from listening to
3 Mr. DeLano, he relied on his Counsel, Mr. Werner, with
4 respect to this objection to claim and that's what I'm
5 going to deal with.

6 So I'm going to deny your motion. I don't
7 think it was a bad faith objection.

8 DR. CORDERO: You're providing an argument
9 for Mr. DeLano.

10 THE COURT: I'm making a decision and I'm
11 justifying my decision. I have explained my decision
12 to you. I believe there was one time in some of your
13 paper work that you allege that I didn't fully explain
14 to you my ruling, so I'm trying to make sure I explain
15 to you my ruling.

16 DR. CORDERO: What I said in my papers, I
17 said that you never - what I said in my papers is that
18 you did not invoke the law or the rules to make your
19 ruling. You just make the ruling because you have the
20 power to make them and you make all the rules.

21 THE COURT: Careful, Counsel, you're a
22 licensed attorney. Okay, you're registered. You're
23 responsible for the lawyer's code of ethics.

24 DR. CORDERO: I talk about 9011 --

25 THE COURT: You can start talking about it.

1 I made my ruling. Move on, unless you're finished.

2 DR. CORDERO: No, by no means, I'm not
3 finished.

4 BY DR. CORDERO:

5 Q. Let me - on Mr. DeLano's confusion to his counsel
6 because his counsel came in here asking for a copy of the
7 complaint. Your - or counsel did not know --

8 THE COURT: You're not asking a question.

9 BY DR. CORDERO:

10 Q. Did your own counsel come into this room during
11 recess asking for a copy of the complaint?

12 A. Yes.

13 Q. Did he ask me to provide him with a copy of the
14 complaint?

15 A. If you had it.

16 Q. Did he ask me?

17 A. I would say yes.

18 MR. WERNER: I object to this line of
19 questioning and relevance.

20 THE COURT: Overruled.

21 BY DR. CORDERO:

22 Q. He did, Mr. Attorney Werner came into the room
23 during the recess and asked me for a copy of the complaint?

24 THE COURT: You already asked that and he
25 answered.

1 BY DR. CORDERO:

2 Q. What is your answer?

3 A. Yes.

4 Q. Very well. So how could Attorney Werner have
5 known the legal basis that you have already stated you did
6 not know, and if he did not know the complaint, the facts
7 show that the statement made by Judge Ninfo that, that the
8 motion to disallow was based not on your knowledge of the
9 petition, but on the knowledge of the petition of Attorney
10 Werner, is disproved by the fact that Attorney Werner comes
11 to these evidentiary hearing totally unprepared, without
12 even having knowledge, that alone a copy of the complaint,
13 on the basis of which he knew moved to disallow my claim,
14 he said, isn't that correct, he did not know?

15 MR. WERNER: Objection.

16 THE COURT: What's the nature of your
17 objection?

18 MR. WERNER: Objection to what Mr. DeLano -
19 or didn't know about any knowledge. He's not
20 competent to answer that.

21 THE COURT: Sustained.

22 BY DR. CORDERO:

23 Q. Judge Ninfo, the judge brought that up. The judge
24 said that Mr. DeLano does not know the basis of the motion
25 to disallow because he relied on his attorney. Is your

1 attorney Christopher Werner?

2 A. I'm sorry?

3 Q. Is your attorney Christopher Werner, is that your
4 attorney?

5 A. Is he what, is he my attorney?

6 Q. Yes.

7 A. Yes.

8 Q. Very well. So Judge Ninfo in your defense stated
9 that you did not know about the motion to disallow because
10 had relied on your attorney, but that is disproved by the
11 fact that Judge Ninfo, knew because I brought to the - his
12 attorney that your own attorney comes into this courtroom
13 for this precise evidentiary hearing, which he has now seen
14 way back in almost 2, 3, 2004, there would be a dispute, he
15 comes here without a copy of the complaint, without knowing
16 what it says, how could you possibly relied on the knowledge
17 of Mr. Werner when Mr. Werner himself does not have that
18 knowledge?

19 THE COURT: I'm going to translate that
20 for you. All he's asking, whether you relied in part
21 or in whole on Mr. Werner. Your answer is, knew it
22 to prepare the claim objection after consultation of
23 him. That is the long and short of the question.

24 DR. CORDERO: Your Honor, I'm more than
25 capable to state and rephrase any answer. It's very

1 improper for you to provide answers.

2 THE COURT: I didn't provide the answer and
3 I just asked him the same question in a way that I
4 think he can probably understand it.

5 DR. CORDERO: Well, you can ask me to
6 rephrase or he can ask himself, please rephrase. He
7 can ask --

8 WITNESS: The answer is yes, Mr. Werner is
9 my counsel and I relied upon him in - in this, in this
10 matter.

11 BY DR. CORDERO:

12 Q. Very well. But since he already showed that he
13 did not have that knowledge, you could not possibly have
14 relied on his knowledge?

15 A. Well, possibly I change attorneys but I'm not
16 going to.

17 Q. But you're saying that - please look at me, Mr.
18 DeLano, please look at me. In fact, what you're saying is
19 that even not Attorney Werner knew the basis on which he
20 moved to disallow my claim, is that so?

21 A. Yes.

22 Q. Very well. So I move again to dismiss that.
23 Your Honor Judge Ninfo stated that the reason why
24 Mr. DeLano did not know about the basis of my claim was
25 that he relied on his attorney, but Mr. DeLano has already

1 stated that even his attorney did not know the basis.

2 The motion to disallow was in fact, was in bad
3 faith. You did not have - or you, attorney knowledge why
4 you were moving to disallow.

5 The reason why you were moving to disallow was
6 because I was asking persistently for documents that could
7 show your commission of bankruptcy fraud and you did not
8 want me to keep asking that, and as a subterfuge, as I
9 have stated among others in my August 17, 2004 motion. You
10 used the motion to disallow as a subterfuge. You filed a
11 motion together with your attorney in bad faith.

12 THE COURT: Is that a question?

13 DR. CORDERO: That is a question.

14 THE COURT: Why don't you ask a question.

15 I think that was more a statement.

16 BY DR. CORDERO:

17 Q. Mr. DeLano said --

18 A. I said I would be careful. That is what I said.

19 Q. That you will be careful or that I should be
20 careful?

21 A. I'm going to respond to your - to your question.

22 Q. Please, I ask you questions now.

23 A. No, that you've asked a question, I'll respond to
24 that.

25 Q. My question, I was going to repeat my question.

1 A. Okay, fine.

2 Q. Did you say that you should be careful or that I
3 should be careful?

4 A. You should be careful.

5 Q. Why?

6 A. Because of the nature of the question. I answered
7 you before. Go ahead.

8 Q. There is no question put before you. Let me ask
9 you a question. Why should I be careful, is that like a
10 threat?

11 A. The response to subterfuge and bankruptcy fraud,
12 etc.. I have spent probably over a year in a three - in
13 actually total 341. I spent a total day with you at a 341.
14 You know, if you don't know everything about the DeLanos,
15 per se, no one does. Now I'm not done. My response to you
16 will be the same response as before. Personally I owe you
17 nothing. In - I have no obligation to you and as a bank
18 officer of M&T Bank, M&T Bank has no --

19 DR. CORDERO: Unresponsive, your Honor. I
20 ask you to ask the witness --

21 THE COURT: Ask a question that is relative.

22 BY DR. CORDERO:

23 Q. That is not responsive. The question before you,
24 why should I be careful? That is the question.

25 MR. WERNER: Objection, your Honor. I see no

1 relevance to Dr. Cordero --

2 THE COURT: Move on.

3 BY DR. CORDERO:

4 Q. You're allowing what sounds to be a threat to be
5 stated.

6 MR. WERNER: Objection, your Honor. Again I
7 see no relevance on Dr. Cordero's statement, any
8 relevance.

9 BY DR. CORDERO:

10 Q. The very relevancy is that you ask I be careful.
11 I ask whether, whether that is a threat?

12 MR. WERNER: Objection, your Honor.

13 THE COURT: Was it a threat?

14 WITNESS: No.

15 THE COURT: Fine. Let's move on.

16 BY DR. CORDERO:

17 Q. In what way should I be careful?

18 THE COURT: He doesn't have to answer that.
19 That was - that is irrelevant. He now has said that
20 was not a threat. Let's move on.

21 BY DR. CORDERO:

22 Q. So the question, that I put to you, you said that
23 I should be careful is - I was asking you that whether your
24 motion to disallow was a subterfuge to eliminate me from the
25 case. You did not know anything about it. You did not know

1 anything about it. Your attorney did not know anything
2 about it. Was your motion to disallow as a subterfuge to
3 eliminate me from your case?

4 A. No.

5 Q. Why was it filed if you did not know?

6 A. I will answer that. It was filed because you had
7 filed a proof of claim. It was to find out what the proof
8 of claim was, what your actual claim was when I owe you
9 nothing, personally. That's the reason.

10 Q. Excellent, Mr. DeLano. That is an excellent
11 question because you have just stated that you moved to
12 disallow a claim that you had to find out what the basis for
13 it was, because --

14 THE COURT: No, you've got to do it all, not
15 part of it.

16 DR. CORDERO: Judge Ninfo, that is most
17 inappropriate, you are supplying answer for questions.
18 You should allow the witness to hang himself by his
19 own statements.

20 THE COURT: I think that the role of the
21 Court - do you believe that is the role of the Court?
22 As an officer of the Court do you believe that you
23 should allow a witness to hang himself by his own
24 statements, is that your statement?

25 DR. CORDERO: That is the purpose of an

1 evidentiary hearing conducted with an adversary to
2 allow me to make statements that - that the way
3 impeachment proceeds and that is what I'm doing with
4 this, with this witness. The witness has impeached
5 himself because you filed a claim to move to disallow
6 my claim. I'm sorry. You filed a motion to disallow
7 my claim in order to find out what the claim was.
8 Isn't that what you just said?

9 WITNESS: I did, but --

10 BY DR. CORDERO:

11 Q. Isn't that not --

12 A. Wait a minute, I'm not done. I'm not done. Is
13 that part of what this hearing is all about?

14 THE COURT: Just answer the question.

15 BY DR. CORDERO:

16 Q. So, you had an opportunity to find out what my
17 claim by reading the complaint that I filed with you and
18 your attorney and Michael Beyma on November 21, 2002. You
19 had an opportunity to find out what my claim was when you
20 were preparing your bankruptcy petition which you filed on
21 January 27, 2004. You had an opportunity to find out what
22 my claim was during the - the month during which you treated
23 me as a creditor. You had an opportunity to find out what
24 my claim was when I filed a proof of claim and asked, as
25 Judge Ninfo stated, I had had paper stating what that claim

1 was. That happened on May 15, 2004. All right, you had an
2 opportunity.

3 THE COURT: Let me just interrupt, because I
4 did not say you attached paper that demonstrate you
5 did not have a claim. I said very specifically that
6 you had some of the pages from your complaint and if
7 you look carefully at what pages you filed, you will
8 see that it does not have those parts of the complaint
9 that deal with the specific cause of action against
10 Mr. DeLano, so let's be clear on that.

11 DR. CORDERO: On the contrary, your Honor.
12 on the contrary. First of all, I already stated, that
13 is only proof of claim form states that it is felonious
14 that you can state the claim in abrogated form. That
15 is what the form states. Second of all, what I
16 attached to that form were precisely the legal basis
17 that you did not read. What you read was in the part
18 of the complaint that I did not attached - did not
19 attach to the proof of form. Had you read that proof
20 of form, you would have read the part that you have
21 already stated that you have not read.

22 BY DR. CORDERO:

23 Q. So you had so many opportunities, to find out
24 exactly what it was that I was alleging against you, so many
25 opportunities. You would have had a duty to do so and you

1 failed to do that. Is it not true on July the 9th I filed a
2 statement, I filed a statement with the Court and gave a
3 copy of it to your attorney stating that you had concealed
4 assets through your bankruptcy petition, did I not do that?

5 MR. WERNER: Objection as to relevance to
6 this proceeding.

7 DR. CORDERO: It's very relevant to this
8 proceeding because that is the basis that I have
9 already stated here in all my papers is that statement
10 of July 9th, that the only reason for you to file a
11 motion to disallow ten days later, that is on
12 July 19, 2004, was to eliminate me from your case,
13 because I had stated in writing --

14 THE COURT: You're making a statement.
15 Can you answer that question? When he said no, it's
16 not a subterfuge, it was not to get you out of the
17 case, he answered that. Now we can't keep going over
18 this, Counsel. We can't keep going over the same
19 ground over and over and over. We need to move on to
20 something new.

21 BY DR. CORDERO:

22 Q. Mr. DeLano, did you file your motion to disallow
23 in order to eliminate me from your case?

24 MR. WERNER: Objection. Again asked and
25 answered a million times.

1 THE COURT: It's been asked a number of
2 times and answered a number of times.

3 BY DR. CORDERO:

4 Q. How did you answer it, you said yes?

5 THE COURT: No, he said no. He said no.

6 DR. CORDERO: Why don't you allow the witness
7 to repeat himself.

8 THE COURT: Because we can't allow him to
9 repeat himself four times or we'll be here forever.
10 He's answered that question on his own. Don't --

11 DR. CORDERO: I'm sorry, but I just saw
12 again Mr. DeLano looking at Mr. Beyma and Mr. Beyma
13 making a sign to the witness. That is completely
14 wrong. You are in front of --

15 THE COURT: See, I was looking at you, which
16 I should be when even addressing, so I wasn't looking
17 at the witness or Mr. Beyma and I have no way of
18 knowing what you're saying is true or not.

19 Do you want me to look at Mr. Beyma and
20 Mr. DeLano in the future instead of looking at - from
21 you when he addresses or anything else? How would
22 you like me to --

23 DR. CORDERO: I would like you to conduct a
24 fair and impartial process, herewith when you answer
25 for the witness and you provide ways of the witness

1 to escape the position in which he has boxed himself.
2 You're being unfair, you're being impartial.

3 THE COURT: Move on.

4 BY DR. CORDERO:

5 Q. Mr. DeLano, so you are not wishy-washy, will you
6 state clearly you filed a motion to disallow ten days after
7 I had stated that you had committed bankruptcy fraud by
8 concealing assets; is that so?

9 MR. WERNER: Objection, your Honor.

10 DR. CORDERO: That is a question of fact.

11 THE COURT: That is a legitimate question.

12 MR. WERNER: Your Honor, that relates only
13 again to the issue of subterfuge and bad faith which
14 we have gone through.

15 THE COURT: That is just a factual question.
16 He just asked him a factual question.

17 WITNESS: I don't know when that motion was
18 filed.

19 THE COURT: All right.

20 BY DR. CORDERO:

21 Q. You did not know. Do you know that I made in my
22 statement of July the 9th a claim that you were committing
23 bankruptcy fraud?

24 A. Yes.

25 Q. So, you know that, you know that is what I am - I

1 am claiming against you the day when you tried to find out
2 what it is that you are going to do, you don't know what
3 happened; isn't that so? You know that the claim is that
4 you committed bankruptcy fraud by concealing assets and then
5 you don't know anything else that happens afterwards?

6 A. And how --

7 Q. No, don't ask me a question.

8 THE COURT: He's asking - you told me he
9 could ask for clarification.

10 DR. CORDERO: You're providing him with - for
11 answers. He was not going to ask for clarification.
12 He was going to provide an answer. This is most
13 unfair. You are on the side of Mr. DeLano and you are
14 testifying for him. I did notice - I wouldn't do it to
15 you. On the witness list to testify, I would put you
16 on the witness list to testify because you're acting as
17 a witness.

18 BY DR. CORDERO:

19 Q. So, Mr. DeLano, my question is clear. Did you
20 know that I had filed against you a motion on July the 9th
21 stating that you had committed bankruptcy fraud and that --

22 A. No.

23 Q. And you had proof - but you just said yes.

24 A. No, wait a minute. Let me refer to your last
25 question.

1 Q. I will rephrase my last question. Thank you very
2 much. Yes, my question is: You already stated that you
3 were aware that I had filed a motion indicating that you had
4 committed bankruptcy fraud and that you had concealed
5 assets. You said yes. My question, then, was whether ten
6 days later I had - you had filed a motion to dismiss,
7 disallow my claim?

8 A. The answer is no.

9 Q. Exactly. Your answer was no?

10 A. Right.

11 Q. So my question now is that you were aware of my
12 claim against you of bankruptcy fraud, did you take that
13 seriously?

14 A. No.

15 Q. Excellent. You did not take that seriously. You
16 - so why should Attorney Werner take it so seriously as to
17 move to disallow my claim?

18 A. Your claim is not viable.

19 Q. So, you're saying that even though there was a
20 claim of bankruptcy fraud you did not take it seriously,
21 then, Mr. Werner and you, because everything that Mr. Werner
22 does is imputed to you is move to disallow; is that your
23 testimony?

24 A. You didn't have - you did not have a viable claim
25 and we wanted to move to disallow your claim so we can move

1 forward with the 341 and on confirmation.

2 Q. Actually, Mr. DeLano, what you said before was
3 that, that you did not know I had a claim and that you had
4 filed to find out. So what I said was that in order to find
5 out, you had so many opportunities, that you had missed,
6 the only time when you filed the motion to disallow was when
7 I filed my statement of July 9th indicating on the basis of
8 your petition and documents that had proof that you had
9 committed bankruptcy fraud. Ten days later you and your
10 attorney filed a motion to disallow and now you're claiming
11 that you filed that motion to disallow to find out what the
12 claim was.

13 A. Yes.

14 Q. Okay. You already answered the question,
15 Mr. DeLano. You already answered it yes. So that motion
16 was in bad faith. If you wanted --

17 MR. WERNER: Your Honor, objection. Once
18 more we're going into the issue bad faith and
19 subterfuge with objection to claim.

20 THE COURT: Let's go forward.

21 MR. WERNER: Your Honor, the proof of claim
22 has yet to be - I'm sorry - no facts have yet to be
23 offered as to the existence of the claim itself, nor is
24 any of these lines of questions.

25 THE COURT: Maybe we'll get to that today.

1 That is what I'm waiting for.

2 MR. WERNER: Thank you.

3 DR. CORDERO: Did Mr. DeLano file a motion
4 to disallow in bad faith? That is a critical issue.
5 That is - that is the issue.

6 THE COURT: Quite frankly, Counsel, if he
7 filed a motion in bad faith but you have no legal claim
8 against him, it's irrelevant.

9 DR. CORDERO: No, because I'm an interested
10 party and he named me as a creditor.

11 THE COURT: But the point is it is not
12 mutually exclusive for one - and I'm not suggesting
13 that there - there was a claim objection filed in bad
14 faith - but a claim objection can be filed in bad faith
15 with respect to somebody who has no claim and that is
16 not usually exclusive. It doesn't give you a claim
17 because somebody filed a bad faith claim objection
18 against you when you don't have a claim.

19 Now, I will - I don't know if you have a
20 claim or not, but you haven't gotten to actually prove
21 that today, but in a metaphysically sense those
22 things are not exclusively exclusive.

23 DR. CORDERO: Will you allow a person to use
24 a motion to disallow in order to avoid that party
25 find the documents that prove that he committed

1 bankruptcy fraud? You are giving assistance to the
2 commission of fraud upon the court.

3 THE COURT: That is - that is an issue I
4 think we have already gone - been through this and the
5 Court has already made a decision and the Court made a
6 decision previously and an Interlocutory Order with
7 respect to these issues, continues to rely on the
8 Trustee's office and U.S. Trustee's office to
9 investigate these matters, to determine whether there
10 was, in fact, bankruptcy fraud or any of these things
11 that you're alleging, and to the best of my knowledge
12 there - there was a lengthy section 341 meeting that
13 you alluded to sometime in February. You mentioned
14 that today, that is everybody is talking about took
15 a whole day or something like that, to talk about these
16 very same issues.

17 So as I've said in the previous ruling, the
18 question of whether there has been bankruptcy fraud
19 here or the concealment of assets appears to the Court
20 to be going forward under the administration of the
21 Chapter 13 Trustee's office, so I don't know exactly
22 why you think I'm participating in anything when
23 there are these parallel activities going on and the
24 Court made it clearly in its decision that until the
25 question of this bankruptcy fraud is resolved by the

1 Trustee, the Court not going to get to the plan of
2 confirmation, any plan, so I don't know what you're
3 alluding to.

4 DR. CORDERO: I will explain. You are so
5 mixed up to this case that you are alluding to the 341
6 examination of DeLano that took place on February 1,
7 2005. Well, while on your order of August 30, 2004,
8 you had already decided by order that the DeLanos had
9 not moved to disallow my claim as to eliminate my
10 case. Without ever having heard Mr. DeLano, without
11 ever having his petition put forward to you, you made
12 a decision on the question of fact that shows you're -
13 particularly since now you're saying that you were
14 relying on Mr. Reiber or the office of the U.S.
15 Trustee - that precisely on that motion of July the
16 9th, 2004, I had stated that Mr. Reiber had not
17 investigated anything, to the point where Mr. Trustee
18 Reiber on June 15, 2004 moved to disallow. That wasn't
19 the lack of interest that he had, precisely because he
20 alleged unreasonable delay on the part of the DeLanos
21 introducing documents.

22 There is no way, in fact, that Mr. - that
23 Trustee Reiber was first investigating anything, and
24 second, that he could have reached a decision on
25 whether the DeLanos had committed fraud because

1 the DeLanos had not produced any documents, even though
2 Trustee Reiber had asked for them, and there is no --

3 THE COURT: We're just covering the same
4 matters that were laid out in the Court's August 30,
5 2004 decision, so let's move on. We have already been
6 through --

7 DR. CORDERO: So you won't admit the fact
8 that on August 30th you made a decision that the
9 DeLanos were not involved?

10 THE COURT: The Court's August 30, 2004
11 Decision speaks for itself.

12 DR. CORDERO: And I am bringing to the
13 issue here because it is very relevant to your bias and
14 impartiality. You made a decision on an issue of fact
15 without ever even having heard of Mr. DeLano. In fact,
16 what you did was that you took an allegation of three
17 lines he made, by Attorney Werner in his July 19 motion
18 to disallow the complaint and took that as fact,
19 violated every conceivable rule of due process.

20 THE COURT: On August 30, 2004 - I'm sorry.
21 The Court's August 30, 2004 Interlocutory Order and
22 Decision speak for itself. That covers a lot of
23 ground. It gives the Court, a decision I made and I
24 explained in fair detail. Given the nature of the
25 motion it speaks for itself. Let's move on.

1 DR. CORDERO: So you're admitting that --

2 THE COURT: No, the Court's order speaks for
3 itself. Let's move on.

4 DR. CORDERO: And what I'm saying, that --

5 THE COURT: You can make these arguments at
6 a later point, okay, to the Appeal Court, what - which
7 you're undoubtedly going to do. I'm telling the order
8 speaks for itself.

9 BY DR. CORDERO:

10 Q. So, Mr. DeLano, you were aware of my claim to you,
11 concerning concealment of assets?

12 A. Yes.

13 Q. Mr. DeLano, do you remember that you're still
14 under oath?

15 A. Yes.

16 Q. Mr. DeLano, do you know whether the prisoner
17 dilemma is?

18 A. The what?

19 Q. The prisoner's dilemma.

20 MR. WERNER: Objection, it seems
21 irrelevant. You cannot ask that.

22 DR. CORDERO: You do not even know what I
23 am --

24 THE COURT: We don't know whether it's
25 relevant or not.

1 WITNESS: I - no, I don't.

2 DR. CORDERO: Very well. I will explain to
3 you very shortly, and if you have any questions, ask
4 me. Prisoner's dilemma is a situation where you take
5 two people accused of something, you put them in
6 separate rooms, and you tell them whichever speaks
7 up first will get immunity. The situation that you
8 there, would you say that it is that each one of the
9 two prisoners would have an interest in speaking
10 first?

11 MR. WERNER: Objection, your Honor, I see
12 no relevance to Dr. Cordero's --

13 THE COURT: Sustained. This is really - this
14 is metaphysical and irrelevant. Move on.

15 DR. CORDERO: Judge Ninfo, Judge Ninfo, you
16 did not even know what I am saying.

17 THE COURT: Prisoner, not something that is
18 relevant to a proof of claim with - and we're
19 not going to do this forever, Counsel. There is going
20 to come a point in time where when this hearing is
21 going to terminate because you haven't gotten to
22 anything yet in terms of being your burden to demon-
23 strate that you have a valid claim against Mr. DeLano.

24 In this Court's opinion you had a lot of
25 interesting questions, a lot of tricky questions, a

1 lot of interesting stuff that is going on today, but
2 quite frankly it has nothing to do with you meeting
3 your burden to prove that you have a valid and
4 allowable claim in Mr. DeLano's Chapter 13.

5 I'm hopeful you're going to get to that
6 point.

7 DR. CORDERO: You're asking me to bear my
8 burden of proof, "but you never - Attorney Werner to
9 bear his burden of proof, that the presumption that
10 I --

11 THE COURT: In the Court's August 30, 2004
12 Decision the Court made a determination that the
13 burden shifted by the nature of the objection, and
14 the Court's own view based upon all of the proceed-
15 ings, in the DeLano case and in Premier Van Lines
16 case, that you hadn't demonstrated any fact or legal
17 basis for a claim against Mr. DeLano.

18 The Court has made a ruling that the burden
19 has shifted and the burden has shifted back to you
20 under the Code to make your ultimate proof that you
21 have a valid claim. That is the Court's ruling in
22 its August 30, 2004 Decision. That is my ruling now,
23 the burden has shifted. The presumption of an
24 allowable under the Code is no longer to your benefit.
25 You must prove - you must meet your ultimate burden to

1 prove that you have a valid proof of claim.

2 DR. CORDERO: First of all, being
3 August 30, 2004 order, you didn't even mention any -
4 explaining or as so many of your orders you only made -
5 you just edict. It was by fear, there was no
6 discussion. You just concluded by making a conclusory
7 statement that Mr. Werner could - Attorney Werner could
8 put forward.

9 THE COURT: That is - that is what the Court
10 has ruled then and now. If you want to close the
11 hearing, if you're satisfied that you have a valid
12 proof of claim and that you - in other words; met your
13 burden with respect to this, we can close your hearing
14 right now. Is that what you want to do, Counsel?

15 DR. CORDERO: No.

16 THE COURT: Well, then move on.

17 DR. CORDERO: What you're doing is simply,
18 escape, be it usual of your personality, you put the
19 burden on me that you did not put --

20 THE COURT: You have the burden to prove
21 that you have an allowable claim. I told you that
22 today is the day for you to do that. We've talked
23 about all of the time. Mr. DeLano had to do various
24 things. You had an awful long time to know that
25 ultimately you were going to have to come here and

1 prove your claim today. That is what this was all
2 about. In fact, if you didn't know before August 30th,
3 you certainly knew in the Court's ruling on August 30th
4 that your burden today was to come here and prove that
5 you have a valid and allowable proof of claim. So I
6 would suggest to you that you take that opportunity,
7 your only opportunity today to do that.

8 DR. CORDERO: And what I have stated in my
9 papers is that it is a foregone conclusion that you
10 will find --

11 THE COURT: You have - haven't put any
12 proof in yet. You haven't put any proof in that you
13 have a valid and allowable claim. You haven't proved
14 any of the elements of even your allegations that
15 somehow he was reckless that resulted in an injury
16 to you, any of these things. You haven't put any
17 proof. You have bald-face allegations in your
18 complaint, in your third-party complaint.

19 Are you going to prove on that today or
20 rely on your bald-face allegations in your complaint?
21 Do that, fine, we can do that. We can close the
22 hearing, but is that all you have got is allegations
23 in your complaint, then fine, we don't need to be here
24 anymore. You can get on your plane and go back before
25 the snow storm that was supposed to get to us.

1 DR. CORDERO: It is very interesting that you
2 say that I rely on what you call bold-face allega-
3 tions, but you do not even take into account that
4 Mr. DeLano doesn't even know that. But - so what you
5 are doing now is ignoring the fact that Mr. DeLano had
6 no idea of even what you said was the basis for my
7 claim.

8 THE COURT: I disagree with you and I'll put
9 all that in a a written decision so you will - it
10 will all come together. You may not agree with it but
11 ultimately will all come together for you. I
12 guarantee.

13 DR. CORDERO: The threshold of every
14 bankruptcy petition is whether it was filed in good
15 faith. You even stated that on March the 8th, 2004.

16 THE COURT: Have we closed the proof or did
17 you want to make a legal argument or are we going to
18 have any more testimony?

19 DR. CORDERO: We are going to have a lot of
20 testimony.

21 THE COURT: Let's get on with the testimony,
22 then you can make whatever legal arguments.

23 BY DR. CORDERO:

24 Q. Mr. DeLano, already stated that M&T thought that
25 my containers were my property within the Jefferson

1 warehouse because they had seen a label with my name there?

2 A. Yes.

3 Q. Very well. And it turned out that my containers
4 were not there?

5 A. Yes.

6 Q. It turned out that my containers were in the Avon
7 warehouse of Mr. Pfuntner?

8 A. Yes.

9 Q. And you have stated that you had the David Palmer
10 case assigned to you?

11 A. Yes.

12 Q. So you told me exactly what you just said here
13 that my containers were in the Jefferson Henrietta
14 warehouse.

15 A. We thought.

16 THE COURT: Is that a question or a
17 statement?

18 WITNESS; We thought they were.

19 BY DR. CORDERO:

20 Q. But they were not?

21 A. They were not.

22 Q. Okay. So doesn't that establish clear negligence
23 that you made a statement, you made a statement of a fact
24 that mislead me because I thought that my property was
25 safely in the Jefferson Henrietta warehouse and actually

1 they were not there?

2 A. No, the bank is - that the boxes or a box had name
3 of Cordero on it that was at Jefferson Road. That does not
4 mean that box was full, because it wasn't.

5 Q. So there were no - you have already stated that
6 there were no containers there. So I relied on your word.
7 I was dealing with you concerning the search of my
8 containers with my property. I relied on - you did say
9 DeLano that --

10 A. Yes, you did, and you asked me. M&T went out and
11 found them for you.

12 Q. Really?

13 A. Yes, really.

14 Q. How? Tell me.

15 A. I went out with the guy that worked - or one of
16 the supervisors that worked for the fellow who owned Avon
17 organization, and we went in there. We saw your cabinets
18 right there as well as some other cabinets. We came back to
19 Rochester. We were informed by our attorneys where they
20 were and, in fact, our attorneys even set up a situation
21 where you could travel - when you came to Rochester, go to
22 the location and see these cabinets. But - or what you did,
23 what you did I believe -

24 THE COURT; What did you mean by cabinet?

25 WITNESS: Or containers there. There were

1 two containers involved.

2 THE COURT: I don't know what cabinets --

3 WITNESS: I'm sorry.

4 BY DR. CORDERO:

5 Q. So Mr. DeLano, what you're saying is that you
6 found my containers?

7 A. Yes.

8 Q. Mr. DeLano, did you have the opportunity to - now
9 what did you do in order to have Mr. Palmer pay his loan to
10 M&T?

11 A. He never did.

12 Q. He never did. What did you do in order to collect?

13 A. Legally we filed a judgment against him
14 personally.

15 Q. A judgment? Do you mean a judgment or a claim?

16 A. A judgment.

17 Q. Okay. did you have opportunity to get in touch
18 with Mr. Palmer?

19 A. I'm sorry?

20 Q. Did you have opportunity to get in touch with Mr.
21 Palmer?

22 A. No.

23 Q. Did you take security for the containers?

24 A. No.

25 Q. Very well. You didn't take security for the

1 containers?

2 A. The receipt?

3 Q. No, security?

4 A. Security, yes. The containers were security, or
5 part of the security for our loan. However, under the
6 personal property law the bank only gets the containers, not
7 the personal contents. Those two containers were worth
8 approximately sixty dollars to the bank if we sold them. So
9 in turn the bank abandoned our interest in the collateral,
10 being your containers, and those containers certainly were
11 yours to begin with and could have gone back to you if you
12 wished to pick them up or whatever.

13 Q. So, did you conduct an auction of the containers?

14 A. Not of yours.

15 Q. Did you conduct an auction of containers?

16 THE COURT: What containers?

17 WITNESS; Not your containers.

18 BY DR. CORDERO:

19 Q. What containers did you conduct an auction?

20 A. We conducted an auction of containers that were at
21 Jefferson Road plus the business assets that were at
22 Jefferson Road.

23 Q. I'm sorry, would you repeat that?

24 A. The business assets and the containers at
25 Jefferson Road, Rochester. None of their containers at Avon

1 were ever sold by M&T Bank.

2 Q. Exactly. But you had told me that my containers
3 were in the Jefferson Road warehouse.

4 A. I told that, that a container with your name on it
5 was at Jefferson Road.

6 Q. Exactly. But that wasn't the case?

7 A. That was not the case, no.

8 Q. So you told me something that was wrong. Did you
9 think --

10 A. I told you something that was erroneous, yes.

11 Q. Did you know that I was relying on your word
12 because I was searching for my property?

13 A. I would say you weren't totally relying on my word
14 because you were in touch with everybody in Rochester
15 looking for those containers. But, apparently, you were
16 relying on my word, yes.

17 A. Exactly. And the reason for that was that Trustee
18 Kenneth Gordon referred me to you. He would not take any
19 more of my phone calls even though I had only spoken to him
20 only once. He referred me to you, so I was relying on you
21 to find out my containers were my property.

22 MR. WERNER: Objection, your Honor,

23 Dr. Cordero didn't take the stand.

24 THE COURT: Do ask him a question.

25 BY DR. CORDERO:

1 Q. He already said that. What I'm asking you now is
2 that you auctioned the containers that were in the Jefferson
3 Henrietta warehouse?

4 A. Yes.

5 Q. And how did you conduct that auction?

6 A. By Section Article 9 sale.

7 Q. How many people? How did you get the number of
8 that section?

9 A. It was an Article 9 sale. We sent out - well, in
10 an Article 9 sale in a bankruptcy it works differently. We
11 did not give notice to all of the people in the auction
12 because we did not have, No. 1, a copy of all the account
13 slips, a billing slip for all containers.

14 Q. How did you give notice? I mean, how did you make
15 it known?

16 A. There was no notice of a public auction. It was
17 an Article 9 sale. Bank sold it directly, to another party.

18 Q. And what was that party, the name of that party?

19 A. I can't tell you, I don't remember the name of the
20 party.

21 Q. So, Mr. DeLano, once again, you came here to this
22 evidentiary hearing knowing what is at stake is whether I
23 have a claim against you; isn't that so?

24 A. Correct.

25 Q. So even though you come here knowing that, you

1 didn't know any of the facts attending to this claim, and to
2 Mr. Palmer.

3 THE COURT: Are you asking a question or are
4 you making a statement?

5 BY DR. CORDERO:

6 Q. Do you know the facts of the claim against you
7 that I raised, for in the Palmer case so that you can be a
8 competent witness to their witness of - so that you can bear
9 witness on what you yourself did?

10 A. I just told you entirely what I know about the
11 Palmer case, No. 1. No. 2, as I said before, I don't feel
12 you have any claim against me for anything.

13 Q. You say - you see, it's very interesting that
14 Judge Ninfo allows you to repeat that over and over and over
15 and over, but if I tried to pin you down on one answer, he
16 claims that I am repeating myself.

17 MR. WERNER: Objection, your Honor, that is
18 - the question --

19 DR. CORDERO: That is the fact that --

20 BY DR. CORDERO:

21 Q. That Mr. DeLano - so that you made an auction that
22 was not published; is that so?

23 A. That is correct.

24 Q. How did you contact the person, to whom --

25 THE COURT: Is this relevant to your claim?

1 DR. CORDERO: Yes, your Honor. It's relevant
2 because is what determines what happened to my
3 property. He doesn't know.

4 THE COURT: But he said all the - all they
5 auctioned off at Jefferson Road, that your property in
6 fact was at Avon, so how can the auction at Jefferson
7 Road be relevant to the fact that your property was at
8 Avon? And why would anybody - I mean, told you the
9 fact of the notice?

10 DR. CORDERO: Well, your Honor, I will ask
11 these questions of the witness.

12 BY DR. CORDERO:

13 Q. How did you contact the person to whom you sold
14 the containers in which you had said that my property was?

15 A. We did that through an auctioneer. We had an
16 auctioneer that works for us.

17 Q. And what's the name of that auctioneer?

18 A. John Reynolds.

19 Q. I'm sorry?

20 A. John Reynolds.

21 Q. And how did you go about conducting the auction in
22 which - at the time you thought that my property was - how
23 did you go about it?

24 MR. WERNER: Objection, your Honor. I
25 believe this is not something that has been

1 established, we knew the property was at - we were
2 referring to Jefferson. I'm confused as to what --

3 DR. CORDERO: Yes, I'm sure I know your
4 confusion because you did not even know my complaint.

5 MR. WERNER: Your Honor, I ask that you
6 direct Dr. Cordero to refrain from what - from such
7 comments. He has no need to address me.

8 THE COURT: Quite frankly, Mr. DeLano, you
9 have to focus on questions.

10 WITNESS: Okay.

11 THE COURT: To analyze the question and think
12 about the answer.

13 BY DR. CORDERO:

14 Q. So, Mr. DeLano, I'm asking you, John Reynolds
15 conducted the auction of the containers?

16 A. That's correct.

17 Q. How was John Reynolds contacted?

18 A. Why is that relevant?

19 Q. Because it determines where my belongings ended
20 up.

21 THE COURT: It's quarter after, we'll take
22 our break now.

23 DR. CORDERO: Your Honor, I ask that you
24 instruct Attorney Werner not to supply --

25 THE COURT: Answers to questions that you

1 haven't asked yet.

2 DR. CORDERO: Your Honor, that is a most
3 improper --

4 THE COURT: Mr. DeLano has answered
5 questions that you have asked. As far as I know, I
6 have no idea what, what questions you are going to ask
7 in the future.

8 DR. CORDERO: Judge Ninfo, you already know
9 the fact that I had a --

10 THE COURT: You're not suggesting that
11 Mr. Werner and Mr. DeLano not consult during recess,
12 are you?

13 DR. CORDERO: And the witness established
14 that I had asked questions about the complaint.
15 Neither Mr. DeLano nor Attorney Werner know about that.
16 They came in here to find out.

17 THE COURT: That is on record. What's that
18 got to do with what happens in the recess? Do you want
19 me to not talk about the complaint? They don't know
20 about the complaint. They don't have a copy of it.

21 DR. CORDERO: Judge Ninfo, it's common sense.
22 What I'm asking, there is no repeat of what Mr. DeLano
23 and Attorney Werner did, try to find out, find answers
24 to questions that I already put to Mr --

25 THE COURT: Right, and he's already answered

1 those. You're not going to ask them again, I hope?

2 DR. CORDERO: The point that I trust that you
3 are capable of understanding my concern. My concern is
4 that I have asked questions of Mr. DeLano, he doesn't
5 know the answers, and what I'm saying --

6 THE COURT: He's not going to ask the
7 questions again?

8 DR. CORDERO: Yes, I'm going to ask.

9 THE COURT: You're going to ask them again,
10 doesn't happen to be repetitive?

11 DR. CORDERO: No.

12 THE COURT: Or are you just going to ask him
13 again in a different way?

14 DR. CORDERO: Yes, in a different way. I'm
15 going to ask him in the context of trying to find out
16 what he knew and what he did not know because it is
17 evident that Mr. DeLano is not, has not, not the
18 faintest idea if what his case, that my claim is. Why
19 he would move to disallow, he doesn't know what he did.

20 THE COURT: So what do you want me to
21 instruct Mr. Werner not to do?

22 DR. CORDERO: Not to find the answers to the
23 questions that I have put to Mr. DeLano.

24 THE COURT: And Mr. Werner, I don't want you
25 to find the answers to questions that Dr. Cordero has

1 asked Mr. DeLano in the recess.

2 We'll see you at quarter --

3 (Recess taken.)

4 (Court reconvened.)

5 THE COURT: Want to step up. You're still
6 under oath.

7 Are you all set?

8 DR. CORDERO: Yes.

9 BY DR. CORDERO:

10 Q. I'm going to determine, Mr. DeLano, what is it
11 that you know about my claim and neither you or your lawyer
12 knew about that claim. We are now trying to find out what
13 it is that you know about your deals with Mr. David Palmer.
14 You stated that you dealt with the failure of Mr. Palmer to
15 pay the loan to the bank.

16 A. Yes.

17 Q. And did you already state that you thought that my
18 containers were at the Jefferson Henrietta?

19 A. Yes, we did. Originally we did.

20 Q. And you auctioneered those containers, did you
21 not?

22 A. We auctioned all the business assets, and about -
23 I think about ten containers were included when we auctioned
24 them off. Yours was not among those containers.

25 Q. Mine was not among those containers?

A. That's correct.

2 Q. And who did you contact to auction those
3 containers?

4 A. John Reynolds.

5 Q. What did he do in going about the auction?

6 A. Mr. Reynolds an appraiser auctioneer and he looked
7 around for a buyer and we had a public sale - or a private
8 sale, I'm sorry, of all the containers and business assets.

9 Q. So Mr. Reynolds had a private sale?

10 A. He conducted it on our behalf, yes.

11 Q. Do you know how he conducted that sale?

12 A. It was a private sale to a carting company.

13 Q. To a carting company?

14 A. Yes.

15 Q. Okay. Which carting company?

16 A. I don't know which one. I don't remember which
17 one.

18 Q. Okay. Is it fair to say that once again you do
19 not know?

20 MR. WERNER: Objection, your Honor.

21 THE COURT: Sustained.

22 DR. CORDERO: Objection. You said that for
23 months that I had to prove my claim for. For years
24 Mr. DeLano --

25 THE COURT: I believe that the sale of

1 containers, which do not include your containers, and
2 business assets at Jefferson Road after the witness
3 testified that your property was not among the
4 containers was sold is irrelevant and if you're going
5 down the line trying to prove, once again in your own
6 theory that somehow Mr. DeLano is incompetent because
7 three years today he can't remember the name of the
8 carting company he sold to, I don't think it's
9 a sign of incompetence. If he had his files here
10 with respect to the Premier Van Lines loan, I'm
11 sure he could tell who the carting company is and - but
12 he doesn't. But - and there is no reason to believe
13 three years later with the seventy-five cases that he
14 has that somehow he would remember the name of the
15 carting company.

16 DR. CORDERO: You do not hold him to
17 standard of the company person to bring those documents
18 to court when he --

19 THE COURT: No, I don't hold him to the
20 standard, bringing documents to court that - that are
21 irrelevant to your claim.

22 MR. WERNER: Your Honor, I believe --

23 THE COURT: I don't need to hear from you
24 either, so sit down, we're going to move along here.

25 BY DR. CORDERO:

1 Q. The essence of the claim is as Judge Ninfo
2 advocates your case, has stated that my containers were not
3 among those that you auctioned; is that so?

4 A. Yes.

5 Q. Excellent. We have established that my containers
6 were not among those that were auctioned.

7 A. Yes.

8 Q. Very well. Mr. DeLano, to whom did Mr. Reynolds
9 auction the containers?

10 THE COURT: Asked and answered. Move on.

11 BY DR. CORDERO:

12 Q. Okay. You do not know, when was the company that
13 actually took possession of the containers?

14 A. I don't know. You mean the ones that were
15 auctioned?

16 Q. The ones that were auctioned.

17 A. I don't know.

18 Q. So at that point in time you thought that my
19 belongings were in those containers I was relying --

20 THE COURT: At what point of time?

21 DR. CORDERO: At the point of the auction.

22 BY DR. CORDERO:

23 Q. At the point of the auction did you believe my
24 containers were in the containers? You didn't say that?

25

1 Q. Excellent. You didn't think so, is that so?

2 A. That's correct.

3 Q. Very well. So, we know both your advocates know
4 that you did not know.

5 MR. WERNER: Objection, your Honor.

6 THE COURT: Sustained.

7 BY DR. CORDERO:

8 Q. You did not know that my belongings were among
9 those containers that you auctioned?

10 THE COURT: No, that is not what he
11 testified. Said he knew your property was not among
12 the containers.

13 BY DR. CORDERO:

14 Q. Exactly that. So you thought my belongings were
15 not where - not among the containers that were auctioned?

16 THE COURT: Correct, they were, Counsel,
17 they were elsewhere.

18 DR. CORDERO: They were elsewhere.

19 BY DR. CORDERO:

20 Q. Do you think that the people that stored
21 belongings in those containers regarded them as viable?

22 MR. WERNER: Objection, your Honor,
23 relevance.

24 BY DR. CORDERO:

25 Q. They paid, common sense, Mr. DeLano, common sense

1 if people paid to store things in containers?

2 A. Yes.

3 Q. Yes. So, I had an interest in finding out where
4 my belongings were?

5 A. That's correct.

6 Q. And I asked you and eventually you auctioned the
7 containers that were at the Jefferson Henrietta warehouse?

8 A. Yes.

9 Q. Yes. So do you think that you - did you make an
10 inventory of what it is that was auctioned?

11 A. Yes.

12 Q. Where is it?

13 A. It's on a bill of sale that we gave to the carting
14 company.

15 Q. And what was the name of the carting company?

16 A. You asked that before and I don't remember.

17 Q. Okay. But that bill of sale is kept where now?

18 A. In the bank records.

19 Q. In the bank records. And you're a bank officer?

20 A. That's correct.

21 Q. And you have access to those records?

22 A. If you want to subpoena them.

23 Q. You are not a lawyer, no?

24 A. I can tell you how it works. If you want bank
25 records, you subpoena bank records.

1 Q. Even though M&T is a party to the Pfuntner case I
2 would not have to subpoena them.

3 A. Yes, sir, you would.

4 Q. Actually, I don't. As the party, yes. Okay.

5 So, so you have a record of what it is that you
6 auctioned?

7 THE COURT: No, he doesn't have a record. He
8 says M&T.

9 M&T has a record?

10 WITNESS: Yes.

11 DR. CORDERO: I do not understand why you,
12 Judge Ninfo, have to correct. He is capable. He is a
13 thirty-two --

14 THE COURT: I'm not correcting him. I'm
15 correcting you.

16 DR. CORDERO: He can do that himself if I
17 say something that he thinks is not correct. He can
18 do that. If he allows that to go through, that means
19 something that I confuse later on.

20 BY DR. CORDERO:

21 Q. You are a thirty-two year bank officer, are you
22 not?

23 THE COURT: We have been through - let's
24 move on to issue --

25 BY DR. CORDERO:

1 Q. Okay. So when you think I'm saying something that
2 is not right, just say it.

3 A. All right.

4 Q. Okay. You auctioned those containers through Mr.
5 Reynolds?

6 MR. WERNER: Asked and answered, your Honor,
7 objection.

8 DR. CORDERO: I have not even stated my
9 question.

10 BY DR. CORDERO:

11 Q. So, you do not know to whom those containers were
12 sold?

13 A. I don't remember.

14 Q. You don't remember?

15 A. Yes.

16 Q. Exactly. Okay. And even though you were supposed
17 to be prepared --

18 MR. WERNER: Objection, your Honor, this
19 presupposes there is any obligation on the part of my
20 witness.

21 THE COURT: He didn't ask the question.

22 MR. WERNER: Your Honor, I believe he's out
23 of line.

24 THE COURT: Let him ask the question, then
25 I'll address it.

1 MR. WERNER: Thank you, your Honor.

2 BY DR. CORDERO:

3 Q. Mr. DeLano, if you sold the containers with
4 property of other third parties, is that not so?

5 A. That's correct.

6 Q. That's correct. The containers that you sold had
7 other property in it?

8 A. Yes, it did. I'll explain that.

9 Q. And did you give notice to the parties that you
10 were giving those containers to other people?

11 A. There is a law with reference to personal
12 property, that states that once the container is sold,
13 removed from carting company to carting company within
14 thirty days, they have to give you a notice that they now
15 have possession of your personal goods and you have thirty
16 days to either remove the personal goods and the container
17 or to leave that personal container with them and rent from
18 them.

19 Q. Before moving the containers did you give notice
20 to the parties?

21 A. No, no, no, they were given notice immediately
22 within the same day.

23 Q. Within the same day of what?

24 A. Within the same day, day of the sale.

25 Q. And when was the sale held?

1 A. Before August. I can't remember the exact date.

2 Q. So you're saying that on the same day that Mr.
3 Reynolds sold the containers to a third party he gave
4 notice?

5 A. That's the law.

6 Q. And did you know whether in fact that he gave
7 notice?

8 A. No.

9 Q. Did you care to find out?

10 A. We would know within thirty days whether notice
11 had been given. They had to provide us with copies.

12 Q. And did they provide you with those copies?

13 A. Yes, they did.

14 Q. And so where are those properties - copies now?

15 A. In M&T records.

16 Q. Okay. So did you think that it was reasonable for
17 you not to give notice to the parties that had their
18 property in those containers when not even you were in
19 charge of the sale to another carting company?

20 A. Yes.

21 Q. It was reasonable for you?

22 A. Yes.

23 Q. Very well. So that means that people that have
24 paid for many years as oneself for the storage of their
25 belongings in a certain place had to rely on your judgment -

1 no, no, not your judgment, Mr. Reynolds' judgment that the
2 property was going to be carted away, is that so?

3 A. That would - that wasn't - be true, would be true
4 in your case --

5 Q. No, the question --

6 A. Yes, you would have to go with our judgment
7 because the landlord was throwing out the property.

8 Q. What landlord?

9 A. The landlord at Jefferson Avenue. He had not been
10 paid, he wanted everything out of there.

11 Q. So had you had the pressure of the landlord of
12 Jefferson Henrietta?

13 A. That's correct.

14 Q. Yes. And since you were on the - under pressure
15 to remove the containers from the Jefferson Henrietta, you
16 did not investigate who was there? You told me that my
17 containers were there because you were under pressure to get
18 the containers out of the Jefferson Henrietta warehouse.

19 A. I told that - that I thought your container was
20 there.

21 Q. Okay. And you were under pressure to remove the
22 containers from the warehouse?

23 A. Or we would have a warehouse lien on all the
24 containers and all the business equipment.

25 Q. Yes. So, in the rush to move the containers out

1 of the Jefferson Henrietta warehouse, is it possible that
2 you were negligent in the way you handled the containers?

3 A. No.

4 Q. So what measures did you take in order to ensure
5 that the property that was in those containers would be
6 stored in the safe place?

7 A. We sold it to a warehouse unit in the city of
8 Rochester. You always sell it to - when we get involved
9 with these types of credit we always sell it to a legitimate
10 warehouse company.

11 Q. And what was the name of that company?

12 A. I don't - I told you before I don't - do not
13 remember the name of the company.

14 Q. I thought you had mentioned a carting company, not
15 a warehouse.

16 A. A carting company, but I do not remember the name
17 of the carting company.

18 Q. Well, isn't it strange that you would have said
19 that you always sell it to that company, but nevertheless,
20 you did not know the name of it?

21 A. I do not always sell to that same company. There
22 are different carting companies in the city of Rochester.

23 Q. And you said that it was a reputable company?

24 A. Yes.

25 Q. But you don't know the name?

1 A. No, I don't.

2 Q. So, actually, you did not sell the containers, it
3 was Mr. Reynolds who sold the containers?

4 A. No. Mr. Reynolds set up a deal. He has to have
5 it approved by M&T Bank.

6 Q. And you were in charge of approving that?

7 A. That's correct.

8 Q. So you had to make sure that the containers were
9 sold to a reputable company?

10 A. That's correct.

11 Q. And how did you come about making that judgment?

12 A. We have knowledge in Rochester. After you have
13 been in business as long as - you have a who is reputable in
14 this town and who is not.

15 Q. And who is reputable in this town?

16 A. I can't name all the carting companies. I do not
17 have a telephone book in front of me or I would.

18 Q. And - but can you name - at least you said --

19 MR. WERNER: Objection, your Honor. What
20 difference does it make? I see no relevance to this
21 line of questioning.

22 THE COURT: Okay.

23 DR. CORDERO: I can explain it very easily.

24 THE COURT: Sustained.

25 DR. CORDERO: You disposed. Judge Ninfo,

1 you're making a statement you disposed of --

2 THE COURT: Ask a question.

3 BY DR. CORDERO:

4 Q. The question is: How did you know that the
5 containers were gone to a reputable company?

6 MR. WERNER: Objection. We're talking about
7 Jefferson Road. It's been established, apparently,
8 that --

9 THE COURT: You know what the problem is
10 here, folks? If Mr. DeLano would just listen to the
11 questions, he could answer them very quickly and very
12 easily and very truthfully and we can just move on.
13 Part of the problem is Mr. DeLano is not listening
14 to the questions and he's not answering them in
15 just, you know, he's just not listening, okay?

16 Now I know that that is difficult, but that
17 is part of the problem here. It's not so much the
18 questions as Mr. DeLano is not listening to them.
19 That's the problem. Because, you know, many of them
20 are irrelevant but we can move a long a lot faster than
21 making objections and rulings on them. If you
22 just answer the question simply, that is all I'm
23 looking for. The time issue, it's just quicker to
24 answer some of these questions and move on than to
25 object and then get overruled and sustained. That is

1 what the problem is. So you know, you need to under-
2 stand that.

3 Go ahead, Counselor.

4 BY DR. CORDERO:

5 Q. So what you're trying to establish is that you
6 entrusted containers that are third parties' viable
7 property, available property to Mr. Reynolds, is that so?

8 A. Yes.

9 Q. And in doing so you relied on the judgment of
10 Mr. Reynolds?

11 A. Yes.

12 Q. Mr. Reynolds is not an employee of M&T?

13 A. No.

14 Q. So he conducted a private auction, and how many
15 bidders came to the auction?

16 A. It was a private sale.

17 Q. So it may have been only one?

18 THE COURT: Now, Counselor, you must know
19 this with all your background in education that is an
20 Article 9 private sale under 503 or whatever it is,
21 it's not a public auction. It's one of the alterna-
22 tives for the disposition of secured property and you
23 know as well as the rest of us in this room that it's
24 an Article 9 private sale, if you can look that up, so
25 don't ask questions that are irrelevant to the kind of

1 sale it is. It's just a private sale, 503.

2 DR. CORDERO: Actually, it's very interesting
3 that you are the first person to mention that here. In
4 none of the papers that Mr. Werner has filed, in none
5 of the statements that M&T has filed, did it ever
6 mention that there was a sale that was under that
7 Article.

8 THE COURT: He said it was right. He said
9 all day that it was an Article 9 private sale. That is
10 the first thing he said when he talked about it and
11 it's in my notes he called it an Article 9 private
12 sale. That is what he was referring to. You know what
13 Article 9 is about and you know what he's talking
14 about, so let's move on.

15 DR. CORDERO: I do not have to know but I
16 think he never mentioned that.

17 THE COURT: He has no obligation to mention
18 that. You didn't, as far as I know, take any deposi-
19 tion of them, you didn't send him any interrogatories,
20 you didn't do any discovery by September 15, cut off
21 day, so they didn't have any obligation to put any of
22 that in the papers. So move on.

23 DR. CORDERO: The statement that you have
24 just made, Judge Ninfo, is not correct, is not in
25 keeping with the facts. I told - asked him for

1 discovery, that I said in this documents in
2 September 29.

3 THE COURT: And the Court ruled on that.

4 DR. CORDERO: Exactly.

5 THE COURT: So move on.

6 DR. CORDERO: You deny me all of the
7 documents that I had required and now you require --

8 THE COURT: I didn't deny you documents.
9 You made a request for documents, Counsel, for
10 Mr. DeLano responded to you that they didn't have those
11 documents, that they were documents of M&T Bank and
12 that if you wanted them, you needed to get them from
13 M&T Bank.

14 DR. CORDERO: No, that is not what they said.
15 They said they were there, is point they made and I
16 made, they have no obligation to produce documents,
17 they have no obligation.

18 THE COURT: I've already ruled on that. I'm
19 not arguing anything. I already made a ruling. I
20 already signed an order with respect to this. This is
21 not something new. We're rehashing hollow ground.
22 Move on. Let's go.

23 DR. CORDERO: Yes. You are asking me to know
24 about Article 9.

25 THE COURT: Are you talking to me or the

witness?

2 DR. CORDERO: I'm talking to you.

3 THE COURT: I want you to talk to the
4 witness and start asking questions.

5 BY DR. CORDERO:

6 Q. Mr. DeLano, did you ever tell me in writing that
7 you had made a private sale to anybody under Article 9?

8 A. No.

9 Q. Did Mr. Werner make any such statement to me?

10 A. I don't know.

11 Q. But in the papers that he signs he must let you
12 know before. Did you know whether he made any such
13 statement?

14 A. No.

15 Q. So how could I possibly know why - how did you
16 proceed in selling the containers if you did not inform me?

17 A. I don't know.

18 Q. Exactly. So it's totally fair for Judge Ninfo to
19 request that I know that?

20 THE COURT: Okay, I'm sold.

21 BY DR. CORDERO:

22 Q. You sold those containers, that had viable
23 property third parties, through a person that wasn't an
24 employee of you, who sold through a private sale to perhaps
25 one bidder, because you didn't even know that, and in doing

1 so you were under pressure to get the containers out of the
2 warehouse, so you actually allowed --

3 THE COURT: Are you asking a question?

4 BY DR. CORDERO:

5 Q. Did you actually allow Mr. Reynolds to go with the
6 auctioneer or the containers, the carting company that he
7 proposed without making any other investigation of the
8 other?

9 THE COURT: Investigation of what?

10 DR. CORDERO: Why didn't you let him answer
11 that? You were providing a way of escape. He could
12 have said that's true and then he would have to -
13 you're just testifying for him because from the
14 beginning --

15 THE COURT: To move this hearing along,
16 Counsel. Okay, because you know you've got to stick to
17 the relevant issues here. The sale of the containers
18 that did not include your property that you've asked
19 fifteen questions about the auctioneer John Reynolds
20 about is really not relevant and I don't know what
21 you're - what you're trying to do, confiscate that
22 bidder, delay it, wear everybody down. I don't know
23 what you're doing but you're not proceeding to get to
24 what we really need to get to, which is what he may or
25 may not have done as a bank officer or individual with

1 respect to your property.

2 The only relevant question you've asked so
3 far and he answered the question three or four times,
4 did he tell you there was a container at Jefferson
5 Road that had your name on it? One container as far
6 as I can - that is the only really relevant question
7 you've asked about it, so I would appreciate for
8 everyone's sake if you would start asking relevant
9 questions about your claim, and It's all very nice, you
10 know, about this Article 9 private sale, but you
11 haven't demonstrated any relevance yet. You may do
12 that if you would just move on.

13 DR. CORDERO: Well, so far what I have done
14 is establish through Mr. DeLano's testimony and your
15 testimony that my containers were not in that auction.

16 THE COURT: Correct.

17 DR. CORDERO: Which is a very important
18 issue.

19 THE COURT: Good, I'm glad we established
20 that. Now can we move on?

21 DR. CORDERO: Thank you.

22 BY DR. CORDERO:

23 Q. So you did not not - any major to find out whether
24 the property of third parties contained in those containers
25 were being sold to a person that would take proper care of

1 them.

2 THE COURT: That's not a question.

3 DR. CORDERO: That is a question.

4 THE COURT: No, it was a statement.

5 "Did you"?

6

7 DR. CORDERO: Thank you.

8 BY DR. CORDERO:

9 Q. Did you make any - did you take any action to
10 ensure that the property of third parties contained in those
11 containers?

12 A. We said it was sold to a reputable carting company
13 in the eyes of the bank.

14 Q. The eyes of Mr. Reynolds because if it were in the
15 eyes of the bank, you would know - you would have to know
16 how - this is a question - how can you know, that a person
17 is a reliable person when you do not even know who it was?

18 A. You know, these goods were sold almost three years
19 ago and we're talking about ten cases or cartons here.
20 We're not talking about a hundred thousand. We're not
21 talking about yesterday.

22 Q. But you knew that we were going to discuss that
23 precise issue, issue of whether you had handled those
24 containers properly, or did you not know that?

25 A. I did not know that.

1 Q. So did you know that my claim is based on this
2 precise issue?

3 A. What is?

4 Q. The issue of whether you had taken care of
5 containers with third party property.

6 A. I normally do, but these have nothing to do with
7 your containers which are still in Avon, correct?

8 Q. Mr. DeLano, you know that you cannot ask me
9 questions and you have not answered my question. I said to
10 indicate that you do not know what claims that you're trying
11 to disallow, you do not know what facts are concerning my
12 property.

13 MR. WERNER: Objection, your Honor, this is
14 argumentative and also presupposes that Mr. DeLano is
15 under any obligation --

16 THE COURT: I think I can sum it up best this
17 way because the claim objection, the claim set up
18 no legal basis or fact to substantiate obligation of
19 the Debtors. So, yes, he didn't know what you were
20 going to talk about today. Quite frankly, I didn't
21 know what you were going to talk about today. I don't
22 know what the basis of your claim is either and I don't
23 know why I'm not - I don't know why he would know
24 because I have had no clue what you were going to talk
25 about today, Counselor.

1 DR. CORDERO: You would know if what it is
2 that you - if you read my complaint, because I stated
3 that quite clearly. You would know in legal terms.

4 THE COURT: All your complaint talking about,
5 that he notified you at one point that he thought that
6 one of your containers was at Jefferson Road, correct?

7 DR. CORDERO: You would know the basis that
8 the legal basis of my complaint and my claim against
9 Mr. DeLano, if you, Mr. DeLano or Attorney Werner had
10 just read the proof of claims. You did not even know
11 that either.

12 THE COURT: I didn't actually know what the
13 basis of it was, which is --

14 DR. CORDERO: No, don't say that, don't say
15 that.

16 THE COURT: You just asked me if I knew what
17 it was.

18 DR. CORDERO: Don't say that.

19 THE COURT: I wanted to prove if I knew what
20 it was because I reviewed it for this hearing. Didn't
21 you want me to tell you what it was?

22 DR. CORDERO: Already said that you did not
23 know.

24 THE COURT: I didn't know what you were going
25 to talk about. I knew what your complaint was but I

1 didn't know what you were going to talk about.

2 DR. CORDERO: Please do not say it.

3 THE COURT: Let's move along.

4 BY DR. CORDERO:

5 Q. The point is, which is at the basis of the claim,
6 and the claim is you went to find out, Mr. DeLano, what the
7 claim was, you're going - yes or no? You can wait because
8 you don't know.

9 A. I would like to know.

10 Q. You would like to know?

11 A. Sure.

12 Q. Exactly, and that is basis of my defense against
13 your motion to disallow. You have already stated that
14 filed a motion to disallow my claim without knowing what
15 claim it was. The Court has a legal obligation under 511,
16 section 1325(A)(3) to find out, whether a petition has been
17 filed in accordance with the law or by means or reason by
18 the law. The Court has not done that, because it doesn't
19 want to find out. The Court cannot have known about that
20 and Mr. Reiber did not want to find out. Mr. Reiber --

21 THE COURT: Are you asking a question or just
22 making a statement?

23 DR. CORDERO: I'm just stating --

24 THE COURT: Because we're not asking - we're
25 not making statements, or asking questions, so do you

1 want to rely on that, that the basis of your defense,
2 the claim objection that he doesn't know what your
3 claim is all about, so we can end this hearing?

4 DR. CORDERO: No, because I'm just eliciting
5 evidence from him and from you, which - because you do
6 not know. That is the point I'm trying to establish,
7 some information that is going to bring both of - to
8 the fact that you have taken the defense of Mr. DeLano,
9 the fact that with the facts --

10 THE COURT: Let's do it. Get going. Let's
11 do it.

12 BY DR. CORDERO:

13 Q. Mr. DeLano, you already stated that you're a
14 truthful person?

15 A. Yes.

16 Q. Ask you a question. I want you to think very hard
17 before you answer it, and you would know why you would have
18 to, depart the answer to me or think hard before answering
19 it. If the Court had allowed you to hear what I have to say
20 about the Prisoner's Dilemma, but the Court did not give you
21 that option and now you're on your own.

22 Mr. DeLano, did you have knowledge that any of the
23 parties, whether it be Attorney Werner, Trustee Reiber,
24 Attorney James Weidman, attorney for Mr. Reiber, Ms. Schmitt
25 or any other parties has contacted Judge Ninfo in this

1 matter?

2 A. I do not. I do not.

3 Q. Okay. And on March the 8th, what happened on
4 March the 8th, after Mr. James Weidman prevented me from
5 asking you, after I had asked only two questions and he had
6 repeatedly asking me how much I knew about a - how you
7 committed the fraud, what happened afterwards?

8 A. I believe he - the 341 was stopped, and called for
9 another date.

10 Q. What happened afterwards after that?

11 A. After that, we left.

12 Q. Where?

13 A. Downstairs.

14 Q. Where?

15 A. Downstairs here in this building and then when
16 came up later for confirmation hearing, and that was it.

17 Q. Do you have - was Mr. Weidman with you all the
18 time?

19 A. Mr. who?

20 Q. Mr. Weidman, the person who unluckily conducted
21 the examination.

22 MR. WERNER: Objection.

23 THE COURT: Sustained.

24 WITNESS: He was not.

25 BY DR. CORDERO:

1 Q. I have already stated --

2 A. He was not?

3 Q. Did you know where he goes?

4 A. No.

5 Q. Was Attorney Werner with you all the time?

6 A. No.

7 Q. Do you know where he went?

8 A. No.

9 Q. Very well. So you did not know whether any party
10 has had contact on this case with Judge Ninfo?

11 A. No.

12 Q. Very well.

13 DR. CORDERO: This is a threshold question.
14 This is a question based on the fifth amendment due
15 process law. I'm entitled to know that these
16 proceedings fair and impartial and that it has not been
17 conducted in any way in violation of due process or
18 specifically of Federal Rules of the Bankruptcy
19 Proceeding, Rule 9003. I'd ask Judge Ninfo, have you
20 had any contact by any of the parties concerning these
21 particular case and - and in asking this question --

22 THE COURT: Absolutely. We had a number of
23 hearings. We had a number of telephonic hearings.
24 The Court has made a number of rules, parties have
25 appeared, made after the argument in writing and

1 otherwise. Obviously, I have been contacted by
2 parties.

3 DR. CORDERO: I understand in violation of
4 Rule 9003.

5 THE COURT: None of the parties have
6 contacted me.

7 DR. CORDERO: None of the parties have
8 contacted you?

9 THE COURT: Other than this, the proceedings
10 that we have had.

11 DR. CORDERO: And when you have used your
12 power to press the telephone button when I have
13 appeared by phone, have you continued talking to the
14 parties in the courtroom?

15 THE COURT: No, not to the best of my
16 knowledge.

17 DR. CORDERO: But it's a possibility, that
18 is what you're saying?

19 THE COURT: I really don't know as we looking
20 back. I mean, I could be, to talk to parties because
21 parties have other matters for me. For example, you
22 may have a hearing, on this case, and then, those
23 parties are appearing in other cases that were - are
24 on the calendar. If that is what you're talking about.

25 DR. CORDERO: Your Honor, I think that you

1 really know that I am referring to my case because I
2 said that. You know I'm not concerned whether
3 Mr. Reiber, for example --

4 THE COURT: Quite frankly, since as long as
5 I can remember, you've started off your appearances
6 with this pre-cant speech thing you have about making
7 sure that the hearing was closed and nothing has
8 happened before and nothing has happened after. We
9 tried to honor that all the time, so if that is what
10 you're referring to? So you made a statement every
11 time you have appeared telephonically. You made it
12 right at the beginning of your appearance and we have
13 always honored that statement.

14 DR. CORDERO: Actually, what happened was on
15 the meeting of the parties in the Pfuntner case on
16 January 10, 2003, there were all the other parties in
17 the room and then all of a sudden you just pressed
18 the button and disconnected me, without giving me
19 any --

20 THE COURT: That is probably because, you
21 weren't listening what we were talking and that the
22 Court had indicated to you, and probably didn't hear
23 it because you were talking over the Court, that the
24 hearing was closed as far as - and that happens
25 sometimes in this court. Not just because of you,

1 because attorneys and other parties just keep talking
2 and talking and the Court says fine, we're done, and
3 I instruct Ms. Parkhurst that the hearing is completed.
4 That, actually. that hearing on January 10, 2003 did
5 not occur in the room. It was in - it was a meeting of
6 the parties relatedly. Some of the parties because
7 you weren't here.

8 DR. CORDERO: Exactly.

9 THE COURT: Right.

10 DR. CORDERO: The other parties were in the
11 room. There was no other party and it was after that,
12 that I realized that without any - even without even
13 putting an end to the meeting, you would disconnect me
14 and you would do that as recently, as the hearing on
15 December 15, 2004.

16 THE COURT: So you were - you weren't here
17 for that.

18 DR. CORDERO: Exactly. I was on the phone.
19 Did you do that again? You have, even though you
20 already stated in your line I have already asked
21 you not do that from the beginning, so the last
22 time --

23 THE COURT: You asked me not to talk about
24 this afterward but you did not tell me I can't end the
25 hearing in my discretion when I heard all I want to

1 hear from you or any other party or all that I need to
2 be hearing because this Court spends a lot of time, as
3 you're aware of, going over things ahead of time and
4 pretty much knows everything that it needs to know and
5 at that point, and has answers to questions that it's
6 asked or the Court ends the hearing that way, which
7 operate --

8 DR. CORDERO: That would be local practice,
9 but --

10 THE COURT: It's not local practice. I
11 don't know what that has to do with local practice.
12 You don't get to speak as long as you want to, you
13 get to speak as long as you need to.

14 DR. CORDERO: No, I get to speak as long as
15 the hearing is in process.

16 THE COURT: Right, and when I end the
17 hearing, it's over.

18 DR. CORDERO: The point, you did not end the
19 hearing, you ended me. You did not state --

20 THE COURT: When we set this hearing on
21 December 15 - when we set that hearing on December 15 -
22 one we set for today, March 1st. That's all. I have
23 other cases that we're setting hearings for on that
24 day on our Evidentiary and Trial calendar. We have to
25 get on to. It's very simple. It's not the only case

1 that we have.

2 DR. CORDERO: That allows you to breach the
3 right of a litigant to turn the key while you have not
4 even terminated the hearing? Due process requires --

5 THE COURT: All we did was set this down
6 for a hearing today. What else was there to do?
7 You may have wished to talk about other things but that
8 wasn't the subject of the Evidentiary Hearing Calendar.

9 DR. CORDERO: Your Honor, the only - it
10 speak about was this case. The point is you put an
11 end to hearings whenever you want, even though I have
12 stated that I have a right to hear and to be heard.
13 You do --

14 THE COURT: You have a right to be heard
15 until I have heard enough, so let's move on.

16 DR. CORDERO: Yes, but you have to give me
17 the same opportunity as other people.

18 THE COURT: You do. You always do, so let's
19 move on, until you start being repetitive like you have
20 so many times. Until you start talking about things
21 that the Court has already made rules on, which you
22 have already done today, too, and so on. We need to
23 move these things on. You know what I'm talking about.

24 DR. CORDERO: What is that you stated?

25 THE COURT: That you can't be repetitive.

1 Okay? That when you just repeating yourself, when
2 you're rearguing something the Court has already made
3 a rule on, the Court has the right, and that is what
4 we're talking about. So when we set the hearing, we
5 moved on. We need to move on right now.

6 DR. CORDERO: Yes. It's - isn't it
7 interesting I'm the only one that repeats himself and
8 Mr. DeLano has repeated himself.

9 THE COURT: Mr. DeLano isn't an attorney.
10 I don't have the same expectation that I have for
11 Mr. DeLano as an attorney, especially a very bright
12 and intelligent attorney like yourself.

13 DR. CORDERO: Any person would come in and
14 understand don't repeat yourself, by saying --

15 THE COURT: You're just being reargumenta-
16 tive. We're not advancing the ball here, Counsel.
17 We need to advance the ball. I'm going to take away
18 from you if you make any more noise. Notice I just
19 pressed the button.

20 BY MR. DeLano:

21 Q. So, Mr. DeLano, you sold the containers through
22 Mr. Reynolds and on that same day there was notice given to
23 the owners of the containers?

24 A. That's correct, notice was given afterwards.

25 Q. And you know when that notice was issued on the

1 same date?

2 A. It was given either the same day or the next day.

3 Q. And do you know what day that was?

4 A. No, sir.

5 Q. Okay. So, the Court allows you to say that you
6 don't know the date. I hope that the Court would also allow
7 me to - to provide you with the date that the document I'm
8 going to mention, because if you sold those containers to a
9 certain - I don't want to - want to provide you with the
10 name because we have - I'm here to find that out - and in
11 the - in doing that it - did you contact that party
12 afterwards?

13 A. Yes.

14 Q. Yes. And did the Bank represented you on your
15 behalf contacted that party afterwards?

16 A. I'm sorry? Ask the question again.

17 Q. Very well. Did your bank also contact that party
18 that had received the containers after taking possession of
19 the containers?

20 A. Yes.

21 Q. What was the content of the letter that you sent
22 to that party?

23 A. I don't recall.

24 Q. That would be very important, no, to find out why
25 you would contact that parties after the party took

1 possession of the containers?

2 A. Why?

3 Q. The question is, would it be important?

4 DR. CORDERO: Did you want to say something?
5 You can say it aloud so we all know.

6 MR. WERNER: What?

7 DR. CORDERO: You wanted to say to
8 to Mr. DeLano?

9 MR. WERNER: No, I wasn't trying to say
10 anything, your Honor. I must object once more. Again
11 this seems to be some sort of mere test on the part
12 of Mr. DeLano. We're under no obligation to bring
13 any proof. As far as I know, no obligation to bring
14 Mr. DeLano. In fairness to the Court and fairness to
15 the - we brought Plaintiff DeLano to court. It is not
16 our burden of proof, it's his burden of proof. If he
17 hasn't brought anything, it's not to be held against
18 - it was not subpoenaed and not pursued. For to him
19 ask me I should not - should know. The point the
20 whole - and what Mr. DeLano and doesn't know and if
21 it isn't appropriate or isn't appropriate is that in
22 basis of law nor basis of procedure, nor is even
23 relevant to his claim.

24 We haven't even got to anything about his
25 claim other than the fact that somehow it's in Avon as

1 opposed to Jefferson Road.

2 THE COURT: Thank you.

3 MR. WERNER: Thank you for letting me
4 express that and, your Honor, I might ask one
5 question. Is Mr. Cordero taping this on his computer?
6 Is the record on anything on his computer, because
7 that would be inappropriate, because it's against the
8 law. Recording devices are not permitted in the court
9 and when there is a stenographer.

10 THE COURT: That is so.

11 DR. CORDERO: First, I am not recording it.
12 But second, what is the basis for your claim,
13 Attorney Werner? If you're stating that no --

14 THE COURT: I believe it says no - whatsoever
15 in - I'm allowing him to have that but they're signs
16 in there that say - really put there - it's outside
17 the courtroom and outside the entrance to the courtroom
18 that was put there at the insistence of the Chief of
19 the District, who is in charge of this courthouse. So
20 there are no electronic devices allowed, but I'll
21 allow to have your computer, which is very unusual.
22 But if you're, in fact, recording that hearing, that
23 would be inappropriate.

24 DR. CORDERO: Because I come from New York
25 City and I can't bring all the files here so I'm

1 trying to have some - just as you could have brought
2 your files to refresh your memory, and --

3 THE COURT: Witness never said this, so let's
4 move on.

5 DR. CORDERO: The attorney for Werner said
6 that - that he had brought his files, and all the
7 issues as I stated before.

8 BY DR. CORDERO:

9 Q. Do you know the legal basis that I stated in my
10 proof of claim against you, you would understand the key
11 that would solve all my questions?

12 THE COURT: But he doesn't, so let's move on.

13 DR. CORDERO: Exactly.

14 BY DR. CORDERO:

15 Q. So it only shows in fact he is negligent. Mr.
16 DeLano, when you came here, did you think that I was going
17 to ask you questions about Mr. Palmer?

18 A. No.

19 Q. You don't. So he read the statement. You already
20 said that you read the statement of my claim against you and
21 that it was the issue of the containers that Mr. Palmer had
22 brought with your bank, bought with your bank's money. You
23 knew that Mr. Palmer and everything that happened to those
24 containers was that you were going to discuss here to
25 establish, to establish your responsibilities, did you not?

1 A. No.

2 Q. So what did you think you were going to discuss
3 here?

4 MR. WERNER: Objection, your Honor, as to
5 relevance.

6 THE COURT: He can answer that question.

7 BY DR. CORDERO:

8 Q. What did you think you were going to discuss here?

9 A. What your actual claim is, and I don't feel you
10 have any, but we haven't done that in three hours.

11 Q. Exactly. That is right. So you're saying that in
12 three hours I should have told you what the claim was, is
13 that true?

14 A. I think you could do it in five minutes.

15 Q. Exactly. That is very good, Mr. DeLano. I
16 understand because you had three years to find that out.
17 You already stated that you read my claims in the statement
18 of facts, did you not?

19 A. Yes.

20 Q. Okay. So, that is the claim that you yourself put
21 in the petition in your bankruptcy.

22 THE COURT: To be perfectly honest, he didn't
23 really put in the petition. Petition is a one or two
24 page document. It's really - it's really just a one or
25 two page document. It's the schedule that we're

1 talking about, it's schedules of creditors that you're
2 talking about. That is not technically the petition.
3 So if you want to get it right, you know, let's
4 start talking about in putting in the schedules,
5 because that is where --

6 DR. CORDERO: Like I say, everything is a
7 package. He has thirty pages. He has thirty pages.

8 THE COURT: I'm just trying to help you out,
9 Counselor.

10 DR. CORDERO: I appreciate it very much. It
11 would be the first time.

12 THE COURT: That is not true. I tried to
13 help you out for several years now and as I have said
14 on a number of occasions, I tried to ask you to focus
15 on real issues in this case, like your property, and
16 when you're going to get it, maybe determine whether
17 there actually has been damages, maybe if there were
18 damages, but we didn't even know whether they were,
19 whether they were caused by anybody that was involved
20 in this proceeding, that you can secure the property
21 so that it wouldn't be further damaged. In fact, had
22 there been any damage, and get down to those issues and
23 get down to the issue of your claim.

24 I have been trying to help you to get to the
25 bottom instead of focusing on all these collateral and

1 procedural issues, but it didn't seem to be something
2 that you really have been doing. But to say I haven't
3 helped, I would say I have tried to help you to focus
4 on everything that is important, so I take issue with
5 it and so let's move on.

6 DR. CORDERO: Judge Ninfo, if you had read
7 my last motion of February 17, you would know that I
8 complied with you saying that I didn't do it.

9 THE COURT: So you have taken control of
10 your property.

11 DR. CORDERO: You impose to me obligation
12 contrary to Rule 55, to inspect my property in - and I
13 did that exactly, and you do see here on May 21st of
14 2003, acknowledge that there was loss or damage to my
15 property. So much so that you invested me to my
16 application for default judgment precisely against
17 David Palmer, but you do not, not what you have done.
18 The only guiding point that you have is always to my
19 detriment, so please do not say that you have helped
20 me.

21 BY DR. CORDERO:

22 Q. Mr. DeLano, did you then did you know what it was
23 that you were going to discuss here?

24 A. I thought what we were going to discuss here is
25 what your claim was against me, and I feel --

1 Q. Are there --

2 A. And I feel that you have no claim against me.

3 Q. Okay.

4 A. And I'm convinced after I - what I hear of that
5 this afternoon.

6 Q. And how did you form that opinion that I did not
7 have a claim against you?

8 A. If your only claim against me is because I
9 erroneously told you where I thought your container was
10 three years ago, to me that claim has no validity, and I
11 apologize for telling you that, however, we did find your
12 containers for you.

13 Q. Actually, that is not true.

14 A. To this day to my knowledge are still alive and
15 well, so I feel the claim is unjustified.

16 Q. You just heard me that even Judge Ninfo on that
17 matter of May 21st on 2003, acknowledge there had been loss,
18 and because of that he requested to know the application for
19 the default judgment against Mr. Palmer.

20 Now, coming to you, did you take - and take a look
21 at my claim, before denying it, because this goes to the
22 issue that your motion to disallow was in bad faith and the
23 Court does not want to rule. The Court does not want a rule
24 of that issue because if the Court ruled on that issue - I'm
25 sorry?

1 MR. WERNER: The Court has already ruled on
2 that issue, sir.

3 DR. CORDERO: What did you have to --

4 THE COURT: Let's address everything to the
5 Court or the witness, not to each other. It goes for
6 both of you.

7 MR. WERNER: I'm sorry.

8 DR. CORDERO: I really think that that whole
9 proceeding a sham.

10 THE COURT: Let's finish it up so we can
11 move on.

12 DR. CORDERO: You allowed the attorneys --

13 THE COURT: Are you making an argument or are
14 you going to continue to put your proof in?

15 DR. CORDERO: I'm going to establish the
16 record for appeal. I'm raising an objection. I'm -
17 the objection I'm raising to your bias and --

18 The COURT: You preserved it, let's move on.

19 DR. CORDERO: And contend specifically again
20 that you allowed the attorneys for Mr. DeLano to
21 either signed to him or mouth to him.

22 THE COURT: I?

23 DR. CORDERO: That you allowed the counsel
24 for Mr. DeLano to make signs to Mr. DeLano or to
25 mouth responses to Mr. DeLano.

1 THE COURT: I really don't know whether
2 that's true or not but I'm going to direct Mr. Werner
3 not to do that. But, quite frankly, my attention has
4 been on you and your asking questions. I'm listening
5 and focusing on you. If so, if there is something
6 going on outside of my sight, I don't know what it is
7 I'm supposed to do. I always thought that the most
8 important thing was to listen to the person who is
9 speaking and to focus on that, but if you want me to,
10 if you want me to take my attention off of you and
11 focus on what Mr. Werner is doing all the time, I would
12 be glad to do that.

13 DR. CORDERO: I'm looking at Mr. DeLano and
14 I can also keep an eye on what is happening just --

15 THE COURT: I guess you're a better man than
16 I, so can you move on, please.

17 BY DR. CORDERO:

18 Q. So you did not know what we were going to say here
19 and because of that you did not know what it is that you
20 could possibly have done negligent, do you?

21 A. No.

22 Q. So, how can you contest that I have a claim for
23 you when you do not even know what that claim is?

24 A. You don't have a claim. I --

25 Q. You said yourself, again with the permission of

1 the Court, my question is very clear, you do not know what
2 my claim is?

3 A. Correct.

4 Q. Now, how can you possibly know whether the claim
5 that I have is by against you viable or not when you do not
6 even know what it is?

7 A. Have - I don't know the word to have you talk
8 about viable - viable, I'm sorry, I don't, but I don't feel
9 that you have any claim against me.

10 Q. How. What do you feel about it?

11 A. What claim do you have, what claim have you spoken
12 of directly to me? Again, it would take five minutes.

13 Q. You know why I can't say.

14 THE COURT: Okay, I'm going to put an end to
15 this, this line of questioning. He does not know what
16 your claim is against him, and that to you, you
17 interpret as somehow that is something I don't know,
18 but you know I think what he's trying to tell you, I
19 don't think you have a claim against me. If you have,
20 tell me what it is and then he can address, but I don't
21 think you have got any claim.

22 The mere fact that you assert that you have
23 a claim doesn't make any difference. We have now done
24 this for about fifteen times. You made your record
25 with respect to that. We all confirm that he has said

1 he doesn't know the nature of your claim against the -
2 against him and that you established. Can we now do
3 something different?

4 And we also know that your assertion, if you
5 don't know the nature of the claim against me, how can
6 you possibly move against it. **And he is saying I can**
7 move against it because you don't have any claim
8 against me and that is where we are after four hours or
9 whatever. That is a summary of where we are, so that
10 is the record now. You can deal with that whenever you
11 want to. Let's move on to something beyond that. You
12 have established that. We all know that. We've heard
13 it ad nauseam.

14 BY DR. CORDERO:

15 Q. Mr. DeLano, did you contact somebody or your bank
16 after you sold the containers?

17 THE COURT: You need to ask a more
18 specific question, they've got thousands of customers.

19 DR. CORDERO: Why did you --

20 THE COURT: Because we have to move that
21 along.

22 DR. CORDERO: That is the reason?

23 THE COURT: Yes.

24 DR. CORDERO: I would appreciate - it seems
25 he also thinks in five minutes I could have stated my

1 claim.

2 THE COURT: The reason I'm asking, Counsel,
3 you have an obligation to ask questions, okay, that are
4 specific, okay, and you're not. "Did your bank contact
5 anybody after the sale?" Well, they contacted millions
6 of people every day when they send bills and things
7 like that. So that question, obviously, isn't a
8 well-framed question. You ask well-framed and specific
9 questions, we could move on and I don't have to rely on
10 the witness to tell - your questions in some regards
11 are not adequate that in result is - when you're not
12 moving the hearing along because you're not asking
13 proper questions. You're asking general questions.
14 "Did M&T ever contact anybody after the sale?" The
15 answer is absolutely yes. They could - contacting
16 millions, so let's ask direct and specific questions
17 that will move the hearing along as to whether you have
18 a valid claim.

19 BY DR. CORDERO:

20 Q. Mr. DeLano, do you think I really was asking about
21 whether M&T or you ever asked any other questions of any
22 other party after your bank sold my containers or did you
23 think, the common sense that I was asking about my
24 containers?

25 MR. WERNER: Objection, relevance.

1 DR. CORDERO: Question is very valid. The
2 question goes to the issue of common sense.

3 Judge Ninfo has said --

4 THE COURT: Move on.

5 BY DR. CORDERO:

6 Q. Did you think that the question related to any -
7 anybody?

8 THE COURT: I've already sustained the
9 objection with respect to that. Move on.

10 BY DR. CORDERO:

11 Q. Did you ask anybody concerning the containers that
12 you sold from the Jefferson Henrietta warehouse after they
13 were sold by your auctioneer Mr. Reynolds?

14 A. Yes.

15 Q. What did you say, though, in that - in that
16 contact?

17 A. We asked if they had contacted the people that of
18 course these containers belonged to, to see if they were
19 going to continue service with them and they said they were,
20 and we also talked about the possibility if there were any
21 other containers involved, and there being those containers
22 from us.

23 Now after three months or whatever, we did locate
24 the containers in Avon, however, there are - there were very
25 few. I think there were five containers of yours were among

1 them two containers there. We elected not to sell those
2 containers because the bag where the containers was very
3 small and the M&T Bank - our interest in those containers.
4 However, we did contact all parties who had the containers
5 in Avon and said your containers are here, come and get them
6 or make arrangements to get them, and that was it. And that
7 was the end of the story regarding the containers.

8 Q. And did you ever send me a letter that my
9 containers --

10 A. Yes.

11 Q. Can you state the date or any reference?

12 A. No, but I believe that our law firm is - made
13 arrangement for you to come to Rochester, to go to Avon, to
14 look at those containers, and that was probably in October
15 or something of 2003 - 2, and, and that after that nothing
16 was heard.

17 Q. But you do not know the date?

18 A. No, I don't remember the date.

19 Q. I see. And at that point in time why did you have
20 to rely on the bank - excuse me, on the - who represents you
21 in this case to contact all other parties who had containers?

22 A. I'm sorry, I don't think I understand the
23 question.

24 Q. Very well. Why did you have to make your law firm
25 that was representing you in my claim against you contact

1 all the other parties, people that have containers in the
2 case, it was their responsibility of M&T to do that, wasn't
3 it? Was it not?

4 A. M&T was represented by a law firm, because of your
5 action in the case against M&T.

6 Q. Exactly. But the other parties that have
7 containers in Avon had nothing to do with my claim against
8 you, did they?

9 A. Correct.

10 Q. So why did you have the firm that was representing
11 you in my claim against you upon the other parties contact
12 the other parties?

13 A. Strictly and as a good-will scenario.

14 Q. Okay. So that means, actually, you didn't feel
15 the need to contact the parties to let them know where their
16 property was, you didn't - did it all out of the good heart?

17 A. Correct.

18 Q. Very well. When you contact that firm that bought
19 the containers, my containers were not there, my containers
20 were not among the containers that were carted away?

21 A. I don't know.

22 Q. But you already said that they weren't there, is
23 it --

24 A. Who's there?

25 Q. My containers were not in the Jefferson Henrietta

1 warehouse. My containers were not in the Jefferson
2 Henrietta - you said you thought they were, did you not?

3 A. I thought your name was on one of the cases in the
4 other warehouse.

5 Q. In the Jefferson warehouse?

6 A. In the Jefferson warehouse, but it was not.

7 Q. It was not, and when you sold the containers to
8 this other carting firm, whose name you don't know, by that
9 time my containers could not possibly have been among those
10 sold to that firm?

11 A. Whatever we sold to that person had to be done by
12 a bill of sale.

13 Q. Okay.

14 A. Since it was done by a bill of sale we could be -
15 would be contacted under the personal property law.

16 Q. No, question is that since my containers were not
17 in Jefferson Henrietta warehouse, they were not sold to that
18 other --

19 A. Correct.

20 Q. Exactly. So, did you send a letter - you're
21 saying now that your bank has sent that letter, stating that
22 my name was among the owners of the containers sold to - to
23 that - to that other party?

24 A. I don't believe so, no.

25 Q. But that is the way - that is what he says you

1 said to that party and it is an attachment to the complaint
2 that you should have reviewed in preparation for this
3 meeting, that you asked that party - you asked that party,
4 to sign a statement that my containers were, and that party
5 among those that that party had received that was fact and
6 you would have known that, but you - if you only read the
7 complaint, had you only prepared for this meeting you would
8 have known that.

9 MR. WERNER: Objection, presumes there any -
10 is any obligation to prepare that.

11 DR. CORDERO: There is an obligation to
12 prepare for this meeting. There is an obligation for
13 you. You are filing a good faith filing, good faith
14 motion to disallow my claim to know what my claim is
15 all about. There is an obligation to prepare for
16 an Evidentiary Hearing that you had known and that you
17 requested by July the 19th. By moving to disallow my
18 claim --

19 THE COURT: Now you have made statements,
20 Mr. Werner disagrees with you that there is an
21 obligation. You believe there is an obligation. The
22 record reflects that. Let's go.

23 BY DR. CORDERO:

24 Q. So that the case of Mr. DeLano, you --

25 A. How do I know? There is no case. The case is you

1 believe one thing and Mr. Werner believes another thing, so
2 it isn't the case.

3 Q. The case is that you included my name among the
4 containers that that other carting company received and you
5 asked that company sign that statement. That is what
6 happened, and I am telling you that you would know that if
7 you had only read the complaint where I took - put a copy of
8 that letter there, and you know what happened, it was not
9 you who found out where my containers were, what happened
10 when - or let's put it this way. Did any person contact you
11 from that carting company?

12 A. I really don't remember. You did receive a letter
13 that said it was in the sale and it wasn't in the sale,
14 which it wasn't. It was still just a matter of error, and
15 it could be erroneous because of the fact that because of
16 the number of slips that they had in their drawers for the
17 number of people that Premier Van Lines had as far as who
18 they rented to, and your rental slip could have been in
19 those drawers involving - so that is how it could have
20 happened. But regardless, your goods were found in Avon and
21 you still have your goods.

22 Q. And do you know what it took to find out, that the
23 goods were in Avon?

24 A. How --

25 Q. You know, you and me?

1 A. I even went there August 2nd of 2002, myself
2 personally, and found them in the store - and found them in
3 the warehouse.

4 Q. Did you know - you already said that on the basis
5 of those slips, none of the basis of the inventory that you
6 made, you found out that my containers were among those to
7 be sold. You said, well, the slip was in the drawers, we
8 thought that the containers contained your property was on
9 them, isn't that what you said?

10 A. That could be.

11 Q. Okay. So in reliance of that, I relied on the
12 fact that the owner company had my containers.

13 MR. WERNER: Your Honor, this is
14 Dr. Cordero's testimony. We move that he be sworn and
15 take the stand.

16 BY DR. CORDERO:

17 Q. So, Mr. DeLano, if you yourself made two mistakes,
18 think that my containers were in the warehouse, did you not?
19 You already said that. Now you're stating that you made -
20 have made a second mistake, did you not, that you may have
21 relied on the slips in the drawers of Mr. Palmer, in the
22 Jefferson Henrietta warehouse?

23 A. Possibly.

24 Q. Two mistakes.

25 A. If so, it was done erroneously and you didn't lose

1 by it.

2 Q. Mr. DeLano, when I relied on both of these
3 mistakes - actually, when I relied on the first and you
4 referred me through your attorney and your conversations
5 that we had to that other party, whose name you would know
6 if you only read the complaint, I relied on that, do you
7 know how long it took me to find out that my containers were
8 there?

9 A. Well, time, I imagine.

10 Q. Do you think that I had to spend my time, my
11 money, I living in New York City, my airport, trying to find
12 out where in fact my containers were because of mistakes
13 that you made?

14 A. I imagine it took you time to do it.

15 Q. Thank you Mr. DeLano. But that is a response with
16 a lot of candor and I appreciate that because that is the
17 basis of the complaint against you. I realize you and your
18 bank made mistakes and took me enormous amount of time
19 trying to find out where those containers were. Mr. DeLano,
20 can you imagine my confusion when you told me that my
21 containers had been sold to that other party? I called that
22 party and he said we don't have anything belonging to you,
23 can you imagine my confusion?

24 A. I will comment that we went to great lengths to
25 ensure that your containers where - where they ended up in

1 Avon and if we had known to begin with that all business
2 assets of this company, Premier Van Lines, was in two
3 different places, not in one, it would have been a lot
4 easier and, however, we don't know that and we weren't told
5 that.

6 Q. Exactly. That's very good, Mr. DeLano. You have
7 stated that because you stated that you also relied on the
8 slips that were in the drawers of Mr. Palmer, when at the
9 Jefferson warehouse, is that so?

10 A. What of Mr. Palmer?

11 Q. You relied on slips?

12 A. On slips, that is correct. They were in the
13 Jefferson Avenue warehouse.

14 Q. Exactly. Do you know how it was, that that other
15 party was, whose name you don't know, found out that my
16 containers may have been elsewhere?

17 A. No.

18 Q. Do you know how much effort I had to spend, how
19 much time, how much money I had to spend trying to find that
20 out?

21 A. No.

22 Q. Okay. Do you know how much confusion I got when
23 by that time, seven months, I have been damaged by Mr.
24 Palmer to Mr. Dworkin - do you know Mr. Dworkin?

25 A. I met him once.

1 Q. Who is Mr. Dworkin?

2 A. Landlord Jefferson Av.

3 Q. Exactly. So he would - in a position to know,
4 would he not?

5 A. I assume.

6 Q. You assume. He also told me that my containers
7 were in that warehouse just as you did. I relied on you. I
8 relied on Mr. Dworkin. I relied on Mr. Gordon to say he
9 would not deal with me, that I have to deal with you. I
10 dealt with you. You made at least three mistakes, that cost
11 me a lot of confusion, a lot of money that I spent trying to
12 find out where you packed my containers, where a lot of
13 money and a lot of time. Do you think that my time is
14 valuable?

15 MR. WERNER: Objection, your Honor,
16 argumentative.

17 BY DR. CORDERO:

18 Q. No, I'm a professional. Judge Ninfo now wants to
19 characterize me as Counsel, as an attorney, so it would be
20 reasonable for you to say that on the basis of my capacity
21 as a professional, that you caused me to waste my time, do
22 you think that that time is valuable?

23 A. To a degree.

24 Q. Thank you. That is the degree that we have to
25 determine at trial. That is basis of my complaint.

1 A. But the claim --

2 Q. There is no question before you, Mr. DeLano. My
3 second question is: Did you know how it was found out that
4 my containers were not by that other party, how that other
5 parties found out that my containers were not in that
6 warehouse?

7 THE COURT: Who was the other party that
8 you're referring to? Is there another party?

9 DR. CORDERO: Yes.

10 THE COURT: The carting company that it was
11 sold to or some other party?

12 DR. CORDERO: Mr. DeLano would know that
13 because he sold it to him.

14 THE COURT: Are you referring to buyer of the
15 containers?

16 DR. CORDERO: Yes.

17 THE COURT: I just didn't know.

18 DR. CORDERO: But you would know if you read
19 the complaint, because I stated the name, just as
20 Mr. DeLano would know and Attorney Werner would know,
21 because care to know what the claim was.

22 BY DR. CORDERO:

23 Q. Do you know, Mr. DeLano, how that other party
24 found out that my containers were not in his warehouse?

25 A. I would assume he had to take an inventory of

1 containers.

2 Q. Do you know if he charged me for that?

3 A. No.

4 Q. Does it matter to you, for a statement you made?

5 A. I don't - wouldn't know.

6 MR. WERNER: Argumentative, your Honor.

7 THE COURT: It's argumentative.

8 DR. CORDERO: Did you say it was argumenta-
9 tive? Did you say it was argumentative?

10 THE COURT: Well, I think it is, from my
11 point of view.

12 BY DR. CORDERO:

13 Q. I'm going to ask you a question just point blank.
14 Do you think, that that other parties charged me?

15 MR. WERNER: Objection. What he thinks is
16 irrelevant. What he knows, would be relevant.

17 THE COURT: Sustained.

18 BY DR. CORDERO:

19 Q. There is question, then, that would have been an
20 attorney that it wouldn't be fact, but the point is if you,
21 cause me to lose money, to lose time, to lose waste of money
22 and trying to find out why my containers were not at that
23 warehouse, do you think that then I would have a - at least
24 a reasonable basis to claim against you because of the
25 mistakes that caused me all that waste?

1 MR. WERNER: Objection, your Honor, what he
2 thinks is not --

3 DR. CORDERO: That is the essence of the
4 question here, whether Mr. DeLano is liable to me.
5 That is the basis here. He knew of me, to waste my
6 time.

7 THE COURT: I think it's an improper
8 question because, quite frankly, if you're talking
9 about a cause of action --

10 DR. CORDERO: No. Let me rephrase my
11 question.

12 THE COURT: He can answer it any way he wants
13 to, but it's a legal question and I'm the one who has
14 to make that, so you can ask questions but I'm telling
15 you that his answer as a lay person to that question
16 doesn't necessarily resolve anything, because I'm the
17 one who has to look at all the facts and circumstances
18 and the evidence to determine the legal questions.

19 You're asking him a legal question and I
20 don't really think it's proper for you to ask him a
21 legal question. You may disagree with that but let's
22 establish if you're going to answer that question.
23 That is really a question of law and his opinion of it
24 one way or another is really irrelevant. If you want
25 to ask it, go ahead.

1 BY DR. CORDERO:

2 Q. So right now, we come to the crux of the matter.
3 He has already stated, and because of his, his mistake,
4 several of them, I had to waste my time trying to find out
5 where, in fact, my containers were; isn't that --

6 THE COURT: With all due respect, you have
7 also elicited - you have also made a statement in your
8 own, in the record that Mr. Dworkin also told that
9 your property --

10 DR. CORDERO: Going now to argue the case?
11 This is so improper. Always when you intervene, it is
12 not to find fault with the witness or with Mr. Werner.
13 Every time you intervene here it is to advocate your
14 case against me. You're not impartial. These
15 proceedings is a sham. That is why it is a former
16 conclusion. It doesn't matter what I prove here on
17 the basis of Mr. DeLano's statement, you're going to
18 find that I do not have a claim against him because
19 you to - for some reason to be determined --

20 THE COURT: You actually don't know that is
21 true, but go ahead. If you want to ask him this legal
22 question, ask him.

23 DR. CORDERO: It is not a legal question.

24 BY DR. CORDERO:

25 Q. When you have a claim against a client and that

1 client causes your bank to lose money, what do you do?

2 A. When a bank has a claim against a client?

3 Q. And the bank loses money because of an action by
4 the client?

5 A. By a client, normally we sue the client. However,
6 in this particular --

7 Q. There is no question.

8 A. Wait a minute, I want to answer.

9 THE COURT: You've answered the question.

10 Okay, now we need to take a break because I
11 think I went over our time frame, so I'll give you a
12 few minutes. So we'll take a break.

13 How long do you expect to be here?

14 DR. CORDERO: I don't - really don't know.

15 THE COURT: You have to try to give us some
16 reasonable estimate because I have to deal with these
17 people's families. I think there is some obligation.
18 Give me some idea how long this is going to - I know
19 you can't tell - you have some idea of the number of
20 questions you have left and some ballpark, between one
21 and two hours.

22 All right, let's take a break.

23 (Court recessed.)

24 (Court reconvened.)

25 BY DR. CORDERO:

1 Q. I asked you before the last recess, whether you
2 thought that your mistake cost me confusion, waste of money,
3 and therefore - and time in trying to find out where my
4 containers were and my property, is that so?

5 A. I would assume so, yes.

6 Q. And then I asked you when a person that, let's say
7 a client causes your bank to lose money, waste time or
8 airport, what does your bank do?

9 A. When a client - please clarify.

10 Q. Thank you. When a client causes your bank to lose
11 money, waste time or airport, what does your bank do?

12 A. Normally talk to the client first, see if we can
13 encourage him to come around our way of thinking. If it
14 ends up being a legal matter, we'll send the matter to our
15 attorneys for handling.

16 Q. With the purpose of recovering from the client for
17 the loss?

18 A. That is correct.

19 Q. We have already established that your negligence,
20 your mistakes caused me confusion and waste, so is it
21 reasonable then that I ask you and your bank to compensate
22 me just as you've learned to do to the client that caused
23 your bank loss?

24 A. I would say I would suppose so.

25 Q. Thank you, Mr. DeLano. That is a very frank

1 answer and I appreciate that, because if that is the crux of
2 this case with my claim --

3 A. With the claim --

4 Q. I'm not, Mr. DeLano --

5 THE COURT: Stop making statements and start
6 asking questions.

7 BY DR. CORDERO:

8 Q. Well, that is the basis, you caused me to do a lot
9 of waste, and I claim about you, I claim compensation from
10 you. Do you think that that is so difficult to understand,
11 that you, a thirty-two year veteran of the lending
12 institution industry would not understand why I would claim?

13 A. If a claim was reasonable, that is one thing. If
14 the claim were against me personally, that that's another
15 thing. Everything you related to has to do with the bank.
16 Again, as I said before, when I look at your original claim
17 to me is as a third party defendant and as a loan officer
18 than the way my bankruptcy, as an employee of M&T Bank and
19 not as an individual that may have some stature.
20 Personally, no, you have no claim against me personally.
21 Everything I did, I did on behalf of M&T Bank.

22 Q. Mr. DeLano, we have a - you have already stated
23 that you did not know what you stated in your petition. Did
24 you use the opportunity of the recess --

25 THE COURT: No, we have to move on. This is

1 just argument. It's not really evidence. If you have
2 established what you said about that, it's so clearly
3 in the record and now let's move on.

4 DR. CORDERO: Judge Ninfo, now Mr. DeLano
5 claims to know what before he said he did not know.

6 THE COURT: He is giving - he now giving an
7 independent assessment. He's not giving an assessment
8 of what was in his schedule, he's giving an independent
9 assessment. He just testified what his view is.

10 BY DR. CORDERO:

11 Q. What is that your petition says. He just said now
12 that you know what it says. Say what it says.

13 A. It says your name in the petition with a claim
14 against me as an employee of M&T Bank.

15 Q. Your - can you find if I represented to you a -
16 presented to you a copy of your petition with schedules?

17 A. I just read it.

18 Q. Would you find out where it says that?

19 A. Yes.

20 DR. CORDERO: May I approach?

21 THE COURT: Why certainly.

22 (Pause.)

23 A. Right here, number twelve. "Dr. Richard Cordero
24 allege --

25 THE COURT: When you're reading it's

1 important that you read slow because when people when
2 they're reading things tend to go very fast and the
3 court reporter --

4 WITNESS: Dr. Richard Cordero, 2002,
5 alleged liable, references stored merchandise as
6 an employee of M&T Bank, suit pending. Item number
7 twelve.

8 BY DR. CORDERO:

9 Q. So, Mr. DeLano, please keep it for the time being.
10 Where did you say that I had sued you personally?

11 A. I didn't, you did.

12 Q. Where?

13 A. You had said before I was sued personally.

14 Q. I'm sorry?

15 A. Named a third party defendant. This is Number
16 four. It says suit and administrative proceedings. Caption
17 of suit and case number. In reference Premier Van Lines,
18 Inc., James Pfuntner, Ken Gordon Trustee, Richard Cordero,
19 M&T Bank, et al. Reference Palmer, Dworkin, Jefferson
20 Henrietta Associates and DeLano. That is suit, nature of
21 proceeding as against Debtor. Damages for inability of
22 Cordero to be covered, property held in storage. Former
23 agency and location status pending.

24 Q. Thank you Mr. DeLano. Do you still want to find
25 out where I claim against you personally?

1 A. As I said, I don't think there is a personal
2 claim. It's in reference.

3 THE COURT: So, take the document.

4 DR. CORDERO: I'm sorry.

5 BY DR. CORDERO:

6 Q. So now you recognize --

7 THE COURT: You can go to the podium and ask
8 questions or go back to your seat. Either one is fine,
9 and I told you --

10 BY DR. CORDERO:

11 Q. So now you recognize that even in your own
12 petition there was never a distinction between whether I was
13 filing a claim against you personally or as an officer of
14 M&T. It only said that I had a claim against you, all it
15 says. The point is had we already established --

16 MR. WERNER: Objection, your Honor, we've
17 established nothing.

18 THE COURT: He needs to ask questions.

19 BY DR. CORDERO:

20 Q. Have we already established that because of your
21 mistakes I was caused to suffer confusion and waste? We
22 have already established that before we recessed, did we not?

23 MR. WERNER: Objection again, your Honor,
24 for purposes of this hearing.

25 THE COURT: He can answer.

1 WITNESS: I would say an error was made.

2 BY DR. CORDERO:

3 Q. Okay. And did I in any way saying that it was
4 relevant to that confusion and waste that you caused me
5 whether I was suing you as a person or as an M&T employee?

6 A. Yes, but your proof of claim was related --

7 Q. No, the question is - the proof of claim doesn't
8 even come into this matter.

9 A. Yes, it does.

10 Q. No, I ask the questions. The matter is that
11 whether it makes a difference, for you caused me waste and
12 confusion whether I was suing you as a person or as an
13 employee, does it make any difference?

14 A. Yes.

15 Q. In what way did I suffer less confusion or less
16 waste because you were acting in the capacity of an employee
17 as opposed to the capacity of a person did I suffer less
18 confusion and less waste?

19 A. A person - as a person the bankruptcy is filed on
20 myself and my wife's name and the claim is against the
21 bankruptcy and you placed a claim against the personal
22 bankruptcy. As far as being an officer of the bank, that is
23 another issue all together.

24 Now the bank at this point in time does not feel
25 that there's any money that is owed to you on this deal

1 because, in fact, you don't have your goods. You never had
2 a loss on your goods and the bank did help to try and put
3 you in touch with those goods, get you up to here to
4 Rochester to look at them, etc.. Now, after that, it's up
5 to you, the bank can't do everything for you.

6 Q. Mr. DeLano, how did your bank know that my
7 containers were not in the possession of that - possession
8 of that person to whom you sold it? You sent a letter to
9 him asking to acknowledge receipt of my containers. It was
10 me, Mr. DeLano. You have records you have already. Also my
11 complaint. I provided the documents there. You would know
12 that it was because I called that other person, asked for my
13 containers there and that person said we only received a
14 statement from the bank asking to acknowledge receipt of -
15 my of your containers.

16 A. That could be.

17 Q. Exactly. That is the point. It is at that point
18 in time when you caused me the loss of and confusion and
19 waste because it was me who had to undertake from New York
20 City, take all the effort to find out where my containers
21 were. I have already asked you, to question how do you
22 think that it was determined where my containers were?

23 A. You already told it before.

24 Q. I am asking you.

25 A. I would assume by company that the containers were

1 sold to.

2 Q. But the company said they - it did not have them.
3 You asked that company to acknowledge receipt of my
4 containers, they said we don't have anything here.

5 A. That's true.

6 Q. Okay. So how do you think that that company found
7 out where my containers were?

8 A. I don't know.

9 Q. Was it even their responsibility of that company
10 to find out where my containers were?

11 A. No.

12 Q. Whose responsibility was it, you sold it?

13 A. I'm sorry?

14 Q. You sold my containers. You thought that you were
15 selling my containers to that person. You acknowledge that
16 you did require acknowledgment of receipt of that person.
17 When that person said, he was not among the containers that
18 we bought, whose responsibility do you think it was to find
19 out where my containers were?

20 A. Ours, M&T.

21 Q. Exactly.

22 A. And we found them.

23 Q. No, you did not find them.

24 A. Yes, we did.

25 Q. How?

1 A. We went back to the old landlord.

2 Q. How did you know who the old landlord was?

3 A. Because we knew where the previous location was.

4 Q. How did you know that.

5 A. We had been there once before. In fact, we had
6 been there more than once before.

7 Q. In where?

8 A. When Palmer owned the business.

9 Q. Where did you go?

10 A. Avon, and that is where we used to have his
11 company.

12 Q. And when did you go there?

13 A. August, 2002, and obtain a list of all the
14 containers.

15 Q. Excellent. I appreciate your statement because it
16 was by letter of July that you asked that person to
17 acknowledge receipt of my containers. It was because I had
18 to invest a lot of time, effort and money to that person to
19 try to find out where it was and it was because of that,
20 that that person found out where the containers were and
21 they - and they contacted you and you would know all that,
22 if you had only read the complaint.

23 A. We're wasting time here, we're --

24 Q. If we are, it is simply because you're --

25 MR. WERNER: Objection, your Honor.

1 THE COURT: Sustained, you're just being
2 argumentative.

3 DR. CORDERO: It's a statement of fact.

4 BY DR. CORDERO:

5 A. So, Mr. DeLano --

6 THE COURT: It's an opinion, it's not a
7 statement of fact as to what kind of unpreparedness
8 or unprepared or what his obligation to be prepared was
9 as a witness that you called. He's your witness,
10 Counsel.

11 DR. CORDERO: No, no.

12 THE COURT: No, he's your witness, you called
13 him. In fact, he's your witness, and now you're
14 characterizing his preparedness. He had no right to be
15 called as a witness, as Mr. Werner said, you chose to
16 call him. He could have sat here all day and never
17 been called as a witness. He didn't know he was
18 supposed to be prepared for anything. Did you notify
19 him? Did you subpoena him and notify him that you
20 were going to call him to testify today? So your
21 characterization of how prepared he was or should have
22 been I think is not correct, and not fair, so I'm
23 sustaining the objection. Go ahead.

24 DR. CORDERO: If you deny all your documents
25 and you thought that Mr. DeLano was not supposed to be

1 here, what were we going to --

2 THE COURT: Who are you talking to now?

3 DR. CORDERO: I was talking to you because
4 you deny all thirty, all the documents that I had
5 requested of Mr. Attorney Werner from Mr. DeLano. Then
6 we had the hearing on December 15. Since you had
7 denied my - all the documents, what do you think that
8 we were going to do today?

9 THE COURT: I don't know. You perhaps were
10 going to, based on what I heard today, because I
11 didn't know what you were going to do today, you might
12 have called a witness from the carting companies, you
13 might have subpoenaed other witnesses to testify on
14 behalf of M&T Bank, you might have contacted
15 Mr. Dworkin and contact - I had no idea what exactly
16 you were going to do and what evidence you were going
17 to put in. I don't know if anybody else would have
18 known what you were going to do. You didn't supply
19 a witness list. You didn't tell me or specify any-
20 thing, so how was I supposed to know, Counsel?

21 DR. CORDERO: Did you hear any objection to
22 my calling Mr. DeLano to testify on the part of
23 Mr. Werner?

24 THE COURT: No.

25 DR. CORDERO: Exactly. Not because he knew

1 for a fact --

2 THE COURT: All about your characterization
3 about how prepared he was supposed to be, so we have
4 been there. Let's move on.

5 BY DR. CORDERO:

6 Q. You, Mr. DeLano, are not my witness. You are an
7 opposing party. You are the Debtor, and I am Creditor.

8 MR. WERNER: Is this a question?

9 THE COURT: You're an alleged creditor.

10 DR. CORDERO: Thank you, your Honor, for
11 your hypothesize of the case, but that is not proper.
12 It was for Attorney Werner who is here if he wants
13 to challenge my characterization of myself to do
14 that. In every case, as I have stated, whenever you
15 make comments, it is always to my detriment and
16 always - and you provide answers on behalf of
17 Mr. DeLano.

18 BY DR. CORDERO:

19 Q. Mr. DeLano, it is already established that you
20 caused me confusion and waste. Did you or did you not?

21 MR. WERNER: Objection, leading question,
22 is established. It's not established. It's not a
23 question.

24 BY DR. CORDERO:

25 Q. Mr. DeLano, if you continue to say at one point in

1 time yes to a fact and that fact is not true, so it is not
2 established, how do you think that we're ever going to
3 trust - you say one thing --

4 THE COURT: You're here to ask questions.

5 BY DR. CORDERO:

6 Q. Mr. DeLano, did you cause me confusion and waste
7 because of the mistakes that the bank and you had made
8 concerning the containers that contained my property?

9 A. Yes.

10 Q. Thank you. Did you think that that is an
11 established fact or do you think that later on as on other
12 occasions, you - not you, but some other occasion, other
13 people - that means Judge Ninfo, are going to contest
14 something that is stated here, unequivocally who --

15 MR. WERNER: Objection, this is not a
16 question, it's an argument.

17 BY DR. CORDERO:

18 Q. Are you going to confess to your own statements
19 repeated several times? That is why I want that, I want no
20 doubt that you acknowledge and have said, and I appreciate
21 your candor, that you caused me confusion and waste.

22 MR. WERNER: Objection, your Honor, as to
23 the form of the question. There has been quite a bit
24 of discussion.

25 THE COURT: I'll let him answer for the fifth

1 time, sixth, seventh time.

2 DR. CORDERO: Yes.

3 THE WITNESS: I would say to a degree, yes.

4 BY DR. CORDERO:

5 Q. Okay. That is a - at the point. It is on that
6 basis that I made my claim against you, and that claim forms
7 part, as you stated against M&T, does it not, my claim also
8 against M&T?

9 A. Your claim is against - if your claim is at all -
10 your claim is against M&T and not me personally because
11 everything - now, wait a minute, let me finish - because
12 everything that was involved in that transaction that you
13 continue to talk about involves M&T Bank and myself as the
14 servicing officer for that file. It has nothing to do with
15 me personally personally.

16 Q. But, Mr. DeLano --

17 THE COURT: Stop everything. He's just
18 expressing his view of this. You have been asking him
19 of his view for a lot of things. You have been asking
20 him to make conclusions all afternoon about these
21 things, about causing you confusion and so forth. Now
22 he's expressed an opinion that you don't like, but he's
23 got a right to express that also.

24 BY DR. CORDERO:

25 Q. What is that opinion, Mr. DeLano, what is that

1 opinion that you're expressing? I thought you had expressed
2 a fact that you did cause me confusion.

3 A. If you're going to look at any - I'm sorry. I'm
4 sorry, you asking a question?

5 Q. Mr. DeLano, I'm the one who asked questions.

6 A. Ask the question.

7 Q. The question is: You already stated that you
8 caused me confusion and waste. That is a fact. You say
9 yes, that is not an opinion, is it?

10 A. As an officer, yes, of M&T.

11 Q. Okay, Mr. DeLano, did you find the part in your
12 petition, that loan, my claim where I say that I am claiming
13 against you personally, did you find that in the petition
14 that I brought to your attention?

15 A. No.

16 Q. No. In the claim that I brought to your
17 attention, can you find that?

18 A. In the claim?

19 Q. Yes.

20 A. I would say no.

21 Q. Exactly. So why, is it relevant, whether it was
22 personally that I sued you when I never sued you personally
23 according to your own statements?

24 A. Because my bankruptcy is personal. My bankruptcy
25 is not corporate.

1 Q. Mr. DeLano, I'm not filing a claim against you.
2 because of your bankruptcy. You have a claim against you
3 from me since November, 2002. It was on that basis that I
4 did not make any statement afterward whether it was personal
5 or whether it was as a bank officer that in any way could
6 have determined whether you put my claim in the petition or
7 not has no relevancy because I never made the difference,
8 does it?

9 MR. WERNER: Objection, your Honor. This is,
10 one, I can't follow the question and the other, I
11 believe it calls for a legal conclusion in some
12 fashion.

13 DR. CORDERO: Can you say the fashion?

14 MR. WERNER: No, I can't, because I can't
15 understand the question.

16 DR. CORDERO: Well, that is very generous of
17 you.

18 BY DR. CORDERO:

19 Q. Mr. DeLano, what I'm asking you is very easy. I
20 never made a distinction, so how could you have made --

21 A. How could I have made it? Because I was acting as
22 an officer of M&T Bank at the time this all took place, not
23 as an individual or personally.

24 Q. Exactly. So now, I can name the person that was
25 responsible for that, for bad handling of the Palmer case.

1 That is what I did. It is when M&T and all the other
2 partners together come to a trial that then we'll determine
3 who's responsible for what. It is at that point in time.
4 What you and Judge Ninfo want to do is to extract you from
5 the Pfuntner case, then when I - when the Pfuntner case
6 comes to trial, then M&T will say, well, it wasn't us as an
7 institution, it was a person, it was Mr. DeLano who was
8 being - sue him, but by that time you will be out of the
9 case.

10 THE COURT: When is that going to happen, by
11 the way?

12 DR. CORDERO: I'm sorry?

13 THE COURT: When is that going to happen?

14 DR. CORDERO: It depends on you whenever the
15 trial comes, the Pfuntner case comes to trial.

16 THE COURT: But you had that, the five days
17 and you were supposed to - when is that going to
18 happen?

19 DR. CORDERO: Whenever the Supreme Court
20 decides the case, you know. That is two-punch
21 strategy here. Without you knowing what the claim
22 was, you look to disprove, to disallow so that I
23 cannot claim from you production of documents that can
24 show --

25 THE COURT: Have you established everything

1 you want to establish with this witness with respect
2 to your claim against him?

3 I don't - you seem to be just going in the
4 same direction. Is there something more that you're
5 going to establish?

6 DR. CORDERO: Yes, your Honor.

7 THE COURT: Will you do that now?

8 DR. CORDERO: I'm sorry?

9 THE COURT: Could you please do that?

10 DR. CORDERO: With the promptness of
11 Judge Ninfo I think I have got to - as to statement
12 of fact, and then, Attorney Werner claims that it is
13 not established so I just want to --

14 THE COURT: He did answer your question the
15 same, which a number of times, and then he also
16 answered your same question by saying that he believes
17 that everything he did was as an employee of M&T Bank
18 and not personally, and those two are not usually
19 exclusive. Why can't we accept that? It's in the
20 record, everybody can read it, and move on. What more
21 is there?

22 DR. CORDERO: Because I'm going to establish
23 that he could not possibly made its decision whether it
24 was as an employee or it was personally because I never
25 made that distinction and because he even read --

1 THE COURT: He doesn't have to, he's telling
2 you now what his view is of what he did.

3 DR. CORDERO: Attorney Werner to argue this
4 case. Why did you argue his case?

5 THE COURT: Because you continue to ask the
6 same questions over and over, elicit the same answers,
7 make arguments instead of asking questions and I'm
8 simply trying to move this hearing to a conclusion.
9 I don't know how many times you want to ask the same
10 questions and make the same statements, but I think it
11 would be nice now if we started to move into something
12 new that we haven't covered five times, okay?

13 DR. CORDERO: Judge Ninfo, the point is, as
14 I have stated, I ask a question and then Mr. DeLano
15 says yes and then Mr. Werner puts in the doubt and I
16 want to know who is testifying here, whether it is the
17 witness, Mr. DeLano --

18 THE COURT: Does that mean you want to ask
19 the same question again?

20 DR. CORDERO: Why did you allow Mr. Attorney
21 Werner to continue --

22 THE COURT: Quite frankly, I'm trying to
23 handle the hearing the best way I know how. I'm
24 trying to expedite it. I'm trying to give everybody
25 their opportunity to make their record, and that's

1 simply what I'm doing.

2 Again, very often you may disagree with
3 what it is that I do or with my rules and so forth,
4 but you know we have to move this on to a conclusion
5 and that is all I'm trying to do and I believe you
6 know I'm trying to give everybody their day in court,
7 an opportunity to make a record, but I don't
8 need to sit here and listen to you asking the same
9 questions over and over, and make the same arguments
10 over and over when you should be making - you should
11 be asking questions and eliciting evidence, not making
12 statements, okay, and that is clear, so let's move on
13 and elicit some evidence.

14 DR. CORDERO: I wish you had told Mr. DeLano
15 not to volunteer again the same statement that he was
16 personally or as a employee that I sued him when you
17 asked me not to repeat himself every time that you
18 ask --

19 THE COURT: Let me give you my opinion of
20 what is going on here, for right or for wrong, and I'll
21 put it on record, okay?

22 You've asked Mr. DeLano a lot of very
23 difficult, not always factual but sometimes legal
24 questions that require kind of conclusion that quite
25 frankly when somebody even reads that record they will

1 come to the conclusion that half the time he hadn't a
2 clue of what it is that you're asking. And, yes, he's
3 answering the questions and sometimes giving you the
4 answer that you're looking for, but if you read the
5 whole record you can see that he's very confused about
6 a number of things that you said, and to the point if
7 you asked him his wife's name, he might tell you it's
8 Sally, okay? That is the kind of level of some of the
9 answers that he has been giving you with regard to the
10 questions you're asking. So, you can continue to pound
11 on him to get him to say the thing that you want,
12 okay, but it doesn't - when you look at the whole
13 record, that is all that is happening here, just being
14 successful at confusing him. But anybody who is going
15 to look --

16 DR. CORDERO: You're providing now an escape
17 again.

18 THE COURT: No, I'm simply telling what
19 my observations of what is going on here.

20 BY DR. CORDERO:

21 Q. Very well. Mr. DeLano, please state --

22 THE COURT: And it's partly because I let you
23 ask him questions that are not always factual but are
24 sometimes legal in nature, which you really should not
25 be asking him.

1 DR. CORDERO: He has an attorney, he can
2 raise that objection. He didn't.

3 BY DR. CORDERO:

4 Q. Are you claiming, Mr. DeLano, that your attorney
5 is incompetent because he did not raise --

6 MR. WERNER: Objection, your Honor, this is
7 totally irrelevant to the facts of this case.

8 THE COURT: Let's move on.

9 BY DR. CORDERO:

10 Q. Judge Ninfo said that --

11 MR. WERNER: Objection, your Honor, Counsel
12 is not asking a question.

13 BY DR. CORDERO:

14 Q. Mr. DeLano, what is stated is that you're confused
15 about?

16 A. I'm not.

17 Q. Thank you very much. Thank you very much. That
18 takes a lot to say that and I do appreciate it.

19 MR. WERNER: Objection, it's not a question.

20 BY DR. CORDERO:

21 Q. Now, Mr. DeLano, we have come to this point. You
22 caused me confusion and waste and I sued you. When the
23 Pfuntner case comes to trial it will be determined --

24 THE COURT: Is this a question?

25 DR. CORDERO: Yes.

1 BY DR. CORDERO:

2 Q. When the Pfuntner case comes to trial will M&T be
3 there?

4 A. Yes.

5 Q. Do you think that M&T will ask you as the person
6 who handled the case to give testimony?

7 A. We'll look at it.

8 Q. Yes. So even M&T are - your own statement will
9 call you because it is reasonable, is it not, if you were
10 handling the case that M&T will call you, is it reasonable
11 or not?

12 A. I assume they will. They'll discuss it with
13 counsel.

14 Q. Exactly. So at that point in time I want to
15 determine, and the Court I hope an impartial Court, will
16 want to determine whether what you did - you went what is
17 called on a folly of your own. That means you took a course
18 of action, that was so removed from what an employee of M&T
19 in charge of something, a loan would do, that it was your
20 responsibility and not M&T.

21 Do you know the principle here, divide and
22 conquer? If you are out of the picture, M&T would blame you
23 and since by that time you will be out of the case, then M&T
24 will claim there's nothing to be paid from us to you because
25 it was Mr. DeLano. That is the reason why you have to be

1 there, because your own bank, by your own statement will
2 call you as a person who was in charge of the Palmer case.

3 MR. WERNER: Your Honor, if I may?

4 THE COURT: No, you may not.

5 MR. WERNER: I'm trying to shorten because
6 maybe it will solve all the would be problems. If
7 Dr. Cordero is proceeding against Mr. DeLano simply
8 because he suspects some sort of bushwhack in the
9 M&T lawsuit, we can resolve this matter right now.
10 M&T will indemnify Mr. DeLano for any obligation that
11 he may have personally, with respect to any dealings
12 with Mr. Cordero.

13 THE COURT: How do you know that?

14 MR. WERNER: I talked to Mr. Beyma and he was
15 here earlier to make that statement to the Court.
16 Unfortunately the matter has gone on for hours, but I
17 believe Mr. Cordero is here on a much larger mission
18 than that.

19 DR. CORDERO: What is that, my mission?

20 MR. WERNER: I frankly --

21 DR. CORDERO: I will clarify that mission.
22 I do not want my claim against you to be dismissed, so
23 that I be taken for, for a fool. I do not want M&T to
24 benefit from the fact that you are eliminated from the
25 case and then, they will blame you and I will be out of

1 all the claim for compensation based on confusion and
2 waste that you caused me. It is so easy.

3 MR. WERNER: I repeat my statement, your
4 Honor.

5 DR. CORDERO: It is so easy, that I even
6 wrote that in my paper. If you and your counsel had
7 read my paper, you would know what my mission was
8 because I stated that in writing.

9 BY DR. CORDERO:

10 Q. So, Mr. DeLano, we have already asked and you have
11 already answered, that there was - there was confusion you
12 caused in the Pfuntner case. It is most likely that M&T
13 will call you as a witness and it is at that point in time
14 when all issues are brought to trial, when all parties are
15 brought to trial that an impartial Court can determine who
16 is responsible.

17 In isolation, without you, that issue cannot be
18 taken because we have to take into account the totality of
19 circumstances, which means that you as a bank officer in
20 charge of this case, of the Pfuntner case, you must be there
21 to determine what is your liability. That is the reason,
22 Mr. DeLano, that you must be there, and whether I sue you
23 personally or as an employee, it is irrelevant, because you
24 never even mentioned that what you're mentioning here, and
25 you read the schedule F, the entry number 12, allege the

1 liability, where stored merchandise and employee
2 of M&T Bank, take it as that you wrote it. When the case
3 Pfuntner comes into play, you will be there, and your own
4 words, an employee of M&T. That is why I want you there.

5 DR. CORDERO: Your Honor, if you think that
6 that is a confusing, please, before we finish, while
7 I'm still here, we can clarify any points.

8 THE COURT: I'm just waiting for you. Are
9 you finished now?

10 DR. CORDERO: I asked whether you think there
11 is any confusion in what I have stated so I can
12 provide --

13 THE COURT: Confused about what?

14 DR. CORDERO: I don't know. You said there
15 was confusion. Mr. DeLano was frank, he wasn't
16 confused.

17 THE COURT: That is what the record reflects.

18 DR. CORDERO: Very well, if you have any
19 confusion, please let me know so I can sit here --

20 THE COURT: I don't have any.

21 DR. CORDERO: Very well, I have completed.

22 THE COURT: Mr. Werner?

23 MR. WERNER: I believe Mr. DeLano has given
24 a fair statement of his position and facts, your Honor,
25 I have no questions.

1 THE COURT: Any other witnesses that you
2 have, or any others that you want to --

3 DR. CORDERO: Yes, I have a lot of witnesses
4 that I want to introduce all the documents that I have
5 asked of Mr. DeLano. Mr. DeLano himself stated --

6 THE COURT: You can step down.

7 DR. CORDERO: That I - what claim be against
8 him as an employee of M&T Bank, as such he could have
9 provided - as such he could have provided documents.
10 It is not possible that every single document that I
11 asked of him was to be relevant and it is not possible
12 because I asked for many of those documents in my
13 statement of July 9, 2004.

14 I submitted that as a proposal request for
15 an order at the hearing of July 19th. You told me that
16 local practice was that I should ask for a proposed
17 order to be signed by you and that I should turn to my
18 request to be a proposed order. I did so, in full
19 knowledge of everything that was there.

20 The record reflects that that order was
21 going to be entered. That is what the record that you
22 yourself included in the order of July 26, 2004
23 reflects.

24 So at that point in time you thought that
25 he, being case of Mr. DeLano's bankruptcy, and thought

1 the documents were relevant, but then only because
2 untimely, the following day after Werner, according to
3 you, expressed concern about whatever that may be, you
4 refused even to docket the order, let alone to issue
5 it, but the fact stands that you had already acknow-
6 ledged of everything that was asked of Mr. DeLano.
7 You approved that it would be ordered. You even gave
8 me your fax number, and then, on the basis of
9 Mr. Attorney Werner's expressed concerns, you denied
10 that.

11 I had my request. Now I put a motion for
12 those documents to be produced, and then we can
13 continue that.

14 If that is the case, that you still think
15 that I do not have a claim against Mr. DeLano, because
16 you, you yourself denied me access to documents after
17 you had acknowledged that you would enter my proposed
18 order for them. I move for those documents.

19 THE COURT: I'm going to deny your motion
20 and I'll give you a written decision with respect to
21 that, too.

22 Okay. anything else?

23 (No response.)

24 THE COURT: Thank you for everyone's
25 cooperation today. We stand adjourned.

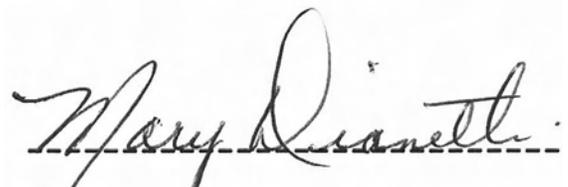
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REPORTER CERTIFICATE

I, Mary Dianetti, do hereby certify that I did report in stenotype machine shorthand the proceedings held in the above-entitled matter;

Further, that the foregoing transcript is a true and accurate transcription of my said stenographic notes taken at the time and place hereinbefore set forth.

Dated: 11/4/05
At Rochester, New York



Mary Dianetti

06-4780-bk

United States Court of Appeals for the Second Circuit

Dr. Richard Cordero

Appellant and creditor

APPEAL

v.

from *Cordero v. DeLano*, 05-6190L, WDNY

David DeLano and Mary Ann DeLano

Respondents and debtors in bankruptcy

APPELLANT'S PRINCIPAL BRIEF

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Post-Addendum, with the reply in Dis. Ct. (Pst:1171-1500)

SPECIAL APPENDIX in CA2 (SApp:1501-1700)

March 17, 2007

by

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**United States Court of Appeals
for the Second Circuit**

Dr. Richard Cordero,
Appellant and creditor

v.

APPELLANT'S PRINCIPAL BRIEF

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

I. PRELIMINARY STATEMENT

1. U.S. District Judge David G. Larimer, WDNY, entered the decision in *Cordero v DeLano*, 05-6190, WDNY, that is on appeal before this Court (Special Appendix, page 1=SApp:1=SApp:1501 in volume II). Underlying his decision was a decision entered by U.S. Bankruptcy Judge John C. Ninfo, II, WBNY (Designated Items, page 3=D:3, this volume) in *In re David and Mary Ann DeLano*, 04-20280, WBNY (hereinafter *DeLano*).

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IV. JURISDICTIONAL STATEMENT

A. Jurisdiction of the District Court

2. The appeal from the Bankruptcy to the District Court was filed under 28 U.S.C. §158.

B. Basis of Appellate Jurisdiction

3. This appeal from the order of the U.S. District Court, is founded on 28 U.S.C. §§158(d) and 1291, both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain*, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).

4. The issues presented herein all concern the fundamental legal matter of due process of law denied through judicial corruption and thus, should be reviewed de novo, *In re Bell*, 225 F.3d 203, 209 (2d Cir. 2000).

C. Filing Dates and Timeliness of the Appeal

5. The decision on appeal was entered in the District Court, WDNY, on August 21, 2006. (SApp:1501) On September 12, an extension of time to appeal was requested (SApp:1505); as a result, leave was granted to file the notice of appeal by October 20 (SApp:1506). Such notice was filed on October 16, 2006. (SApp:1507)

D. Appeal from Final Orders

6. The decision of the Bankruptcy Court (D:3), was “in all respects affirmed” (SApp:1502, 1504) by the District Court, before which there remains no pending proceeding in *Cordero v. DeLano*. Its decision was final.

V. STATEMENT OF ISSUES PRESENTED FOR REVIEW

7. The unifying issue before this Court in this bankruptcy case is whether it too, like the judges below, will deny due process of law to one litigant and impair the integrity of judicial process to the detriment of the public at large in order to avoid that a conscientious review of this case, rather than its cover up through a summary order, may raise the embarrassing questions, and all the more so the incriminating evidence, of what it knows about the bankruptcy fraud scheme involving its WDNY peers and others; since when the Court has known it; and for what motive it tolerates the scheme by refusing, as its peers below did, to order the Appellee Debtors to produce financial documents that will answer the smoking-gun question: Where and for whose benefit is at least \$673,657 of the Debtors’ known concealed assets? (SApp:1608) So long as the Court refuses to obtain the facts to answer that question, it aids and abets the cover up of a bankruptcy fraud scheme. The constituent issues of this unifying issue are the following:

a) Whether Judge Larimer so disregarded the law, the rules, and the facts in the proceedings leading up to and in his interlocutory and final decisions and

showed such bias as to deny Appellant due process of law and render his decisions unlawful and a nullity.

- b) Whether the Appellee Debtors' motion to disallow Creditor Dr. Cordero's claim was an artifice and the evidentiary hearing was a sham that the Debtors and Bankruptcy Judge Ninfo employed to justify the predetermined disallowance decision by denying Dr. Cordero *every single document* that he requested from them, even the Debtors' bank account statements, as well as the testimony establishing Dr. Cordero's claim given by Mr. DeLano at the hearing, in order to eliminate him from the Debtors' bankruptcy case before he could prove their involvement in a bankruptcy fraud scheme.
- 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.
- d) Whether 28 U.S.C. §158(b) allowing judges, circuits, and parties to choose whether to establish or resort to bankruptcy appellate panels impairs due process

of law, provides for forum shopping, and denies equal protection under law so that it is unconstitutional and has been abused to terminate the BAP in the Second Circuit and allow local operation of a bankruptcy fraud scheme.

Table of Notices

**to the 2nd Circuit Court of Appeals and Judicial Council
the Circuit Judges, and others
of Evidence of a Bankruptcy Fraud Scheme
in the Bankruptcy and District Courts, WDNY
since May 2, 2003**

by

Dr. Richard Cordero

- I. Appeal of *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, sub nom. *In Premier Van et al.*, no. 03-5023, CA2:
 - A. of May 2, 2003;
 - B. writ for mandamus *In re Richard Cordero*, no. 03-3088, CA2, of September 12, 2003;
 - C. motion to quash the order of Judge Ninfo of August 30, 2004, to sever a claim from *In re Premier Van et al.*, in order to try it in the bankruptcy case *DeLano*, no. 04-20280, WBNY, thus making a mockery of the appellate process, of September 9, 2004 (Add:D:440);
 - D. motion for leave to file an updating supplement of evidence of bias in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury, of November 3, 2003 (D:425);
 - E. petition to CA2 for panel rehearing and hearing en banc, of March 10, 2004.
- II. Judicial misconduct complaint against Judge Ninfo, no. 03-8547, CA2:
 - A. of September 2, 2003;

- B. letters to the members of the Judicial Council of:
 - i. February 11 and 13, 2004;
 - ii. March 22, 2004;
 - iii. July 30, 2004;
 - C. appeal of the dismissal to the Judicial Council, of July 13, 2004.
- III. Judicial misconduct complaint against Former Chief Judge John M. Walker, Jr., no. 04-8510, CA2:
- A. of March 19 2004;
 - B. letter to then next chief Judge Dennis Jacobs, of March 24, 2004;
 - C. letter to Circuit Judge Robert Sack, of March 25, 2004;
 - D. appeal of its dismissal to the Judicial Council, of October 4, 2004;
 - E. letter to the members of the Council, of October 14, 2004;
 - F. letter to each member of the Council requesting that each make a report under 28 U.S.C. §3057(a) to the Acting U.S. Attorney General that an investigation should be had in connection with offenses against U.S. bankruptcy laws.
- IV. Appeal of both complaints to the Judicial Conference of the United States:
- A. letter to Circuit Justice Ruth Ginsburg, of November 26, 2004;
 - B. letter to Circuit Judge Ralph K. Winter, Chair of the Committee to Review Circuit Council Conduct and Disability Orders:
 - i. of January 8, 2005;
 - ii. of February 7, 2005;
 - iii. of March 24, 2005.
 - iv. of March 25, 2005;
- V. Comments in response to CA2's invitation for public comments on the reappointment of Judge Ninfo to a second term as bankruptcy judge:
- A. of March 17, 2005;
 - B. of August 4, 2005;
 - C. letter to each of the members of the CA2 and of the Judicial Council:

- i. of March 18, 2005;
- ii. of August 4 and 5, 2005;
- iii. of September 6, 2005.

VI. Request to the Judicial Council to abrogate WDNY Local Rule 5.1(h) and 83.5 (Add:633) that make it practically impossible to file a RICO claim and to record events that occur in the court and 'its environs':

- A. to now Chief Judge Jacobs and to members of the Judicial Council, of January 8, 2006;
- B. to the Judicial Council, of January 7, 2006.

VI. STATEMENT OF THE CASE

8. **In Bankruptcy Court, WBNY**, Appellee DeLanos filed as debtors a voluntary bankruptcy petition with its schedules under 11 U.S.C. Chapter 13 on January 27, 2004. (D:27-60) Therein they named Appellant Dr. Cordero among their creditors. (D:40). For six months the Debtors and Chapter 13 Trustee George Reiber treated Dr. Cordero as a creditor. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
9. However, their attitude changed when he showed that the Debtors had concealed assets and that Trustee Reiber had failed to investigate them and should be removed. (D:193) Then the Debtors moved to disallow his claim (D:218) and Judge Ninfo scheduled an evidentiary hearing (D:279, 332) only for the Debtors (D:313-315, 325) and the Judge (D: D:278¶1, 327) to deny *every single document* that Dr. Cordero requested (D:287, 317; Tr:188/2-189/18) to establish his claim

and determine the good faith of the Debtors' petition as well as the whereabouts of the known concealed assets that could reveal their participation in a bankruptcy fraud scheme (cf. SApp:1608).

10. At the evidentiary hearing held on March 1, 2005, Judge Ninfo dismissed Mr. DeLano's testimony that established the claim of Dr. Cordero so as to disallow his claim and deny him standing to participate further in the case. (Pst:1281§§c-d) After his decision of April 4, 2005, was filed (D:3), Dr. Cordero appealed to the District Court, WDNY (D:1). Then upon the recommendation of the trustee (Add:937-939; cf. 953§I), Judge Ninfo confirmed the Debtors' repayment plan that discharged 78% of their debt (Add:941; cf. 962§II). The Debtors were discharged by Judge Ninfo's order of February 2, 2007. (D:508o)
11. **In District Court, WDNY**, Judge Larimer repeatedly tried to prevent Appellant Dr. Cordero from obtaining the transcript of the evidentiary hearing by setting a brief-filing deadline (Add:692, 695, 831, 836, 839) before the court reporter had had time even to respond to his request for the transcript (Add:681).
12. Likewise, the Judge denied *every single document* (Add:1022) that Dr. Cordero requested (Add:951), including the Debtors' bank account statements that could establish the whereabouts of known concealed assets worth at least \$673,657 (SApp:1608), just as he denied (Add:1019, 1155) every substantive motion (Add:853, 881, 911, 993, 1097) aimed at exposing the participation of the

Debtors, court officials, and trustees in a bankruptcy fraud scheme.

13. Judge Larimer disposed of the appeal in a decision (SApp:1501) without stating any legal principle, let alone a controlling one, and without discussing any of the four issues presented by Appellant or even a single one of his brief's 15 headings dealing with their factual and legal elements (Pst:1254). Instead, he discussed two issues "preserved" by the Appellees, who had filed no cross-appeal and, as a result, could present no issues on appeal.
14. Appellant timely filed a notice of appeal (SApp:1505-1507) and on October 21, 2006, mailed his list of issues to be presented and designation of items in the record on appeal (SApp:1508). The 10 days provided under FRAP 6(b)(2)(B)(ii) for Appellees to designate other parts of the record that they believed necessary expired without their making any such designation or filing any other paper. Therefore, to the extent that this Court feels like showing respect for the rules of procedure any more than it allows the WDNY court not to do so, it must consider only and all issues presented by Appellant.

VII. Statement of Facts

- A. **In Bankruptcy Court, the Debtors filed a bankruptcy petition with schedules where they made incongruous, implausible, and outright suspicious declarations about their financial affairs and since then have refused to account for the whereabouts of known concealed assets worth at least \$673,657**

15. Mr. David DeLano, a 39-year veteran of the financing and banking industries still employed in the bankruptcy department of M&T Bank, and Mrs. Mary DeLano, a Xerox technician, filed a voluntary bankruptcy petition on January 27, 2004, in Bankruptcy Court, WBNY. It included their debt repayment plan to have 78% of their debt discharged in three years (D:59), just in time to travel light into their retirement. They invoked 11 U.S.C. Chapter 13, thereby avoiding the liquidation of any of their assets that would have resulted from filing under Chapter 7. Their petition was accompanied by Schedules A-J (D:29-45), signed by them under penalty of perjury (D:46) and verified by Christopher K. Werner, Esq., their bankruptcy attorney with 28 years' experience (D:28). Therein they listed 21 creditors, 19 as unsecured (D:38), including 18 credit cards and Dr. Cordero (D:40). The latter's claim against Mr. DeLano had arisen in the still pending adversary proceeding under FRBkrP 7001 et seq. *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY (Add:712).

16. The DeLanos' sworn declarations in their Schedules are most suspicious even for a lay person. Indeed, they declared that:

17. a) They only had \$535 in cash and bank accounts. (D:31) Yet their 1040 IRS forms for 2001-03 show that they earned \$291,470 in just the three years preceding their filing. (D:47; 186-188; SApp:1608) Since they petitioned for debt discharge due to inability to pay, it would appear reasonable to ask that they

account for the whereabouts of their earnings by producing supporting documents, such as bank account statements, so obviously apt to establish the good faith of any petition. This is precisely what Dr. Cordero wanted to have them do when he made repeated requests of the Debtors (D:288¶3), the trustees, and the courts (Pst:1261)

17. b) Nevertheless, to date Trustee Reiber (D:193§I), Judge Ninfo (D:278¶1, 327; Tr:189/11-22), Judge Larimer (Add:1022; SApp:1504), and this Court (SApp:1623, 1678) have refused to require the Debtors to provide their bank account statements to ascertain the whereabouts of \$291,470 in earnings unaccounted for. As to the Debtors, to avoid producing such statements, they have incurred attorneys' fees, and their attorneys have been willing to provide them with legal services, worth at last count \$27,953 (Add:938, Pst:1174), and Judge Ninfo has approved their payment (Add:942). What is more, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's motions and appeals.

17. c) Given that under their plan the DeLanos had to commit all their disposable earnings to debt repayment and that they have not needed to request a modification of that plan, where did they come up and "continue" to come up with that kind of money and how did Att. Werner and Palmer, members of

the same firm, know that the Delano Debtors could pay them despite their declaration that they only had \$535 in cash and *on account*?

18. Even more suspiciously incongruous, the DeLanos declared only one piece of real property (D:30), to wit, the home that is presently their address at 1262 Shoecraft Road, Webster (Town of Penfield), NY 14580. They bought it in 1975, when they took out on it a \$26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it is only \$21,416 and the mortgage that they carry on it is \$77,084...after making mortgage payments for 30 years! *Mind-boggling!* (Add:1058¶54) Worse still, during that same period the DeLanos received a total of \$382,187 through a string of mortgages! (SApp:1608; D:341-354) Where did that money go, for whose benefit, and where is it now?
19. Moreover, the Debtors declared credit card borrowings totaling \$98,092 (D:41), while they set the value of their household goods at only \$2,810! (D:5/4-8; Add:888§§c-e) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years. This is particularly so if they are two professionals and have not experienced a home disaster or long-term catastrophic illness. Such are the DeLanos, who did not incur either or similar loss or expense, as shown in Trustee Reiber's shockingly unprofessional Findings Report (Add:937-939), which was approved by Judge Ninfo (Add:941) and Judge

Larimer (Add:1022) despite Dr. Cordero's analytical objections (Add:951, 1038).

1. The efforts of the trustees and Judge Ninfo to protect the Debtors from being examined at the meeting of creditors and having to produce incriminating documents reveal coordination pointing to a bankruptcy fraud scheme

20. From the very beginning, it became evident that nobody was going to question whatever declarations the DeLanos had made in their January 2004 petition and schedules...or allow anybody else to do so. Thus, the meeting of the DeLanos' creditors was held on March 8, 2004, pursuant to 11 U.S.C. §341. (D:23) Mr. DeLano and Trustee Reiber could have expected that no creditor would attend, for creditors hardly ever show up at these meetings unless the amount of their claims is high enough to make travel and representation expenses cost-effective in light of what they can expect to receive on the dollar of debt owed them. Nor could they have expected that the only individual, as oppose to institutional, creditor that they had named in their schedules, namely, Dr. Cordero (D:40), would travel hundreds of miles from New York City to Rochester to attend.
21. Consequently, they were expecting a pro forma §341 meeting that would merely rubberstamp the DeLanos' debt repayment plan and get it ready for confirmation later that afternoon by Bankruptcy Judge Ninfo. So much so that in violation of his duty under C.F.R. §58.6(a)(10) to conduct the meeting personally, Trustee Reiber had his attorney, James W. Weidman, Esq., conduct it right there in a room

of the office of his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt. She knew and tolerated that violation...and how many others?

22. But the unexpected did happen: Creditor Dr. Cordero showed up and was the only one in attendance. (D:68) Hardly had he finished identifying himself and handing out a copy to Attorneys Werner and Weidman of his written objections to the confirmation of the DeLanos' plan (D:63), when Att. Weidman unjustifiably asked him whether and, if so, how much he knew about the DeLanos' having committed fraud. Dr. Cordero would not reveal what he knew. Rather than risk allowing the DeLanos to incriminate themselves or commit perjury while being examined under oath, as §343 requires, and having their answers officially tape recorded, Mr. Weidman protected them by putting an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II) At the confirmation hearing before Judge Ninfo, Dr. Cordero objected to the conduct of both Att. Weidman and Trustee Reiber, who ratified his attorney's conduct, but the Judge excused them as merely engaging in "local practice", thus disregarding what the law of the land of Congress provided. (D:98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)
23. This blatant conduct revealed confidence born of coordination. Its objective was twofold: To protect the DeLanos from being exposed as bankruptcy fraudsters, and thereby protect themselves from being incriminated as their supporters

(D:379§3) in its enabling mechanism: a bankruptcy fraud scheme. (D:458§V; Add:621§1).

24. Dr. Cordero requested and kept requesting the trustees that the DeLanos be required to produce documents supporting their petition's incongruous, implausible, and suspicious declarations. For six months they had treated and went on treating him as a creditor while stonewalling on his request for those incriminating documents. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
25. What is more, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:74), although 11 U.S.C. §341(c) contemplates an indefinite series of meetings and FRBkrP 2004(b) provides for a very broad scope of examination (D:283; Pst:1262¶13 et seq.).
26. Meantime, they produced a few documents (D165-188) and Dr. Cordero analyzed them in light of their petition and its schedules. This resulted in his Statement of July 9, 2004 (D:193), which he sent to Judge Ninfo. It charged the Debtors with bankruptcy fraud, specifically concealment of assets, and requested that the Judge order them to produce all the other documents that Dr. Cordero had requested but that they had failed to produce with the connivance of Trustee Reiber, whose removal he requested. (D:196§§IV-V; 207, 208) Everything changed after that, as

the schemers coordinated how to eliminate Dr. Cordero.

2. The timing and handling of the motion to disallow the claim of Dr. Cordero reveal it as an artifice resulting from coordination among the schemers intended to force him into a sham evidentiary hearing where he would be deprived of standing in *DeLano* and thereby of the right to request documents proving the Debtors' bankruptcy fraud and the involvement of all of them in its enabling mechanism: a bankruptcy fraud scheme

27. Filed on July 22, 2004 (D:218), the motion to disallow was heard on August 25 by Judge Ninfo. He manipulated Dr. Cordero's request for documents (D:234§§II & IV) and disregarded his arguments showing the motion's defects of untimeliness, laches, and bad faith (¶79 below; D:253§§V & VI) as well as the presumption of validity in favor of the claim (D:256§VII). Then the Judge ordered that Dr. Cordero take discovery of Mr. DeLano until December 15, 2004, in *Pfuntner*, that is, the case that gave rise to his claim against Mr. DeLano (Add:534/after entry 13) and that the parties introduce their evidence at an evidentiary hearing (D:278¶¶3 & 4).

28. However, when Dr. Cordero requested evidentiary documents (D:287, 310, 317), the DeLanos (D:313, 325) and Judge Ninfo (D:327) denied him *every single document* that he requested. Dr Cordero was being set up to walk empty-handed into the evidentiary hearing! where he would fall victim of their divide and conquer stratagem that would force him to prove his claim against Mr. DeLano out of context due to the absence of all the other parties and issues. (D:444§§I-II)

On December 15, 2004, Judge Ninfo set its date. (D:332)

29. The evidentiary hearing was held on March 1, 2005. On that occasion, Judge Ninfo abandoned his duty impartially to take in evidence and instead behaved as Chief Advocate for Mr. DeLano, who is represented in *Pfuntner* by Michael Beyma, Esq., a partner at Underberg & Kessler (Add:532), the law firm of which Judge Ninfo was a partner at the time of taking the bench (Add:636).
30. Att. Beyma was present at the hearing together with Att. Werner, who at the time had appeared before Judge Ninfo in over 525 cases, according to PACER. (Add:891¶12; Pst:1281§c) Actually, that number pales by comparison to the 3,909 *open* cases that Trustee Reiber had on April 2, 2004 (D:92§C, 302), of which 3,907 were before Judge Ninfo! (Add:1107§24) Such abnormally high frequency of appearances engenders close personal relationships, the blurring of inhibitions, and the sense of friendship betrayed unless everybody tells the others what he or she is doing, i.e., unless they coordinate their acts. (D:361¶¶13-16, 431§C)
31. It follows that the evidentiary hearing in *DeLano* was for the schemers an organizational affair where they had to protect one of their own from an 'out-of-town citizen' whose inquiries in defense of his claim threatened to expose their participation in the scheme. (Add:603¶¶32-33) Defensively, they predetermined that the hearing would end with the disallowance of his claim. This explains why

they did not bring either a copy of the motion to disallow that Att. Werner himself had raised or of Dr. Cordero's claim that they were challenging. (Pst:1288§e) They only needed to rely on their coordination, which included Attorneys Beyma and Werner signaling answers on three occasions to Mr. DeLano as he was on the stand under examination by Dr. Cordero, and Judge Ninfo preposterously pretending that he had not seen them do so in front of his eyes in the courtroom. (Pst:1289§f) Would those attorneys have ever dare so to attempt to suborn perjury had they been before a judge they knew not to be a participant of the scheme after the case had been transferred to a U.S. court in Albany, NY? Of course not!

32. At the evidentiary hearing, Mr. DeLano was the only witness examined and Dr. Cordero the only one to introduce evidence. Mr. DeLano made consistent admissions against self-interest to the effect that as the M&T Bank bankruptcy officer in charge of liquidating the assets of a bankrupt client in the business of storing third parties' property, including Dr. Cordero's, he had injured Dr. Cordero. (Pst:1281§d) Thereby Mr. DeLano established Dr. Cordero's claim against him. So clear and understandable was his testimony that Att. Werner, with 28 years' experience, felt no need to rehabilitate him or correct it, but on the contrary, validated his testimony at the end of the hearing thus:

I believe Mr. DeLano has given a fair statement of his position and facts, your Honor. I have no questions. (Tr:187/23-25)

33. Nevertheless, Judge Ninfo arbitrarily disregarded Mr. DeLano's testimony as

“confused” in order to reach at the evidentiary hearing the predetermined decision of disallowance. (Tr:182/14-183/18; Pst:1281§§c-d) He confirmed it in his written decision, where he repeated that Dr. Cordero had not proved his claim in *Pfuntner* against Mr. DeLano and had no standing to further participate in *DeLano*; and restated his denial to stay his decision (D:20). Dr. Cordero challenged that decision, dated April 4, 2005, on appeal to the District Court, WDNY, on April 11, 2005 (D:1).

B. In District Court, Judge Larimer made repeated attempts to deprive Dr. Cordero of the incriminating transcript of the evidentiary hearing before Judge Ninfo, denied him *every single document* that he requested, and avoided even mentioning the evidence of the Debtors’ concealment of at least \$673,657 and its enabling bankruptcy fraud scheme

1. To prevent the incriminating transcript of the evidentiary hearing from becoming part of the record, Judge Larimer repeatedly scheduled the brief of Dr. Cordero before he and the Reporter had even made arrangements for its preparation

34. The Bankruptcy Court filed Appellant Dr. Cordero’s Designation of Items in the Record and Statement of Issues on Appeal (Add:690) on April 22, 2005, and on that very same day the Court sent it upstairs to District Judge David G. Larimer, who on that very same day dropped everything else he was doing and rushed to schedule Dr. Cordero’s appellate brief for filing within 20 days (Add:692). The Judge knew that the record should not have been transmitted to him because it

was incomplete and, thus, not in compliance with FRBkrP 8007: There had not been time under FRBkrP 8006 for the Appellees to have their 10 days to file their additional issues and items, which they filed only on May 2, 2005. (Add:711)

35. Nor had there been time for Court Reporter Mary Dianetti even to respond to Dr. Cordero's transcript request made in his letter to her of April 18 (Add:681), as provided for under FRBkrP 8006. Also pursuant to it, he sent a copy of that letter to the Bankruptcy Court together with his Designation and Statement, which bore the same date of April 18, 2005. The Bankruptcy Court selectively docketed the latter, but failed to docket the transcript-requesting letter to Reporter Dianetti...just as Judge Larimer failed to wait until the transcript had been filed, thus making the record complete, before scheduling Dr. Cordero's brief. It was pitcher-catcher coordination to deprive an appellant of an incriminating transcript!, which showed his Downstairs Peer, Bankruptcy Judge Ninfo, engaging in bias, arbitrariness, and denial of due process, and Mr. DeLano establishing the claim by admitting that his handling of Dr. Cordero's property could have injured Dr. Cordero. (Pst:1281§d)

36. Such non-docketing once more of incriminating documents (D:231, 234¶¶14-17; 106, 108, 217; Add:1081) is evidence itself of an unlawful practice by courts that have no respect for the rules, such as FRBkrP 5003, 5005(a)(1), and FRCivP 79, or for the purpose of the docket, that is, to give public notice of every event in a

case and thereby contribute to the administration of justice in public. (cf. FRBkrP 5001(b); FRCivP 77(b))

37. Dr. Cordero filed an objection and requested that the brief be scheduled for filing only after the transcript had been filed (Add:695). Judge Larimer, pretending that Dr. Cordero had requested a time extension, rescheduled the brief for filing by June 13. (Add:831) Dr. Cordero had to write a motion to request the Judge to comply with the law. (Add:836) Only then did Judge Larimer order that “Appellant shall file and serve his brief within twenty days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court”. (Add:839) It took 10 letters to and from Court Reporter Mary Dianetti (Add:912) and several motions to Judge Larimer (Add:911, 951, 993, 1031) for the transcript to be filed seven months later! (Add:1071)
38. What trust can you have that a judge is going to decide a case according to law, let alone impartially, when from the outset he disregards it so blatantly?...and for the second time! Indeed, in January 2003, Judge Larimer, acting likewise in coordination with the Bankruptcy Court, disregarded the rules to schedule Dr. Cordero’s brief despite the incompleteness of the record and before even an arrangement with Reporter Dianetti had been reached, and months before the transcript was finally filed. (Add:1086¶16) This occurred precisely in the case underlying the instant one, namely, *Pfuntner v Trustee Gordon et al*, 02-2230 in

Bankruptcy Court, from where it was appealed, sub nom. *Dr. Cordero v. Trustee Gordon*, 03cv6021L, WDNY. (Add:1011§A)

2. Parties who need not bother to oppose motions that can spell the end of their careers or incriminate them in a bankruptcy fraud scheme reveal a pattern of conduct born of coordination with judges they know have as much to lose if they granted them

a) **Judges Larimer and Ninfo accepted work of dismal quality but in furtherance of the bankruptcy fraud scheme by Reporter Dianetti and Trustee Reiber so they denied motions for their removal**

39. While making arrangements for the transcript, Reporter Dianetti refused to certify that the transcript of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero moved before Judge Larimer for her to be referred to the supervising authority of reporters under 28 U.S.C. §753, to wit, the Judicial Conference of the United States (Add:911), for it to investigate her refusal to certify the transcript's reliability. The Judge denied the motion as concerning a "tempest in a teapot" and ordered Dr. Cordero to obtain the transcript from Reporter Dianetti. He also added that "Cordero has no right to "condition" his request in any manner" (Add:991), mindless of the obvious fact that Reporter Dianetti was asking for \$650 in advance and that as a matter of basic contract law Dr. Cordero did have the right to "make satisfactory arrangements" (FRBkrP 8006) at arms length for the product that he would receive in exchange.
40. Dr. Cordero moved for reconsideration (Add:993), but Judge Larimer denied the

motion, likewise without discussing a single one of Dr. Cordero's factual and legal arguments. Instead, the Judge warned him that if he did not request the transcript within 14 days, his case could be dismissed (Add:1019). Thereby he revealed that it did not matter to him whether he or Dr. Cordero received a transcript that was inaccurate, incomplete, or tampered-with, for he did not need to rely on it to know how he would decide the appeal from Peer Ninfo's decision.

41. The transcript that Reporter Dianetti filed was of shockingly substandard quality. In it everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. As a result, the participants at the hearing, though professionals, come across in the transcript as a bunch of speech impaired illiterates. Why would Judge Larimer keep such Reporter on her job? Consider this.
42. Reporter Dianetti received Dr. Cordero's payment on November 2 and already on November 4, 2005, she filed it and sent a copy to him. She neither could have transcribed 192 pages in little over a day nor would have transcribed them while still making payment arrangements with Dr. Cordero on the off chance that he would pay for the transcript despite her refusal to agree that she would certify its accuracy, completeness, and tamper-free condition. This means that she had already transcribed it on somebody else's instructions, somebody who wanted to

know what had happened at the evidentiary hearing before Judge Ninfo on March 1, 2005, in order to decide how to handle it, and who upon learning about its incriminating contents tried to keep it from the record, even by violating the rules and Dr. Cordero's right to it.

43. Hence, Judge Larimer must have known that Reporter Dianetti's transcript was of substandard quality, just as he knew her transcript was that she certified as of March 12, but mailed to Dr. Cordero only on March 26, 2003, in the appeal to his Court from Judge Ninfo's decision in *Pfuntner*. (¶38 above; D:234¶14.b; Add:559¶4, 920¶26)
44. Likewise, Judge Larimer was informed (Add:953§I) of the shockingly unprofessional Findings Report that Trustee Reiber (Add:937-939) submitted to Judge Ninfo (Add:1041§I) to recommend the approval of the DeLanos' debt repayment plan (D:59).
45. Nevertheless, he refused to take any corrective action against either of them (Add:991, 1019, 1021, 1155), just as Judge Ninfo did (Add:1094). This shows that what matters to them is not the quality of their work, but rather their willingness to follow instructions as participants in, or to work in line with, the bankruptcy fraud scheme. In exchange, they could count on the Judges' protective bias toward them. This explains why none of Dr. Cordero's motions requesting the replacement and investigation of Reporter Dianetti (Add:911, 973¶¶60.1.c, 3;

993) and Trustee Reiber (D:243¶34.d; Add:882§II, 973¶¶60.1.d-e, 4; 1121¶61.e, 1062¶66.b) caused them to bother to file even a Stick-it note of objection. Yet, each of those motions put their careers at risk. But they knew why the motions would not be granted.

b) Neither Trustee Schmitt nor the DeLanos need oppose motions that, if raised before an impartial judge, could have been granted if only because of their being unopposed, but that they knew the judges here would deny as they did *every single document* that Dr. Cordero requested

46. Similarly, there was no opposition to Dr. Cordero's motions requesting either production of documents by Assistant U.S. Trustee Schmitt (D:244¶e; Add:973¶60.1.a-b) and the DeLanos (SApp:1606, 1637), or nullification of the confirmation of the DeLanos' plan (Add:1121¶61.a-c). Yet, if any of those motions had been granted by default, these non-movants would have risked the penalties of bankruptcy fraud: up to 20 years' imprisonment and devastating fines of up to \$250,000 (18 U.S.C. §§152-157, 1519, and 3571)...but they *are* schemers! They too did not have to bother to respond, for they knew that if ever Judges Larimer or Ninfo had granted any of those motions, they would have incriminated themselves in the bankruptcy fraud scheme.

47. Consequently, Judges Larimer and Ninfo denied Dr. Cordero *every single document* that he requested. (Add:951, 1022; Table on Pst:1261) Neither was interested in obtaining those documents in order to render decisions based on

facts, for both already knew that the DeLanos had committed bankruptcy fraud. Their interest was in preventing Dr. Cordero from obtaining the documentary evidence that would expose such fraud. To secure their interest, they had no qualms about disregarding FRBkrP 7026 et seq. and FRCivP 26 et seq. (D:278§2) so that Dr. Cordero could not discover the whereabouts of the Debtors' known concealed assets worth at least \$673,657 (SApp:1608) and end up incriminating all of them in the scheme. Therefore, they engaged in a cover up.

48. In the same vein, this Court refused twice and with no comments (SApp:1623, 1678) to order any of these parties to produce any of the documents requested by Dr. Cordero (SApp:1606, 1637). If this Court ordered those documents produced, they would lead to the DeLanos' known concealed assets and the DeLanos would be but the first dominoes to fall.

49. Hence, pattern evidence shows that Judge Larimer, Judge Ninfo, other court officers, the trustees, the Court Reporter, and the Debtors coordinated their conduct to deprive Dr. Cordero of the transcript and discoverable incriminating documents. In so doing, the judges denied Dr. Cordero due process of law.

50. Interestingly enough, under RICO, 18 U.S.C. §1961(5), two acts of racketeering activity within ten years form a pattern. Not coincidentally, the District Court has resorted to the subterfuge of WDNY Local Rule 5.1(h) (Add:633) to make filing a RICO claim all but impossible by demanding exceedingly numerous and

detailed pre-discovery factual assertions. (§IX.C below) Judge Larimer did not even mention that issue presented by Appellant Dr. Cordero. Nor did he show awareness of Appellant's three other issues, including how the elimination by the judges of three-judge bankruptcy appellate panels in the Second Circuit facilitates the running of a bankruptcy fraud scheme. (§IX.D below) As a result, Judge Larimer left the appeal undecided.

VIII. SUMMARY OF THE ARGUMENT

51. Judges and trustees are expected to suspect the good faith of bankruptcy petition, and consequently to examine them critically, for they are presumed to know about rampant fraud in bankruptcy. It forced Congress to adopt the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, due "to the absence of effective oversight". (Pst:1395) To provide such oversight is their duty, which they must discharge by examining bankruptcy petitions for the consistency and plausibility of their financial affairs declarations and by requiring that such declarations be supported with documentary and testimonial evidence and through physical inspections of assets and locations.
52. Far from it, Judge Larimer repeatedly tried from the inception of this appeal to prevent the incriminating transcript of the evidentiary hearing before his Peer, Bankruptcy Judge Ninfo, from becoming part of the record. Just as the Debtors and Judge Ninfo had done, he too denied *every single document* that Appellant

Dr. Cordero, to ensure meaningful appellate review on the basis of facts, had requested. (Add:951) He disregarded the four issues presented by Dr. Cordero (Pst:1257¶2a-d), the one who took the appeal. Instead, in his decision (SApp:1501) the Judge discussed the “issues preserved” for the first time in their response brief by the Appellee Debtors, the ones who did not want the appeal, did not file a cross-appeal, and thus could not have “preserved” any issue. While he discussed their untimely issues, he did not even mention the issue that ran through Appellant’s four issues, namely, the Debtors’ bankruptcy fraud made possible by a bankruptcy fraud scheme. Thereby he showed gross partiality toward the Debtors and against Dr. Cordero and committed dereliction of duty by failing to do precisely what he was supposed to do, to wit, to give a fair hearing to both in order to weigh their competing contentions against the facts in evidence on the scale of the applicable law.

53. Because of such bias Judge Larimer denied Dr. Cordero due process of law, which he only compounded through his prejudice. Revealing his attitude, he started off with his outcome to “affirm that decision [of Peer Ninfo] in all respects” (SApp:1502), spared his Peer’s assertions any critical analysis in light of the Appellant’s contentions of fact and discussion of applicable law, moved on to a slavish recapitulation of those assertions (SApp:1503,) and ended up with the predetermined conclusion that his Peer’s decision “is in all respects affirmed”

(SApp:1504) Instead of testing whether Peer Ninfo could have erred, Judge Larimer prejudged the validity of his assertions, thus defeating the very purpose of the appeal.

54. By so proceeding, Judge Larimer managed to accomplish the only objective that he pursued during the appeal: to protect himself, Judge Ninfo, the trustees, and others from being exposed as participants in a bankruptcy fraud scheme. Consequently, he issued a decision conceived in self-interest rather than in the interest of justice and born of unlawful coordination between schemers rather than the application of law to the facts in evidence. His decision materializes the abusive exercise of judicial power that denied Dr. Cordero due process of law.
55. That bankruptcy fraud scheme is a corrupt enterprise. To protect it, the District Court abused its judicial power to issue Local Rule 5.1.(h), which requires so many and detailed factual allegations just to file a RICO claim and before discovery has even started as to make its filing impossible. Hence it disregards the notice pleading provisions of the FRCivP as well as its rulemaking enabling provision. Moreover, it obstructs the exercise by any person of a right of action conferred upon the people by an act of Congress.
56. For its part, the BAP provisions of 28 U.S.C. §158(b) are unconstitutional because they provide for unequal judicial process under law at the discretion of the several circuits and their districts. However, a three-judge bankruptcy

appellate panel from a district different from that of the bankruptcy judge appealed from offers a higher degree of impartiality, objectivity, and integrity than a single district judge to whom a decision must be appealed from his colleague bankruptcy judge in the same district. In the latter instance, the bankruptcy and the district judge may even have their chambers in the same small federal building, so propitious for them to meet daily, become buddies, and develop more deference for their friendship and its terms of coordination than for any abstract rights of unknown, one-time, far away appellants. Such in-house review engenders the same danger of bias and collusion that warranted diversity of citizenship jurisdiction. Unlike in the latter matter, in that of bankruptcy appellate review Congress provided for the home team advantage at the expense of equal protection.

57. This Court's application of §158(b) ensures such inequality, first by eliminating the BAP in the Second Circuit and then allowing bankruptcy-district judicial buddies to manipulate appeals in pursuit of a bankruptcy fraud scheme.

IX. THE ARGUMENT

A. Judge Larimer so disregarded the law, the rules, and the facts in the proceedings leading up to and in his interlocutory and final decisions and showed such bias as to deny Appellant due process of law and render his decisions unlawful and a nullity

1. Judge Larimer based his decision on the "preserved, appellate issues" of

the Appellees, who never filed a cross appeal and thereby could not present any issues on appeal

58. Judge Larimer stated the issues that he set out to decide thus:

The preserved, appellate issues, are rather straightforward, although Cordero has expended considerable energy to make it otherwise. The DeLanos, appellees here and debtors in bankruptcy, by their attorneys, set forth whether Chief Judge Ninfo should have recused himself and whether Cordero had a valid claim. (SApp:1502 2nd para.)

59. One need not be a lawyer to realize how counterintuitive it is for a judge to say that the issues on appeal, which is filed by the appellant, the one who lost in the court below, are “preserved” by the appellee, the one who won and who obviously has no interest in disturbing the decision below, which was favorable to him. So in Judge Larimer’s mind the winning party below is the one that determines what issues the losing party considers so wrongly decided below as to bring them up on appeal. This is nonsense!

60. And very revealing too, for it betrays Judge Larimer’s ignorance of the FRBkrP and the record in the instant case...as well as the appalling sloppiness with which the Judge cobbled together his decision. To begin with, he must be deemed to know the proper terminology, to wit, what is “preserved” is objections at trial, whereas issues are presented on appeal. Then he should have read the applicable rules, which in pertinent part provide thus:

FRBkrP 8002. Time for Filing Notice of Appeal

(a) Ten-day period

...The notice of appeal shall be filed with the clerk within 10

days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed...

61. Dr. Cordero's notice of appeal to the District Court was filed in the Bankruptcy Court on April 11, 2005. (D:1; Add:679) Within the next 10 days the Appellees filed no notice of appeal, which would have constituted a cross appeal, and thus "preserved" no issue on appeal.

FRBkrP 8006. Record and Issues on Appeal

...Within 10 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, ***if the appellee has filed a cross appeal***, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. (emphasis added)

62. Likewise, as a matter of law, their failure to file a cross appeal barred them from raising any untimely issue of their own when filing even a timely response brief, which they did on January 20, 2006 (Pst:1361), nine months after the appeal was filed by Dr. Cordero on April 11, 2005 (D:1)

Rule 8009. Briefs and Appendix; Filing and Service

(a) Briefs

...

(1) The appellant shall serve and file a brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file a brief within 15 days after service of the brief of appellant. ***If the appellee has filed a cross appeal, the brief*** of the appellee shall ***contain the issues*** and argument ***pertinent to the cross appeal***, denominated as such, and the response to the brief of the appellant. (emphasis added)

63. Thus, the only issues on appeal were those that Dr. Cordero presented (§V above) since he was the only one who filed an appeal. However, none of the four issues that he presented were even acknowledged, let alone discussed and much less decided, by Judge Larimer. Thereby he avoided even mentioning the subject matter unifying them, that is, the DeLanos' bankruptcy fraud made possible by a bankruptcy fraud scheme tolerated or supported by judges that denied Appellant due process of law. Since he left the issues presented on appeal undecided, this Court owes no deference to his decision. It can decide them not just de novo, that is, anew, but rather for the first time.

2. Judge Larimer failed to read the issues presented by Appellant and wrote his decision on those “**preserved**” in Appellees' response without noticing the objection thereto in Appellant's reply that they had filed no cross appeal and could not untimely raise issues nine months after the appeal's filing

64. The four issues presented by Appellant (Add:690) were in brief whether:

- a) Judge Ninfo denied Dr. Cordero due process of law;
- b) the motion to disallow was an artifice to protect the bankruptcy fraud scheme;
- c) WDNY Local Rule 5.1(h) unlawfully prevents the filing of RICO claims;
- d) 28 U.S.C. §158(b) is unconstitutional and its bankruptcy appellate panel provisions have been applied to allow the operation of the scheme.

65. The Appellees and Judge Larimer were intent on not drawing attention to these embarrassing issues and their incriminating evidence. Thus, when it was their

turn, they discussed something else. That is how the Appellees, in their response to Appellant Dr. Cordero's principal brief, replaced (Pst:1398§II) the issues presented there (Pst:1257¶2a-d) with their own, namely, whether Judge Ninfo's should have recused himself and whether Appellant Dr. Cordero had a valid claim (Pst:1365; §IX.B.1, below) That was exactly what Judge Ninfo had done in his decision (D:3), where he did not once mention the unifying outcome-determining issue of bankruptcy fraud, which had been repeatedly brought to his attention by Dr. Cordero through the course of the proceedings. (D:65§III, 75¶¶4-7, 132¶6, 196§IV, 207, 217, 240§IV, 253§V, 320¶13, 370§C; cf. Pst:1402§III)

66. Judge Larimer did likewise, writing his decision on the basis of what he referred to as the Appellees' "preserved, appellate issues". (¶58 above; SApp:1502) He did not even notice the objection in Dr. Cordero's reply (Pst:1398§II) that as a matter of fact, the Appellee Debtors had brought up the recusal and claim validity issues, not as a cross appeal within 10 days of Appellant Dr. Cordero's notice of appeal (D:1), but rather nine months later in their response (Pst:1369§A) to his principal brief (Pst:1231).

67. Therefore, Judge Larimer would have this Court believe that the issues on appeal and on which he had to render a decision were those that the Appellees had "preserved". But did you see among the issues actually presented by Appellant anything about Judge Ninfo's recusal or the validity of Dr. Cordero's claim?

Neither could Judge Larimer have seen them, had he read section “C. Issues Presented” in Appellant’s brief. (Pst:1257¶2.a-d) Hence, he read about those two issues in the response of the Debtors, who in turn had picked them up from Judge Ninfo’s decision! (D:7§I, 10§II) Never mind how counterintuitive or contrary to basic knowledge of the law it is to write a response or an appellate decision in terms of the issues chosen by the appealed-from judge rather than the appellant. The Appellees and Judge Larimer’s conduct show that they wrote their respective pieces pro forma and without intending to meet any generally accepted standard of common sense or legal sufficiency.

68. Since it was in their interest to avoid discussing the incriminating issues and evidence in Appellant’s briefs, why would the Appellees (Pst:1409§V; cf. D:130¶3) and Judge Larimer waste time reading them? When by means of coordination debtors, judges, and trustees have at their disposal the power to disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme, why would they waste time with what the opposing party has: mere written words?
69. All of Judge Larimer’s mistaken assertions show that they are consistently, and thus non-coincidentally, in line with Judge Ninfo and the Appellees’ position:
 - a) “Cordero had filed a claim in the Chapter 13 Bankruptcy case relating to David and Mary Ann DeLano”, (SApp:1501).

It was the DeLanos who in Schedule F named Dr. Cordero among their creditors. (D:40; 250§I, 371¶a); Tr:80/9-10; Add:600¶24, 853¶1, 884¶10, 1118§IV, 1148§IV; Pst:1407¶29, 1409¶34)

- b) “Chief Judge Ninfo determined, after trial and other proceedings, that Cordero had no valid claim...”, (SApp:1501)

There was never a trial because what Judge Ninfo himself ordered and held was an evidentiary hearing. (D:279, 332; Pst:1290§g)

- c) “That decision and the attachments to it, and the rest of the file, indicate clearly that Cordero was given every opportunity to conduct discovery”, (SApp:1503)

The DeLanos (D:313-315, 325) and Judge Ninfo (D:278¶1, 327) denied Dr. Cordero *every single document* that he requested (D:287, 317; Tr:188/2-189/18) in preparation for the evidentiary hearing, as subsequently did Judge Larimer himself (Add:1022; SApp:1504), and even this Court (SApp:1623, 1678); as for the trustees, see Table on Pst:1261.

3. Judge Larimer showed gross partiality and irresponsibility by uncritically accepting the validity of Peer Ninfo’s decision and deciding an appeal without knowing the issues presented by Appellant, whom he thus denied a fair hearing and due process of law and whose appeal he left undecided for this Court to decide

70. Judge Larimer dismissed Appellant’s brief in bulk with the conclusory statement that “Cordero has done virtually nothing to point out in what manner Chief Judge Ninfo

erred finding no valid claim” (SApp:1503). However, he had constructive knowledge, since he was supposed to read that brief, and would have had actual knowledge, had he read it, that his statement was false and misleading given that the brief contains 15 summarizing headings (Pst:1254§D.4-E) under each of which Appellant Dr. Cordero analyzed a factual or legal point in support of the four issues that he had presented on his appeal. Had Judge Larimer read the four issues even he would have realized that the validity of Appellant’s claim was not an issue before him. Nonetheless, Dr. Cordero did address it squarely at Pst:1281§d and in the references contained therein.

71. To no avail, for Judge Larimer made the damning admission followed by a pretended claim that “although it was difficult to determine the precise nature of the arguments advanced, I have considered them all and find that none warrant relief”. (SApp:1504) Talk is cheap, particularly when it is done in the very last sentence of his decision as an afterthought. Indeed, to “consider them all” without discussing any of them, Judge Larimer need not have bothered to read anything...and he did not, unless he affirms the opposite and thereby indicts his capacity to understand the simple issue that runs through and unifies the four “Issues Presented” in Appellant’s brief (¶64 above; Pst:1257¶2a-d): Whether bankruptcy fraud enabled by a bankruptcy fraud scheme so corrupted the proceedings as to deny Appellant due process of law.

72. Similarly, even Judge Larimer should have been able to understand the coherent argument threaded through the 15 headings of Appellant's brief if he had only read them:

a) The DeLanos filed a bankruptcy petition, but unable to bear their burden to prove its good faith, coordinated with the trustees and the judges to use the artifice of a motion to disallow to shift the burden onto Creditor Dr. Cordero to require that he prove his claim, only to deny him *every single document* that he requested to do so, as did Judge Ninfo, who then at a sham evidentiary hearing deprived him also of the testimony of Mr. DeLano, who admitted Dr. Cordero's claim against him, in order to disallow his claim and eliminate him from the case before he could expose their involvement in a bankruptcy fraud scheme, which is also protected by 28 U.S.C. §158 as applied and Local Rule 5.1.(h) preventing the filing of RICO claims.

73. By his own damning admission, Judge Larimer found this argument too difficult to understand. So much so that he further admitted that "I can add nothing to what Chief Judge Ninfo has set forth in his detailed decision and order". (SApp:1503) So he took the easy way out of having to engage in his own critical analysis of a decision before him for his appellate review and simply stated that "for the reasons stated in Chief Judge Ninfo's Decision and Order, which I adopt, there is no basis whatsoever to overturn Chief Judge Ninfo's decision". In that sentence, Judge

Larimer glaringly demonstrated his incapacity to engage in critical analysis of even his own statements, let alone someone else's: Judge Larimer was expecting to find among the reasons stated by Judge Ninfo to support his own decision the reasons to overturn Judge Ninfo's own decision!

74. A legally trained person would have had the conditioned reflex to examine the brief of the appellant, who challenged the appealed-from decision, for the reasons to overturn the decision. Not so Judge Larimer, who in addition once again betrayed his failure to read Appellant's brief. (¶69 above) By contrast, an attentive analysis of his decision reveals that it is not only another perfunctory and lazy one in line with the pattern of his previous scribbles (Add:991, 1019, 1021, 1092, 1155, 1214). This one begins with the non-sense that the appeal was framed by the Appellees' "preserved" issues and ends with a statement that is outright dumb!

75. One can only be outraged that one's legal rights were disposed of by a judge who showed so little care with his own work and the image that it would cast of him as a person, let alone a professional. Worse still, his decision shows that Judge Larimer:

- a) started off with the prejudgment that his Peer Judge Ninfo's decision was correct "in all respects" (SApp:1502);
- b) was put off by the fact that Appellant's file was too "substantial" "prolix" (id.)

“voluminous” and “lengthy” (SApp:1503) to read as well as too difficult to understand, so he

- c) skipped over it to Appellees’ “preserved, appellate issues, [that] are rather straightforward” (SApp:1502), thanks to which he
- d) avoided even mentioning Appellant’s embarrassing issues and incriminating evidence of the involvement of himself, his Peer Ninfo, the Debtors, the trustees, and others in a bankruptcy fraud scheme, and made it easy for him to
- e) cut to the foregone conclusion that Judge Ninfo’s decision was valid because Judge Ninfo said so, thus sparing his Peer’s decision the independent critical analysis that he was supposed to perform on it, whereby he
- f) turned the appellate review into a rubberstamping mockery of justice.

4. Judge Larimer failed to engage in any legal analysis and reached no conclusions of law, thereby providing no valid basis on which a court of appeals can review his decision

76. Our system of law, and certainly the federal judiciary, operates under the fundamental principle of “Equal Justice Under Law”. Decisions must be taken by application of the rule of law to the facts of the case. This requires that a law or a legal principle be stated as the standard for deciding the legal issues in their factual context presented to a court for it to determine the relative rights and duties of the parties to the controversy submitted for resolution through judicial process. For that process to be in keeping with our Constitution, it must conform

to the substantive and procedural requirements of the law, which must be applied after giving the parties a fair hearing. Only thus is it due process of law. The objective of that process is a concrete, practical one, namely, to ensure that in settling the controversy between the parties that resorted to, or were brought within, the court's jurisdiction justice is done and is seen to be done. *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923), "Justice should not only be done, but should manifestly and undoubtedly be seen to be done".

77. Judge Larimer set forth no legal principles for evaluating the competing contentions of the parties, described no operative facts in evidence on which he based his decision, and provided no legal discussion leading to any conclusions of law. (SApp:1501). His decision did not even decide Appellant's issues actually presented on appeal, of which he did not take cognizance (§64 et seq. above). Rather, it was a raw exercise of judicial power to impose a prejudgment or a factually and legally unconstrained, personal, and thus arbitrary view of the case: It was an unlawful fiat.

78. Judge Larimer issued his fiat in self- and the other schemers' interest in preventing the exposure of their involvement in the Appellees' bankruptcy fraud and in its enabling mechanism, that is, the bankruptcy fraud scheme. As an act of abuse of power not in conformity with procedural requirements and intended to deprive Appellant of substantive rights, including to his claim as a creditor, to discovery of evidence, to protection from bankruptcy fraud, to a fair hearing

before an impartial judge applying the rule of law, Judge Larimer's fiat constituted an unconstitutional denial to Appellant of due process of law.

B. The Debtors' artifice of the motion to disallow the claim of Dr. Cordero and the sham evidentiary hearing were coordinated process-abusive means to eliminate him from their case before he could obtain documents incriminating them and others in a bankruptcy fraud scheme

1. The claim that the DeLanos included in their petition as held by Dr. Cordero became entitled to the presumption of validity that FRBkrP 3001(f) attaches to a creditor's proof of claim upon its filing

79. For well over a year before filing their petition on January 27, 2004, the DeLanos knew the exact nature of Dr. Cordero's claim against Mr. DeLano, contained in his complaint of November 21, 2002, in *Pfuntner*. (Add:785) So much so that it was they who included Dr. Cordero among their creditors. (D:40) They even marked it as unliquidated and disputed. From that moment on they could have filed an objection to that claim because they already knew all the factual and legal elements supporting their dispute. Instead, for the following six months they treated Dr. Cordero as a creditor. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
80. Only after Dr. Cordero showed that they had concealed assets, thus committing bankruptcy fraud, (D:193) did they move to disallow his claim (D:218) By then it was too late, for they were barred by laches. They had an obligation on grounds of judicial economy and fairness to raise their objection in a timely fashion.

(D:448¶20) By their failure so to raise it, they created for Dr. Cordero a reliance interest in the reasonable assumption that they had given up any such objection and had accepted the legal validity of his claim. In reliance thereon, Dr. Cordero invested his time, effort, and money pursuing his claim.

81. What is more, by the time they moved to disallow Dr. Cordero's claim, the DeLanos had allowed it to become protected by the presumption of validity. Indeed, their official notice of the meeting of creditors that was sent to Dr. Cordero (D:23) was accompanied by the Proof of Claim form.

FRBkrP 3001(a) Proof of Claim

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

82. Dr. Cordero filled it out and sent it back to the Bankruptcy Court, WBNY, on May 15, 2004. (D:142-146) It was so formally correct that it was filed by the clerk of court and entered in the register of claims. Thereafter, his claim was legally entitled to the presumption of validity.

FRBkrP 3001 (f) Evidentiary effect

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

83. Dr. Cordero's claim thus became legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their petition. If at that point they wanted to object to it in order to disallow it, they not only had to proceed in a timely fashion, but also had to overcome the additional hurdle of its presumptive

validity. On the contrary, they just went on treating Dr. Cordero as their creditor.

This was the third time they did so.

84. Indeed, at the meeting of creditors on March 8, 2004, Dr. Cordero was the sole creditor in attendance. Att. Werner contested that Dr. Cordero had a claim against the DeLanos and thus, his status as creditor. Dr. Cordero stated grounds supporting such status. Att. Werner relented. Dr. Cordero went ahead to ask two questions of the DeLanos before Trustee Reiber's attorney, James Weidman, Esq., came to the rescue and unlawfully put an end to the meeting. (D:253§V) However, the DeLanos went on treating Dr. Cordero as their creditor.

85. Then on April 16, 2004, in response to Dr. Cordero's objection (D:75) to their claim of exemptions (D:35), the DeLanos mentioned in passing his creditor status when stating that "Debtors oppose any objection by Cordero, to the extent that he is not a proper creditor in this matter" (D:118). To this Dr. Cordero timely replied less than 10 days later (D:128) to argue that within the definitional scope of "claim" and "creditor" of 11 U.S.C. §101(5) and (10), respectively, he held a claim as a creditor. The DeLanos dropped their objection and went on treating Dr. Cordero as their creditor for months.

86. Consequently, by July 22, 2004, when the DeLanos filed to disallow the claim of Dr. Cordero, their motion (D:218) was untimely, barred by laches, and raised in bad faith as an artifice coordinated with the other schemers to eliminate him

before he could prove their bankruptcy fraud in the context of a bankruptcy fraud scheme. In addition, it was legally deficient, for they did not even try, whether on that motion or afterwards, to overcome the presumption of validity that by then already protected his claim. (D:370§C)

2. Unable to bear the burden of proving their petition's good faith, the DeLanos coordinated with other schemers to use the artifice of a motion to disallow and a sham evidentiary hearing to switch it onto Dr. Cordero for him to prove his claim and then deprived him of the available evidence to do so

87. The Debtors had no right to object to any claim until they had first borne their burden to prove that their bankruptcy petition was "in good faith and not by any means forbidden by law". (11 U.S.C. §1325(a)(3)) This follows necessarily from the legal principles that a conditional right does not vest until satisfaction of the condition and that a criminal is not allowed to benefit from his crime. Since the DeLanos could not prove the good faith of their petition because they did not meet the requirements under 11 U.S.C. for obtaining bankruptcy relief from their debts since they had concealed assets, they could not use their petition either as a shield to protect themselves from their creditors or as a sword to kill the validity of their claims through a motion to disallow. Only after they had borne their burden of proof that they were entitled to be considered for bankruptcy relief could they have used a motion to disallow to determine the extent of such relief.
88. This means that as for their burden of proof, they were spared having to bear it by

judges and trustees who refused to require them to produce financial documents in support of their petition. Thereby the DeLanos were placed in the undeserved legal position of apparently being entitled to move to disallow Dr. Cordero's claim. Consequently, even now they still have to carry their burden before they can benefit from the disallowance of his claim or, for that matter, of any of their creditors'.

89. As for the burden of proof that the DeLanos offloaded onto Dr. Cordero, their right to do so had not yet vested. Therefore, the disallowance that they obtained by exercising a right that they lacked is invalid because they were not yet in a position to inflict such legal detriment on any of their creditors. Moreover, they obtained such disallowance "not in good faith and by the means forbidden by law" of unlawful coordination with officers who under color of law aided and abetted their fraud, furthered their interests in a bankruptcy fraud scheme, and denied Dr. Cordero due process of law.

C. WDNY Local Rule 5.1(h) requires exceedingly detailed facts to file a RICO claim, thus violating notice pleading under FRCivP, impeding in practice its filing, and protecting bankruptcy fraud schemers, the secrecy of which is protected by Local Rule 83.5 banning cameras and recording devices from the Court and its 'environs'

90. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that

“each averment of a pleading shall be simple, concise, and direct”. For its part, FRCP 83(a)(1) provides that “A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and 28 U.S.C. §2075”. As stated in the Advisory Committee Notes on the 1985 Amendment to Rule 83, local rules shall “not undermine the basic objective of the Federal Rules”, which FRCP 84 sets forth as “the simplicity and brevity of statement which the rules contemplate”. Thereby the national Rules aim at preventing that a local rule with “the sheer volume of directives may impose an unreasonable barrier”. (Advisory Committee Notes on the 1995 Amendments to Rule 83) In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (1st Cir. 2000) stated that “Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter’s purpose”.

91. Yet such barrier is precisely what the District Court, WDNY, erects with its Local Rule 5.1(h) (Add:633), which requires a party to provide over 40 discrete pieces of factual information to plead a claim under RICO, 18 U.S.C. §1961. This contravenes the statement of the Supreme Court that to provide notice, a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)). On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The

latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

92. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is “relaxed in situations where requisite factual information is peculiarly within defendant’s knowledge or control”, *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). This means that even in fraud cases the purpose of the complaint is to put defendants on notice of the claim, not to allow the court to prevent the filing of the case or enable it to dismiss the claim on the pleadings.

93. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances”, by the absolute and strict standard of “facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party’s RICO claim”. To require “facts...in detail and with specificity” is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of “allegations and other factual contentions...likely to have evidentiary support after a reasonable opportunity for further investigation or discovery”. Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that “We recognize that the degree of particularity should be determined in light of such circumstances as whether the plaintiff has had

an opportunity to take discovery of those who may possess knowledge of the pertinent facts". By contrast, Local Rule 5.1(h) provides no opportunity for discovery, but instead requires such "detail and specificity" in the pleadings as to make it easier to spot any "failure" to comply and "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a directive".

94. It is suspicious that Local Rule 5.1(h) singles out RICO and blatantly hinders the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting at the outset an evidentiary barrier that so starkly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose".

95. Given the bankruptcy fraud scheme supported by people doing business in the same small federal building housing the bankruptcy and district courts and the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI, why would a Local Rule be adopted that forestalls any RICO claim? It smacks of a pre-emptive strike carried out against any potential RICO claim through the abusive exercise of the local rulemaking power. In so doing, that Rule contravenes its enabling provision

and is void. Moreover, it causes injury in fact to Dr. Cordero inasmuch as it erects an insurmountable barrier at the outset to his bringing a RICO count against the schemers, thus depriving him of the protection and vindication of his rights under that federal law

96. The pre-emptiveness of Local Rule 5.1(h) is strengthened by its companion Rule 83.5 which bans all cameras and recording devices from the court and its “environs”. (SApp:1695) This defeats the public policy expressed by the Judicial Conference “to promote public access to information”, which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF (28 U.S.C. §1914). Defying logic, such devices may be allowed “for non-judicial hearings or gatherings”, that is, for inconsequential activities in terms of the business of the Court as well as for the “informal procedures” of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits “a transcript or recording to be made” as a matter of course. However, a litigant is forbidden to bring a recording device to make a transcript of a ‘formal proceeding’ where matters that could support a RICO claim would be formally discussed.
97. In the context of the totality of circumstances surrounding the bankruptcy fraud scheme, Local Rule 83.5 reveals its insidious purpose of as a means to ensure secrecy and concealment of evidence of the scheme and the identify the schemers. Indeed, it is tailor-made to prevent the recording of prohibited ex-parte

communications (D:433§D, 434¶¶22-24); conduct, such as lawyers signaling answers to their client on the stand before a complicit judge (Pst:1289§f); and items, such as documents, including the exposure of the inaccuracy, incompleteness, and tampered-with condition of a transcript by comparing it with the recording of an evidentiary hearing (¶¶39-45 above).

D. Section 158 of title 28 U.S.C. provides for bankruptcy appellate review by judges of unequal degree of impartiality in violation of the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution and is unconstitutional

98. Section 158(b) of 28 U.S.C. (Add:630) allows different majorities of judges in individual districts or circuits to decide whether they want to set up or keep a bankruptcy appellate panel (BAP). Likewise, it allows individual litigants to choose whether to let an appeal go to the BAP, if available, or to “elect to have such appeal heard by the district court” rather than the BAP initially chosen by appellant. It also allows judges and some parties to keep the appeal in district court for the time being by refusing to agree to a direct appeal to the court of appeals.

99. Section 158 prohibits any BAP judge to hear any appeal originating in his own district. The degree of independence that this provision is intended to provide is nevertheless defeated by allowing a majority of bankruptcy judges in a district to vote against the creation or retention of a BAP. Thereby they can keep appeals

from their decisions in their own district and choose as their reviewer their friendly district judge, whom they may see and talk with every day. (§56 above)

100. There is the reasonable presumption that bankruptcy judges will prefer to have one friend decide those appeals rather than three judges from other districts whom they may not even know. Hence, allowing judges to decide whether to set up a BAP goes against the protection from prejudgment and self-interest that 28 U.S.C. §47. "Disqualification of trial judge to hear appeal" intends to afford by providing that "No judge shall hear or determine an appeal from the decision of a case or issue tried by him." The presumption of favoritism by district judges toward the judges in the "adjunct" bankruptcy court to which they refer cases under 28 U.S.C. §157(a) and with whom they may be "so connected" finds support, mutatis mutandis, as follows:

Advisory Committee Notes to FRBkrP 5002. Restrictions on Appointments ...The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district....

FRBkrP 5004(b) Disqualification of judge from allowing compensation. A bankruptcy judge shall be disqualified from allowing compensation to **a person** who is a relative of the bankruptcy judge or **with whom the judge is so connected** as to render it improper for the judge to authorize such compensation. (emphasis added) (cf. 5004(a) requiring disqualification as provided under 28 U.S.C. §455 of a bankruptcy judge where a relative is involved)

104. This presumption of favoritism also supports a challenge to the appointment of bankruptcy judges by the court of appeals rather than Congress. Indeed, after the

appeals court for the circuit appoints a bankruptcy judge under 28 U.S.C. §152(a)(1), that judge becomes their appointee. When a decision by that judge comes on appeal to that court of appeals, one, two, or three circuit judges who may have been among the appointing judges must then decide, not only whether the bankruptcy judge's decision was legally correct, but also whether they were right in voting for him. The circuit judges are not so much reviewing a case on appeal as they are examining the work of their appointee under attack. Voting to reverse his decision amounts to voting against the wisdom of their own vote to appoint him. How many circuit judges would willingly admit that they made a mistake in making an appointment to office...or for that matter, any mistake?

105. Likewise, §158 allows local litigants, who may have developed a very friendly relation with the bankruptcy judge, to elect the district judge to hear an appeal as oppose to three judges in the available BAP, on the spurious consideration that "the friend of my friend is my friend". The cases at hand illustrate how likely it is for local litigants to develop a close relationship, even friendship, with the local judges to the detriment of non-local ones: According to PACER, Att. Werner has appeared before Judge Ninfo in over 525 cases; and Trustee Reiber in more than 3,900! Would local attorneys similarly situated ever think of allowing an appeal from their judicial friends to go to an available BAP where their friendship would not play a role and they would have to engage in legal research and writing and

present legal arguments to defend their clients? Hardly.

106. The importance of providing a level field where locals and non-locals argue and decide appeals on legal considerations rather than personal relationships (D:431§C) grows ever more as does “an increasingly national bar”. If in recognition of the latter the Judicial Conference provides for uniformity among judicial districts in connection with setting up standards governing the technological aspects of electronic filing, then providing for equal protection under the law when local and non-local counsel clash on appeal should assume even more importance (cf. Advisory Committee Notes on the 1996 Amendments to FRBkrP 5005, Filing and Transmittal of Papers).

107. Hence, §158(b), provides for a two-stages of inequality appellate system: First judges choose to handle among insiders the review of their own judicial process dealing with one of the most insidious corruptors, money!, that to be made by not having to pay it to creditors; and then the parties with the stronger connection with them choose for each appeal how to deal ad hoc with the weaker, ‘out-of-the-loop citizen’ involved. (Add:603¶¶32-33) That is the antithesis of a uniform nationwide system that provides independent appellate review of bankruptcy decisions on terms settled in advance and apt to ensure equal protection under law.

108. This Court has through the elimination of BAPs in the Circuit facilitated the

operation of a bankruptcy fraud scheme. It even reappointed Judge Ninfo to a second term as bankruptcy judge despite the evidence of his bias and involvement in the scheme (Table after ¶7 above, §V). It denied (SApp:1623, 1678) Dr. Cordero's motions (SApp:1606, 1637) for it to order the Debtors to produce financial documents required in every bankruptcy case, such as bank account statements, and denied by everybody in the instant one. Not coincidentally, they will lead first to the Debtors' known concealed assets worth at least \$673,657 and then to the incrimination of Appointee Ninfo and Peer Judge Larimer for covering up the Debtors' fraud.

X. CONCLUSION AND RELIEF SOUGHT

109. The Court is still confronted with a conflict of interests: to protect itself from being found tolerating or supporting the scheme or to uphold Appellant's constitutional right to due process of law based on facts in evidence before judges that give the appearance of honesty above suspicion (cf. *Liteky v. United States*, 510 U.S. 540, 548 (1994)). So far, however, the Court denied the two document production motions. (SApp:1637, 1678) It is justified to wonder for what motive it disregarded J. Brandeis' dictum, "Sunshine is the best disinfectant" and failed to apply the legal principle 'When in doubt, disclose'. Yet, it cannot honestly doubt that something is wrong here when no official with the duty to provide "effective oversight" wants to find out where at least \$673,657 of the Debtors' known

concealed assets went and for whose benefit.

110. Therefore, Dr. Cordero respectfully requests that the Court now let the sunshine in by ordering disclosure in the following several ways:

a) All the decisions of:

1) Judge Larimer in

(a) *Cordero v. DeLano*, 05-6190, ,

(b) *Cordero v. Trustee Gordon*, 03cv6021L,

(c) *Cordero v. Palmer*, 03mbk6001L; and

2) Judge Ninfo in

(a) *In re DeLano*, 04-20280, and

(b) *Pfuntner v. Trustee Gordon et al.*, 02-2230, WBNY,,

which have been linked by the Judges and the Appellees themselves (D:3; Add:711; SApp:1503 2nd full para.; cf.Add:853) be declared null and void as tainted by bias and illegality resulting in denial of due process;

b) in the interest of justice those cases not be remanded to WDNY and WBNY, where Dr. Cordero would suffer as much bias and unlawfulness as he has in the past five years and the enormous waste of effort, time, and money and emotional distress already inflicted upon him would only be increased, but rather be transferred to the U.S. District Court in Albany, NY, for trial by jury before a visiting judge from a circuit other than the Second Circuit who

is unfamiliar with all of those cases and unrelated to any of their parties and court officers;

- c) Judges Ninfo and Larimer be disqualified from those cases;
- d) Dr. Cordero's disallowed claim in *DeLano* be reinstated;
- e) The record of those cases and in *In re Premier Van et al.*, 03-5023, CA2, be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General Alberto Gonzales, with the recommendation that to provide for an impartial, zealous, and efficient investigation, these cases be investigated by U.S. attorneys and FBI agents in Washington, D.C. or Chicago who are not and have never been related to their colleagues in the U.S. Attorney's and FBI offices in Rochester or Buffalo or the judges, trustees, and other court officers that may come within the scope of the investigation;
- f) Trustee George Reiber be removed from *DeLano* and an independent, competent trustee unrelated to any of the officers and parties in the case be appointed to:
 - i) determine the conformity of the DeLanos' petition to the requirements of Titles 11 and 18;
 - ii) establish the whereabouts of, and recover, the DeLanos' known concealed assets worth at least \$673,657, and all other assets of theirs that, directly or indirectly, are in their, their relatives', or agents'

possession, names, or under their control; and

- iii) produce a public report on all the DeLanos' financial affairs, including all of their properties, mortgages, and their proceeds;
- g) Court Reporter Dianetti be referred for investigation under 28 U.S.C. §753 to the Judicial Conference as requested in Dr. Cordero's motions of July 18 and September 20, 2005 (Add:911, 993);
- h) District Court Local Rules 5.1(h) and 83.5 be stricken down as inconsistent with the FRCivP and federal law;
- i) 28 U.S.C. §158(b) be held unconstitutional as denying equal protection and due process of law; otherwise, BAPs be reestablished throughout the Second Circuit;
- j) the proposed order accompanying Appellant's brief in District Court, as updated and attached hereto, be issued;
- k) Dr. Cordero be granted all other fair and just relief.

XI. CERTIFICATES OF COMPLIANCE

A. Type-volume Limitation

111. This brief complies with the type-volume limitation of FRAP 32(a)(7)(B) because it contains 13,959 words, excluding the parts of the brief exempted by FRAP 32(a)(7)(B)(iii).

B. Typeface and Type Style Requirements

112. This brief complies with the typeface requirements of FRAP 32(a)(5) and the type style requirements of FRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2002 in 14 point normal Times New Roman with quotes in 14 point normal Bookman.

C. Anti-virus Protection

113. The brief in digital, PDF format was scanned for viruses and no virus was detected before it was e-mailed as an attachment to briefs@ca2.uscourts.gov with the subject line "06-4780-bk; Dr. Richard Cordero, Appellant's brief; March 16, 2007".

D. Oral Argument Request

114. Appellant respectfully restates his statement of November 2, 2006, on the Notice of Appearance form that he desires oral argument and that he requests 20 minutes therefor.

Respectfully submitted on:

March 17, 2007

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Brooklyn, NY 11208

Dr. Richard Cordero

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

Certificate of Service

In re Dr. Richard Cordero v. David and Mary Ann DeLano

dkt. no. 06-4780-bk, CA2

I, Dr. Richard Cordero, certify that I sent by USPS or e-mail to the parties listed below a copy of my principal brief in the above-captioned appeal.

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United States Court of Appeals for the Second Circuit

06-4780-bk

Dr. Richard Cordero,
Appellant and creditor

v.

ORDER

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

Having considered the briefs filed in his appeal, IT IS HEREBY ORDERED AS FOLLOWS:

- A. Persons and entities concerned by this Order
1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors and Appellees in the above-captioned case, hereinafter *DeLano*, which shall be understood to include the cases below, namely, *In re David and Mary Ann DeLano*, 04-20280, WBNY, and *Cordero v. DeLano*, 05-6190, WDNY;
 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 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, Acting U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, and Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212) 510-0500;
7. Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;
8. U.S. Bankruptcy Judge John C. Ninfo, II, and Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585) 613-4200, and any and all members of their staff;
9. 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
10. 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:

11. 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;
12. 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;

13. 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;
14. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
 - 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;
 - 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;
15. 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, omission, 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;

16. Produce any document within the scope of this Order by producing a true and correct copy of such document;
17. 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, in particular, the DeLanos have committed bankruptcy fraud, or, in general, there is a bankruptcy fraud scheme involving the DeLanos and/or any other individual; and
18. File with the Court and serve on Appellant Dr. Richard Cordero at 59 Crescent Street, Brooklyn, NY 11028, tel. (718) 827-9521), and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

19. 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 whereabouts or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the whereabouts or likely 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, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

- b. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, which transcript has already been prepared and is in possession of Trustee Reiber, who shall produce it on paper and 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 or the Judicial Conference of the United States upon the request of either of them;
- d. The documents that Trustee Reiber obtained from any source prior to the confirmation hearing for the DeLanos' plan on July 25, 2005, in the Bankruptcy Court, 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;
- e. The statement reported in *DeLano*, WBNY docket 04-20280, entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing before Judge Ninfo of the DeLanos' plan, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read;

f. 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,

1) Such as:

- (a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at or issued by M&T Bank and/or any other entity in the world;
- (b) 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:
 - (i) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY; and
 - (ii) personal property, including any vehicle, mobile home, or water vessel;
- (c) mortgage documents;
- (d) loan documents;
- (e) title documents and other documents reviewing title, such as abstracts of title;
- (f) prize documents, such as lottery and gambling documents;
- (g) service documents, wherever in the world such service was, is being, or may be received or given; and
- (h) documents concerning the college expenses of each of the DeLanos' children,

including but not limited to tuition, books, transportation, room and board, and any loan extended by a government or a private entity for the purpose of such education, regardless of whose name appears as the borrower on the loan documents;

2) the production of such documents 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.

20. The holder of the original of any of the documents 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 only upon order of this Court, the court to which *DeLano* may be transferred, the Supreme Court of the United States, or the Judicial Conference of the United States.

21. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, (hereinafter *Pfuntner*), are withdrawn from the District and Bankruptcy Courts to this Court pursuant to 28 U.S.C. §157(d).and the inherent power of this Court over lower courts in the Second Circuit.

22. The orders of Judge Ninfo, II, of August 9, 2005, confirming the DeLanos' Chapter 13 plan and of February 7, 2007, discharging the DeLanos after completion of their plan are hereby revoked; his order of August 8, 2005, to M&T Bank shall continue in force and the Bank shall continue making payments to Trustee Reiber until the appointment of a trustee to succeed him and from then on to the successor trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.

23. The notice signed by Clerk Warren, dated January 24, 2007, releasing employer from making further payments to Trustee Reiber is hereby withdrawn and the situation preceding it is reinstated as if the notice had never been given or acted upon.
24. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*, but shall continue subject to the jurisdiction of this Court and this Order, and such jurisdiction shall continue after appointment of a successor trustee or transfer of *DeLano* to any other court;
25. The Court recommends that:
 - a. the successor trustee be an experienced trustee from a district other than WDNY, such as a trustee based in Albany, NY, who shall:
 - b. certify that he or she:
 - 1) is unfamiliar with any aspect of *DeLano*,
 - 2) is unrelated and unknown to any party or officer in WDNY and WBNY;
 - 3) will faithfully represent pursuant to law the DeLanos' unsecured creditors;
 - c. exhaustively investigate the DeLanos' financial affairs on the basis of the documents described herein and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets,
 - d. produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets - whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and
 - e. file in the court under whose jurisdiction this case shall be at the time, and serve upon the DeLanos and Dr. Cordero a copy of, such report together with a copy of its related

documents, which shall include all documents obtained during the course of such investigation and any previous investigation conducted while the case was in the Bankruptcy Court or the District Court.

26. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶25 above; and such firm shall produce a certificate equivalent to that required therein.
27. Court Reporter Mary Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference of the United States for investigation of her refusal to certify that the transcript of her recording of the evidentiary hearing held in the Bankruptcy Court, WBNY, on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim would be complete, accurate, and tamper-free; Dr. Cordero's motion of July 18, 2005, for the District Court, WDNY, to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript and produce it for review and evaluation to the Conference, this Court, and Dr. Cordero.
28. Notwithstanding the above and without detriment to any party's duty to it carry out, *DeLano* and *Pfuntner* are reported under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the U.S. Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either of those cases and unacquainted with any of the parties to either of them, or court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that

may be investigated, and that no staff from the offices of the Department or the FBI in either Rochester or Buffalo participate in any way in such investigation.

29. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a visiting judge from a circuit other than the Second Circuit who is unfamiliar with either of those cases and unrelated and unacquainted with any of the parties to either of those case, or any court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated in connection therewith.
30. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and any party shall be allowed to make its own electronic sound or video recording of any and all such proceedings.

FOR THE COURT:

Date

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

06-4780-bk

Dr. Richard Cordero

Appellant and creditor

PETITION

for panel rehearing and hearing en banc

to determine the question of exceptional importance:

v.

**To what extent is the Court's integrity compromised by
supporting or tolerating a bankruptcy fraud scheme?**

David DeLano and Mary Ann DeLano

Respondents and debtors in bankruptcy

from *Cordero v. DeLano*, 05-6190L, WDNY

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

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A. The Court disingenuously pretends that the Trustee’s motion only has ‘minor deficiencies’ although it **1)** failed to state any duty to object to a trustee’s final report; **2)** failed even to notice that the bankruptcy judge had deprived Dr. Cordero of standing in DeLano, thus relieving him of any alleged duty to object; **3)** failed to show why the judge would serve notice of his approval of the report on a person without standing; **4)** failed to assert that the alleged service of “a summary of the account” was timely; **5)** failed to explain how service of such “summary” would impose any duty to object; and **6)** failed to cite any authority for pretending that by not objecting to the report the appeal had become moot and dismissible 2198

B. The Court disregarded the law and the facts by invoking for its dismissal “equitable mootness” and two cases although they **1)** neither deal with bankruptcy fraud nor can excuse it; **2)** do not concern a simple Chapter 13 payment by an individual of cents on the dollar and the continued payment to his creditors but rather complex Chapter 11 company reorganizations involving special debt-release arrangements with non-parties and their unraveling by recoupment from innocent parties; and **3)** did not have to do with a party that sought a stay of the plan confirmation, but with companies that failed to challenge the arrangements until after their completion..... 2201

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I. Question presented: To what extent is the Court covering up the involvement of its bankruptcy court appointee and its district court peer in a bankruptcy fraud scheme? If determining the integrity of the Court does not “involve a question of exceptional importance”, what does?

1. This case concerns a bankruptcy fraud scheme. It involves Appellee DeLano, a 39-year veteran of the banking and financial industries, who at the time of filing his bankruptcy petition with his wife, a specialist in business Xerox machines, was and continued to be employed precisely in

the bankruptcy department of a major bank, namely, Manufacturers & Traders Trust Bank (M&T). As an insider of the bankruptcy system, he knew more than enough about the bankruptcy fraud scheme to be sure that in preparation of his and his wife's debt-free retirement to their golden pot, they could file a bankruptcy petition with the most self-serving, implausible, and suspiciously incongruous statements about their financial affairs because the co-scheming trustees and judges would not examine it, let alone expose the petition's fraudulent nature at the risk of implicating themselves in the scheme.

2. On the contrary, the judges and the trustees would protect the DeLanos not just by allowing them to file a bankruptcy petition with no document supporting it, but also by denying to any creditor his due process right to discovery of any such document. So after the DeLanos denied discovery of *every single document* (D:313-315, 325) that Creditor Dr. Richard Cordero requested, the judges covered for them by also denying him *every single document* for which he sought an order of production, even documents as obviously necessary for the judges themselves to determine the good faith of any bankruptcy petition as the bankrupts' bank account statements: Bankruptcy Judge John C. Ninfo, II, WBNY, (D:278¶1, 327; Tr:189/11-22); District Judge David G. Larimer (Add:1022; SApp:1504); Bankruptcy Trustee George Reiber (D:193§I); his supervisor, Assistant U.S. Kathleen Dunivin Schmitt (Pst:1263¶¶19-21); U.S. Trustee for Region 2 Deirdre A. Martini (Pst:1261¶¶12-14) and this Court (on 1/24/7, SApp: 1623; on 2/1/7 SApp:1634; on 3/5/7 SApp:1678; on 2/8/8 CA:2081and 2082). Nevertheless, the judges had evidence in the petition itself pointing to fraud, such as this: (SApp:1654 *infra*)

a) The DeLanos declared having only \$535 in cash and on account (D:31); yet after deduction of their generous living expenses from their monthly earnings, they declared that every month they had disposable income of \$1,940 (D:45/Sch.J). The judges avoided exposing through document production where the DeLanos were stashing that money.

- b) The DeLanos declared to have earned \$291,470 in the three years 2001-03 preceding the filing of their petition. (D:47, 186-188) But the judges protected them by not asking that they account for that money, whose whereabouts are as a result still unknown.
- c) They declared a debt of \$98,092 on 18 credit cards (D:38/Sch.F), while they valued their household goods at only \$2,810 (D:31/Sch.B), less than their \$3,880 disposable income in only two months and less than even 1% of the \$291,470 that they had earned in the previous three years! Yet the judges protected the DeLanos from having to reveal the assets and services that they acquired through that huge credit card debt;
- d) The DeLanos declared their home as their only piece of real property. (D:30). They bought it in 1975, when they took out on it a \$26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it was only \$21,416 and their outstanding mortgage balance \$77,084...after making mortgage payments for 30 years! *Mind-boggling!* (Add:1058¶54) During that period, they engaged in a string of mortgages through which they received a total of \$382,187! (D:341-354) Then barely three years after their bankruptcy filing, they sold that home on April 23, 2007, for the declared amount of \$135,000, an increase of 37% in value in a down real estate market. (CA:2086). Despite all those suspiciously incongruous declarations and facts, the judges kept protecting the DeLanos by refusing to ask that they provide any documents to show where that mortgage money paid to and by them went.
- e) To avoid producing any documents, the DeLanos incurred attorneys' fees worth at last count \$27,953 (Add:938, Pst:1174), and Judge Ninfo approved their payment (Add:942). Moreover, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's document requests. But the judges did not want to find out from where the

DeLanos, who had only \$535 in cash and on account and had to commit the \$1,940 monthly disposable income to their creditors, came up with well over \$28,000 to pay their attorneys, who were willing to “continue to” render legal services because they knew that the DeLanos, far from being bankrupt, did have money to pay their legal fees.

3. In all, there is at least \$673,657 that the DeLanos have not accounted for (SApp:1654 infra)...in just one of Trustee Reiber“ cases listed by PACER as of April 2, 2004: 3,909 *open* cases! Why did Trustees Schmitt and Martini allow one trustee to amass such an unmanageable number of cases that under 11 U.S.C. §704(4) and (7) and C.F.R. 58.6(a)(10) he must investigate and handle personally? This bankruptcy fraud scheme can net some serious money!
4. No wonder it paid the judges to engage in willful ignorance of the facts by not ordering the DeLanos to produce documents that would have revealed that all of them have supported or tolerated the scheme. By so doing, the judges of this Court, just as those below, have denied Dr. Cordero due process of law. They denied him in general his right to discovery and in particular his right to specific documents that they had reason to believe would prove his contentions and establish his right to property as a creditor of the DeLano Bankrupts.
5. In addition, this Court decided a case in which it has a disqualifying conflict of interests: If the DeLanos were proved to have filed a fraudulent bankruptcy petition that contained false statements intended to work their concealment of assets, they would face up to 20 years imprisonment and devastating fines of up to \$500,000 each for violating, inter alia, 18 U.S.C. §§152-157, 1519, 1957(a), and 3571. Therefore, they would have an incentive to enter into a plea bargain whereby in exchange for a reduction of the criminal charges against them, Mr. DeLano, drawing from his by now longer than 39 year long career as a banker and bankruptcy officer, would provide testimony incriminating Trustee Reiber and Trustee Schmitt as well as Judges Ninfo and Larimer and other court officers. In turn, those judges would enter into their

own plea bargains where they would agree to disclose their evidence that CA2 judges have known about the bankruptcy fraud scheme for years (CA:1978), since before the reappointment of Bankruptcy Judge Ninfo to a second term in office, and have likewise supported or tolerated it. Consequently, the CA2 judges decided this case in their own and their collegial self-interest and with disregard for the rule of law and for their 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)

A. The Court disregarded the question presented on appeal, which in each of its four constituent issues dealt explicitly with fraud in the context of a bankruptcy fraud scheme and in the abuse of WDNY Local Rule 5.1(h) and 28 U.S.C. §158(b) as subterfuges to operate such scheme

6. The question presented in this appeal explicitly stated that its four constituent issues were unified by one issue, namely, a bankruptcy fraud scheme’s existence and means of operation. (CA:1719) They are briefly summarized (cf. SApp:1508¶1(a)) as follows:

- a) District Judge Larimer’s bias toward the schemers rendered his decisions a nullity;
- b) the DeLanos’ motion to disallow the claim of Dr. Cordero against them and the judges’ granting and upholding it were an artifice to deprive him of standing as creditor so that he could not keep requesting documents that would prove their fraud and scheme;
- c) WDNY Local Rule 5.1(h) (Add:633 infra) requires excessive details before discovery for filing a RICO claim, which is unlawful as contrary to notice pleading and the rule-issuing enabling provision, and as a means to prevent RICO claims from being filed against the schemers;
- d) 28 U.S.C. §158(b) (Add:630 infra) gives the judges discretion to create bankruptcy

appellate panels (BAPs), which subjects people to unconstitutionally unequal protection of the law and to abuse by schemers keeping appeals under their control to better operate their scheme.

7. Neither in denying Dr. Cordero's substantive motions nor in dismissing his appeal has the Court shown to be cognizant of the fact that the question presented concerned bankruptcy fraud and its support or toleration by judges. It did not even use the word fraud, not even to acknowledge that an allegation of judicial involvement in fraud even in one case, let alone as part of a scheme, calls into question the essence of judicial process, its integrity, without which there is no justice.
8. Nor did the Court acknowledge that the issues of the judges turning WDNY Local Rule 5.1(h) and 28 U.S.C. §158(b) into subterfuges to run their bankruptcy fraud scheme in general could not possibly be affected by whatever mootness the Court resorted to as an excuse to dismiss Dr. Cordero's claims against the DeLanos in this particular case.
9. The Court did not order the production of any requested document even if only to ascertain whether when a 39-year veteran banker and bankruptcy officer made self-serving, implausible, and suspiciously incongruous statements unsupported by any document Appointee Ninfo, Peer Larimer, and the trustees looked the other way as part of operating a bankruptcy fraud scheme. Since a person is deemed to intend the reasonable consequences of his acts, the Court intentionally and in self-interest left the scheme undisturbed for them to continue operating it. (Cf. SApp:1509 ¶after e.). Thereby the Court supports and tolerates a bankruptcy fraud scheme. In so doing, it shows dereliction of its supervisory duty to safeguard the integrity of judicial process, leaving the conditions in place for due process to be denied, not only to Dr. Cordero, but also to the public at large. On both it inflicts the concrete harm of losing property as victims of fraud and paying higher prices due to the fraud premium added to everything to compensate for the fraud of a few. The Court has become an enabler of fraud and a source of injustice.

II. The Court pretends that the Trustee’s motion to dismiss only has “minor deficiencies” and that in any event its summary order dismissed the appeal on grounds of equitable mootness, whereby it objectively disregards the facts and the law concerning both the motion and the order so as to reach the necessary result of self-protecting from having its support and toleration of the bankruptcy fraud scheme exposed

10. The whole text of the Court’s decision is the following (CA:2180 infra):

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

A. The Court disingenuously pretends that the Trustee’s motion only has ‘minor deficiencies’ although it **1) failed to state any duty to object to a trustee’s final report; **2)** failed even to notice that the bankruptcy judge had deprived Dr. Cordero of standing in *DeLano*, thus relieving him of any alleged duty to object; **3)** failed to show why the judge would serve notice of his approval of the report on a person without standing; **4)** failed to assert that the alleged service of “a summary of the account” was timely; **5)** failed to explain how service of such “summary” would impose any duty to object; and **6)** failed to cite any authority for pretending that by not objecting to the report the appeal had become moot and dismissible**

11. To determine whether the Court was justified by legal considerations or motivated by self-interest in characterizing Trustee Reiber’s motion to dismiss the appeal (CA:2102 infra) as having only „minor deficiencies“ it suffices to analyze its operative part:

14. The trustee filed his final report accounting for the plan funds with the bankruptcy court on June 7, 2007. Cordero was subsequently served with a summary of the account.
 15. The bankruptcy court signed an order approving the trustee's final report on June 29, 2007. Cordero has never filed an objection to said report, and his time to do so has passed.
 16. Since all plan distributions have been made pursuant to the court's confirmation order and the final order has been signed without timely objection, the bankruptcy estate no longer exists. Therefore this appeal has been rendered moot and should be dismissed.
12. The first „minor deficiency“ to notice: *There is no authority cited or even legal principle argued!* (CA:2123§V) What is more, or rather less, there is not even a logical basis for the implied proposition that a bankruptcy appeal, regardless of its ground -which as to the instant appeal was nowhere discussed by the Trustee- should be dismissed just because the judges refused to grant the creditor's motions to stay the disallowance of his claim and the confirmation of the Chapter 13 debtors' debt repayment plan, thus letting enough time to go by for the debtors to make all payments, regardless of whether the debtor had any right under the Code to file his petition and make payments on a plan in the first place because, for example, "the plan was [not] proposed in good faith, [but] by means forbidden by law". 11 U.S.C. §1325(a)(3)
13. Who ever said that a fraudulent bankruptcy becomes lawful just because the debtors are given time to complete their fraud on the creditors? Never mind that, contrary to the Trustee's assertion, Dr. Cordero did move for a stay of the disallowance of his claim and of the confirmation of the DeLanos' debt repayment plan and was denied his motions by Judge Ninfo (D:21) and Judge Larimer (Add:881, 974¶7, 1021). (See also ¶20 infra)
14. Another „minor deficiency“ is that precisely because Judges Ninfo and Larimer had stripped Dr. Cordero of standing in the DeLanos' case, he had by their own view neither the right nor the obligation to object to any report filed by the Trustee or order by Judge Ninfo approving it.

Therefore, Dr. Cordero cannot be penalized for not doing what the judges themselves had decided he could not do anymore, that is, intervene in the case... assuming, of course, that there is any such obligation at all provided by some law known to the Court, for the Trustee did not cite any. Would a Court of law respectful of the rule of law deem the absence of legal authority for dismissing a case, thus denying a person his day in court, a „minor deficiency“?

15. Another „minor deficiency“ is that because Judge Ninfo deprived Dr. Cordero of standing in *DeLano*, there was no reason for either the Judge or the Trustee himself to give notice to Dr. Cordero of either the Trustee’s report or the Judge’s approval of it. As a matter of fact, the Trustee could not even affirm that he had given Dr. Cordero timely notice of his report, but only that “Cordero was subsequently served with a summary of the account”, whatever that “account” is relative to the report and to any duty to object to it and whether that alleged service took place before or after an unknown deadline for filing any objection. What could motivate this Court to pretend that lack of notice and certainty of duty are „minor deficiencies“?
16. Analysis in greater detail of the Trustee’s motion to dismiss is provided in Dr. Cordero’s opposition papers. (CA:2111 & 2135, cf. CA:2178 *infra*) It shows the perfunctoriness of a motion cobbled together by a trustee who, though calling himself “an attorney admitted to practice before this Court” (CA:2102 *infra*), does not even know its name, so that he captioned his original motion “UNITED STATES DISTRICT COURT OF APPEALS SECOND CIRCUIT” (*id.*), and even after Dr. Cordero brought this gross mistake and its legal consequence to his attention (CA: 2124¶¶39-40), he still misnamed it in his „amended“ motion as “UNITED STATES COURT OF APPEALS SECOND CIRCUIT” (CA:2130 *infra*; CA: 2135§I). The major deficiencies that impair his motion are the reflection of his arrogant confidence that he did not have to bother researching the law or checking the record in order to write a professional legal paper, for he knew that this Court cannot dare order production of the documents

requested by Dr. Cordero and thereby risk being incriminated in supporting or tolerating a bankruptcy fraud scheme. Thus, all he had to do was provide the Court with an excuse to dismiss a threatening appeal. The Court took it and tried to rehabilitate it by pretending that its “deficiencies are minor”. It was disingenuous for the Court to do so...just as when it propped up those deficiencies with “equitable mootness” as an alternative ground for dismissal.

B. The Court disregarded the law and the facts by invoking for its dismissal “equitable mootness” and two cases although they **1) neither deal with bankruptcy fraud nor can excuse it; **2)** do not concern a simple Chapter 13 payment by an individual of cents on the dollar and the continued payment to his creditors but rather complex Chapter 11 company reorganizations involving special debt-release arrangements with non-parties and their unraveling by recoupment from innocent parties; and **3)** did not have to do with a party that sought a stay of the plan confirmation, but with companies that failed to challenge the arrangements until after their completion**

17. Neither of the two cases cited by the Court, i.e. *Metromedia* and *Chateaugay* (§10 supra) even hinted 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. Nor do they deal with bankruptcies under 11 U.S.C. Chapter 13 and its simple “adjustment of debts of an individual with regular income” to creditors under a repayment plan providing merely for the debts owed them to be reduced by payment of the same number of cents on the dollar.

18. Rather, those two cases deal with Chapter 11 bankruptcies and the complex reorganization of bankrupt companies. Actually, they are even more complex, for they involve 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 at all! 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.

19. Deciding the case at bar on its merits and even finding that the DeLanos committed fraud through concealment of assets identified by ordering production of the requested documents would not disturb their completed debt repayment plan in any way whatsoever. It would only mean that, instead of evading their debts by paying only 22¢ on the dollar (D:59), the DeLanos would have to reduce their fraudulently-gotten enjoyment of their golden retirement in order to keep paying the rest of what they owe to their creditors. Consequently, there would be absolutely no “recoupment of these funds ,already paid from non-parties, and the continued payment to creditors would be neither impracticable nor” “impose an unfair hardship on fault-less beneficiaries who are not parties to this appeal”, *Chateaugay, §II*. There would only be completion of payment to the only innocent parties here, those who in good faith became the DeLanos’ creditors and to whom it would be inequitable to deprive of what is owed them in order to allow the DeLanos to benefit from their participation in the bankruptcy fraud scheme.
20. This is all the more so because the Court’s own members “presume 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” *In re Chateaugay Corp.*, 94 F.3d 772, 776 (2d Cir.1996), internal quotations omitted. Dr. Cordero did precisely that: He diligently sought not only a stay of the confirmation of DeLanos’ debt repayment plan (¶12 supra), but also revocation of the order of confirmation, both 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)

21. This shows that the Court proceeded as perfunctorily to dismiss this appeal as the Trustee did in filing his dismissal motion: It simply fetched the name of equitable mootness and two citations and slapped them on an order form without ascertaining whether any of them were applicable to this appeal to begin with. In so doing, the Court not only committed an inequity by depriving Dr. Cordero, an innocent party, of his claim against the DeLanos, the fraudsters, but it denied him due process by dispensing with the rule of law in order to cover for Appointee Ninfo and Peer Larimer and protect its own interest in not giving them occasion to incriminate it for supporting or tolerating their bankruptcy fraud scheme. Faced with a conflict of interests between its duty to apply the law to determine impartially controversies before it and its interest in preserving its good name and protecting its very survival, the Court compromised its integrity: It looked after itself and its own as it acted as a Worker of Injustice.

III. Relief sought

22. One can only hope that not all the workers at the Court are similarly compromised by wrongdoing, whether it is fraud, conflict of interests, bias, or some other wrong. Some may have supported or tolerated it to a lesser degree than others. Some may even still have a measure of the idealism with which they arrived at the Court, where they expected to participate in the noble mission of dispensing to all men and women alike the one thing that the Court was

supposed to give them: “Equal Justice Under Law”. Perhaps some are judges who are inspired by the feats of the person after whom the Court’s building was named, Thurgood Marshall, the one who in cases such as *Brown v. Board of Education* defended the highest principle of our Constitution: That under government by the rule of law, it is the impartial and equal application of the law that guarantees to everybody a fair chance to enjoy their rights to property, liberty, and life, and limits to a fair burden the common obligation to secure them for all.

23. If judges, they know that such principled performance eventually earned Thurgood Marshall a nomination and confirmation as a justice of the Supreme Court. They may consider the evidence in *DeLano* of a bankruptcy fraud scheme supported and tolerated by coordinated wrongdoing among judges and muster the courage to stand up and denounce it in what can become known as Judge X’s *I Accuse*, the equivalent of [Emile Zola’s](#) denunciation of abuse of power by government officials in the Dreyfus Affair. That judge will suffer at the hands of his or her wrongdoing colleagues, though not as much as the litigants that they have victimized, but he or she may have shown the moral fiber necessary to be chosen to fill the place that will soon be left open by either Justice Stevens, 88, J. Ginsburg, 75, or JJ. Scalia and Kennedy, 72.
24. However, it is more likely that such Court worker be a staff attorney or a clerk, like the one reading this petition, one who was once an idealist and now is a disillusioned observer in disgust of how the judges routinely disregard the law and the facts to protect their personal or class interests, or treat with perfunctory contempt pro se and small law firm litigants while they strive to associate their names to pedigree cases, or ignore their duty under the law and to their fellow men and women for the worst reason possible: Because they can do so and get away with it. That staff attorney or clerk has the opportunity, as an insider, to become not only a whistleblower, but also a reluctant hero that helps restore integrity to judicial process and the Court itself. For him or her there is the reward of 15 minutes of fame, a Pulitzer Prize, a movie

deal, or the even more enduring and historically meaningful one of exposing corruption in the judiciary, as once Carl Bernstein or Bob Woodward did, who after bringing down President Nixon and his corrupt White House aides involved in the Watergate Scandal opened the way for historic reforms in the functioning of our government. That attorney or clerk can become known as the *Champion for Justice!* If you have the necessary commitment to Justice and want to find out how to do what is right, contact Dr. Cordero in all confidence.

25. Therefore, Dr. Cordero respectfully moves the Court to:

- a) grant panel rehearing and hearing en banc;
- b) quash the dismissal order and all the orders in *DeLano* and the case from which it derives, *Pfuntner v. Trustee Gordon et al.*, and its progeny (Add:863§V; CA:1918 ¶¶37-39);
- c) issue the proposed order for production of documents attached hereto;
- d) cause the issue under 28 U.S.C. §294(d) of a certificate of necessity for the designation and assignment from the roster of senior judges of a retired judge from a circuit other than the Second Circuit (cf. 28 U.S.C. §152(b)), who is known for his or her integrity and independence and is unrelated to any of the members of this Court or to the officers and parties in either *Pfuntner* or *DeLano*, to conduct a trial by jury of both cases in the U.S. District Court in Albany, NY.;
- e) decide the issues of the unlawfulness of WDNY Local Rule 5.1(h) and the unconstitutionality of 28 U.S.C. §158(b) and their abusive employment in support of the scheme;
- f) provide Dr. Cordero with all other relief that is just and proper, including the relief requested in his principal brief and en banc production order motion. (CA:1771, 1972)

March 14, 2008
59 Crescent Street,
Brooklyn, NY 11208


Dr. Richard Cordero
tel. (718)827-9521; CorderoRic@yahoo.com

Service & Virus Protection Certificate

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

I, Dr. Richard Cordero, certify that I mailed or e-mailed to the parties listed below a copy of my petition for panel rehearing and hearing en banc of the dismissal of the appeal. I further certify that the PDF version of this petition was scanned and no virus was detected.

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Mr. David Palmer
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Dated: March 14, 2008
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
tel. (718) 827-9521
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18 U.S.C. §3057(a)

Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title [18 U.S.C. §§152-157 on bankruptcy crimes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans [e.g. 18 U.S.C. §1519 on destruction of bankruptcy records; §3284 on concealment of bankrupt's assets] has been committed, or that an investigation should be had in connection therewith, **shall** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed....[emphasis added]

28 USCS §158 (2005)

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[--]

- (1) from final judgments, orders, and decrees;
- (2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
- (3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b) (1) The judicial council of a circuit shall establish a bankruptcy appellate panel service com-posed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that--

- (A) there are insufficient judicial resources available in the circuit; or
- (B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2) (A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title [28 USCS § 152].

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c) (1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless--

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal, to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules [USCS Court Rules, Bankruptcy Rules, Rule 8002].

(d) (1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2) (A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that--

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel--

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

HISTORY:

(July 10, 1984, P.L. 98-353, Title I, § 104(a), 98 Stat. 341; Dec. 1, 1990, P.L. 101-650, Title III, § 305, 104 Stat. 5105; Oct. 22, 1994, P.L. 103-394, Title I, § § 102, 104(c), (d), 108 Stat. 4108-4110.)

(As amended April 20, 2005, P.L. 109-8, Title XII, § 1233(a), 119 Stat. 202.)

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

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 et seq., shall file and serve a “RICO Case Statement” under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party’s RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party’s failure to file a statement may result in dismissal of the party’s RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

- (1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).
- (2) List each defendant and state the alleged misconduct and basis of liability of each defendant.
- (3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.
- (4) List the alleged victims and state how each victim was allegedly injured.
- (5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:
 - (A) List the alleged predicate acts and the specific statutes which were allegedly violated;
 - (B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;
 - (C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the “circumstances constituting fraud or mistake shall be stated with particularity.” Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a “pattern of racketeering activity”; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable “person” and the “enterprise” under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

**The DeLanos' income of \$291,470,
mortgage receipts of \$382,187,
plus credit card borrowing of \$98,092**

unaccounted for due to the judges' refusal to require production of documents supporting their declaration in Schedule B (D:31) that at the time of filing their bankruptcy petition they only had in hand and on account \$535!

Exhibit page #	Mortgages referred to in the incomplete documents produced by the DeLanos to Chapter 13 Trustee George Reiber ^a (cf. Add:966§B)	Mortgages or loans	
		year	amount
D ^b :342	1) from Columbia Banking, S&L Association	16jul75	\$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers & Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-54	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed?	Subtotal	\$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition of January 27, 2004 (D:23)			
2001	1040 IRS form (D:186)	\$91,229	\$91,229
2002	1040 IRS form (D:187) Statement of Financial Affairs (D:47)	\$91,859	91,655
2003	1040 IRS form (D:188) Statement of Financial Affairs (D:47)	+97,648	+108,586
to this must be added the receipts contained in the \$98,092 owed on 18 credit cards, as declared in Schedule F (D:38) ^c		\$280,736 ^d	\$291,470 ^d
		TOTAL	\$673,657

^a The DeLanos claimed in their bankruptcy petition that their only real property is their home, valued on November 23, 2003, at \$98,500, as to which their mortgage is still \$77,084 and their equity is only \$21,416 (D:30/Sch.A)...after making mortgage payments for 30 years! and having received during that same period at least \$382,187 through the known elements of a string of mortgages! *Mind-boggling!*

^b D=Designated items in the record of *Cordero v. DeLano*, 05-6190L, WDNY, of April 18, 2005.

^c The DeLanos declared that their credit card debt on 18 cards totals \$98,092 (D:38/Sch.F), while they set the value of their household goods at only \$2,810! (D:31/Sch.B) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years.

^d Why do these numbers not match?

motion was adjourned from time to time. A final hearing on said motion was conducted on March 1, 2005.

9. The bankruptcy court filed a decision on April 4, 2005, granting debtors' motion and disallowing Cordero's claim. Cordero filed a Notice of Appeal on April 11, 2005.
10. Cordero never filed a motion for a stay pending appeal pursuant to Bankruptcy Rule 2005. Upon information and belief Cordero did and continues to serve the trustee with all motions and treat him as a party.
11. On or about August 22, 2006, Hon. David Larimer of the district court rendered a decision affirming the decision of the bankruptcy court. Cordero filed a notice appealing said decision to this Court. Upon information and belief Cordero never made a motion for a stay pending appeal either before the district court or this Court, as permitted by Federal Rules of Appellate Procedure Rule 8.
12. There have been numerous proceedings in connection with this appeal before this Court. Upon information and belief Cordero has served the trustee with all process relative to this appeal. Indeed, upon Cordero's request the trustee agreed to allow Cordero to serve the trustee electronically. Upon information and belief, all motions and briefs in this appeal have been filed with this Court.
13. Meanwhile, on or about January 30, 2007, the debtors completed the payments under their confirmed plan. All funds were distributed to the allowed claims. The final distributions were made on or about February 23, 2007, and the last check cleared the trustee's bank account on or about March 20, 2007. The bankruptcy court issued its discharge order in favor of the debtors on February 7, 2007.
14. The trustee filed his final report accounting for the plan funds with the bankruptcy court on June 7, 2007. Cordero was subsequently served with a summary of the account.
15. The bankruptcy court signed an order approving the trustee's final report on June 29, 2007. Cordero has never filed an objection to said report, and his time to do so has passed.
16. Since all plan distributions have been made pursuant to the court's confirmation order and the final order has been signed without timely objection, the bankruptcy estate no longer exists. Therefore this appeal has been rendered moot and should be dismissed.

WHEREFORE movant requests an order of this Court:

- a) a) dismissing this appeal on the grounds of mootness; and
- b) b) for such other and further relief as is just and proper.

Dated: October 30, 2007

Respectfully Submitted,

/s/

GEORGE M. REIBER
Chapter 13 Trustee
3136 Winton Road South
Rochester, NY 14623
(585) 427-7225

To: Kathleen Dunivin Schmitt, Esq.
Devin Palmer, Esq.
Christopher Werner, Esq.
David & Mary Ann Delano
Richard Cordero

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

_____)	AMENDED
DR. RICHARD CORDERO,)	MOTION TO DISMISS
)	Case No. 06-4780
Creditor - Appellant)	
)	
v.)	
)	
DAVID & MARY ANN DELANO,)	
)	
Debtors-Appellee.)	
_____)	

George M. Reiber, attorney for the bankruptcy trustee herein and an attorney admitted to practice before this Court, hereby respectfully alleges as follows:

1. On or about January 27, 2004, the above entitled debtors filed a petition in the United States Bankruptcy Court for the Western District of New York, Rochester Division, commencing a case under Chapter 13 of Title 11 of the United States Code, the Bankruptcy Code. (Herein all references will be to said Code or its Bankruptcy Rules).
2. George M. Reiber was appointed Chapter 13 bankruptcy trustee of said case.
3. Thereafter on or about March 8, 2004, said trustee conducted a meeting by his staff attorney pursuant to §341.
4. Dr. Richard Cordero, Appellant herein (hereinafter referred to as Cordero) appeared as a creditor at that time.
5. Since both the trustee and Cordero had concerns about the schedules and plan, the 341 meeting was adjourned; and thereafter was adjourned from time to time.
6. On or about March 8, 2004, Cordero filed an Objection to Confirmation.
7. Based upon the concerns mentioned above and the filed Objection, the confirmation hearing was adjourned; and thereafter was adjourned from time to time.
8. On or about May 19, 2004, Cordero filed a Proof of Claim with the bankruptcy court. Thereafter on or about July 22, 2004, Debtors filed a Motion Objecting to Cordero's Claim, returnable before said court on August 25, 2004. Cordero filed opposition to said motion. The hearing on said

motion was adjourned from time to time. A final hearing on said motion was conducted on March 1, 2005.

9. The bankruptcy court filed a decision on April 4, 2005, granting debtors' motion and disallowing Cordero's claim. Cordero filed a Notice of Appeal on April 11, 2005.
10. Cordero never filed a motion for a stay pending appeal pursuant to Bankruptcy Rule 8005. Upon information and belief Cordero did and continues to serve the trustee with all motions and treat him as a party.
11. On or about August 22, 2006, Hon. David Larimer of the district court rendered a decision affirming the decision of the bankruptcy court. Cordero filed a notice appealing said decision to this Court. Upon information and belief Cordero never made a motion for a stay pending appeal either before the district court or this Court, as permitted by Federal Rules of Appellate Procedure Rule 8.
12. There have been numerous proceedings in connection with this appeal before this Court. Upon information and belief Cordero has served the trustee with all process relative to this appeal. Indeed, upon Cordero's request the trustee agreed to allow Cordero to serve the trustee electronically. Upon information and belief, all motions and briefs in this appeal have been filed with this Court.
13. Meanwhile, on or about January 30, 2007, the debtors completed the payments under their confirmed plan. All funds were distributed to the allowed claims. The final distributions were made on or about February 23, 2007, and the last check cleared the trustee's bank account on or about March 20, 2007. The bankruptcy court issued its discharge order in favor of the debtors on February 7, 2007.
14. The trustee filed his final report accounting for the plan funds with the bankruptcy court on June 7, 2007. Cordero was subsequently served with a summary of the account.
15. The bankruptcy court signed an order approving the trustee's final report on June 29, 2007. Cordero has never filed an objection to said report, and his time to do so has passed.
16. Since all plan distributions have been made pursuant to the court's confirmation order and the final order has been signed without timely objection, the bankruptcy estate no longer exists. Therefore this appeal has been rendered moot and should be dismissed.

WHEREFORE movant requests an order of this Court:

- a) a) dismissing this appeal on the grounds of mootness; and
- b) b) for such other and further relief as is just and proper.

Dated: November 16, 2007

Respectfully Submitted,

/s/

GEORGE M. REIBER
Chapter 13 Trustee
3136 Winton Road South
Rochester, NY 14623
(585) 427-7225

To: Kathleen Dunivin Schmitt, Esq.
Devin Palmer, Esq.
Christopher Werner, Esq.
David & Mary Ann Delano
Richard Cordero

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Outline of Dr. Richard Cordero

for oral argument on January 3, 2008

against the Trustee's motion to dismiss

in *Dr. Richard Cordero, Creditor v. David and Mary Ann DeLano, Debtors*, 06-4780-bk-CA2

appeal from *Cordero v. DeLano*, 05-6190L, WDNY

A. Original motion

- I. The Trustee failed both to appear and answer a single motion or pleading for years in either the bankruptcy, the district, or the appeals Court and having thus missed the opportunity to invoke through a motion the benefit of judicial process for which he showed only contempt, he is now a party in default **2112**
- II. This conclusory motion is to be dismissed because the Trustee failed even to hint any legal argument that an appellant that has been deprived of standing in the case, such as Dr. Cordero, has any legal duty to object to a court approval - which the Trustee does not even allege was or even would be served on such appellant- to his final report, which he cannot allege he timely served on such appellant, but only that the latter was “subsequently served” and only with “a summary of the account” **2115**
- III. A finding by the Court that the debtors engaged in bankruptcy fraud through concealment of assets and that the Trustee protected them by not investigating their financial affairs will render their bankruptcy petition, the Final Report, the summary of the account, and Judge Ninfo's approval a nullity, thus preventing the dismissal of the appeal on the alleged failure to object to the Report **2118**
- IV. Evidence of the Trustee's contempt for the Court and the law, whether concerning his duty to provide legal grounds for it to decide on or his duty to perform his office in compliance with pertinent regulations and supervisory instructions **2120**
- V. The Trustee's motion does not meet the substantive requirements for a motion because it is devoid of legal argument just as it fails to meet other formal requirements under FRAP and the CA2 Local Rules **2123**
- VI. Relief requested..... **2125**

B. Amended motion

- I. The Trustee’s arrogant perfunctoriness shown in his original motion is only confirmed in his amended motion and provides further grounds for his motion to be dismissed with prejudiced and for costs to be assessed against him **2135**
- II. Recapitulation of relief requested with additions (in bold) **2139**

C. Placing the motion on the motions calendar

- I. The Court’s placement on the substantive motions calendar of the Trustee’s motion to dismiss although the Court denied the same treatment to Dr. Cordero’s 14 motions and indicated that all his motions will be referred to the panel is arbitrary and discriminatory treatment that constitutes a denial of equal protection under law and a subterfuge for the Court to rid itself of this appeal and thus evade the conflict of interests with which it confronts the Court **2152**
- II. The Trustee’s arrogantly perfunctory and conclusory motion to dismiss provides no argument, let alone authority, for the implied allegation that there is any duty to object to his final report, not to mention “a summary of the account”, much less that failure to do so within a given period –not even hinted at- renders dismissable a pending appeal; and shows not even an awareness of the fact that an appellant deprived of standing in the case, such as Dr. Cordero, would have no duty to object in addition to prosecuting his appeal..... **2157**
- III. Precedent gives rise to the expectation that the Court placed the Trustee’s arrogantly perfunctory motion on the motions calendar and, disregarding its factual and legal baselessness, will use it as a pretext to dismiss the case, so that due process requires that it invoke 28 U.S.C. §294(d) to transfer this appeal to an impartial and unrelated retired judge **2162**
- IV. Relief requested..... **2165**

Dated: January 3, 2008
 59 Crescent Street
 Brooklyn, NY 11208

Dr. Richard Cordero

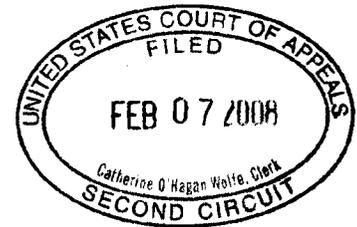
 Dr. Richard Cordero
 Appellant and Creditor
 tel. (718) 827-9521

United States Court of Appeals
FOR THE
SECOND CIRCUIT

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

Present:

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



Dr. Richard Cordero,

Creditor-Appellant,

v.

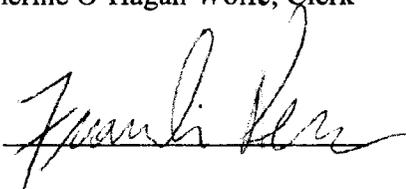
06-4780-bk

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

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

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: 

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

SAO-LB

United States Court of Appeals for the Second Circuit

06-4780-bk

Dr. Richard Cordero,

Appellant and creditor

v.

ORDER

David and Mary Ann DeLano

Appellees and debtors in bankruptcy

Having considered the briefs filed in his appeal, IT IS HEREBY ORDERED AS FOLLOWS:

A. Persons and entities concerned by this Order

1. David DeLano and Mary Ann DeLano (hereinafter the DeLanos), Debtors and Appellees in the above-captioned case, hereinafter *DeLano*, which shall be understood to include the cases below, namely, *In re David and Mary Ann DeLano*, 04-20280, WBNY, and *Cordero v. DeLano*, 05-6190, WDNY;
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 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, Acting U.S. Trustee for Region 2, and Deirdre A. Martini, former U.S. Trustee for Region 2, and Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, tel. (212) 510-0500;
7. Manufacturers & Traders Trust Bank (M&T Bank), 255 East Avenue, Rochester, NY, tel. (800) 724-8472;
8. U.S. Bankruptcy Judge John C. Ninfo, II, and Paul R. Warren, Esq., Clerk of Court, United States Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614, tel. (585) 613-4200, and any and all members of their staff;
9. 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
10. 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:

11. 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;
12. 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;

13. 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;
14. Produce of each document within the scope of this Order those parts stating as to each transaction covered by such document:
 - 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;
 - 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;
15. 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, omission, 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;

16. Produce any document within the scope of this Order by producing a true and correct copy of such document;
17. 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, in particular, the DeLanos have committed bankruptcy fraud, or, in general, there is a bankruptcy fraud scheme involving the DeLanos and/or any other individual; and
18. File with the Court and serve on Appellant Dr. Richard Cordero at 59 Crescent Street, Brooklyn, NY 11028, tel. (718) 827-9521), and the trustee succeeding Trustee George Reiber when appointed (hereinafter the successor trustee) any document produced or certificate made pursuant to this Order.

C. Substantive provisions

19. 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 whereabouts or likely whereabouts of any such document (hereinafter identifier) shall certify what document the identifier controls or knows the whereabouts or likely 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, who shall within 10 days of this Order arrange for, and produce, its transcription on paper and on a floppy disc or CD; and produce also the video tape shown at the beginning of such meeting and in which Trustee Reiber was seen providing the introduction to it;

- b. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, which transcript has already been prepared and is in possession of Trustee Reiber, who shall produce it on paper and 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 or the Judicial Conference of the United States upon the request of either of them;
- d. The documents that Trustee Reiber obtained from any source prior to the confirmation hearing for the DeLanos' plan on July 25, 2005, in the Bankruptcy Court, 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;
- e. The statement reported in *DeLano*, WBNY docket 04-20280, entry 134, to have been read by Trustee Reiber into the record at the July 25 confirmation hearing before Judge Ninfo of the DeLanos' plan, of which there shall be produced a copy of the written version, if any, of such statement as well as a transcription of such statement exactly as read;

f. 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,

1) Such as:

- (a) the ordinary, whether the interval of issue is a month or a longer or shorter interval, and extraordinary statements of account of each and all checking, savings, investment, retirement, pension, credit card, and debit card accounts at or issued by M&T Bank and/or any other entity in the world;
- (b) 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:
 - (i) real estate, including but not limited to the home and surrounding lot at 1262 Shoecraft Road, Webster (and Penfield, if different), NY; and
 - (ii) personal property, including any vehicle, mobile home, or water vessel;
- (c) mortgage documents;
- (d) loan documents;
- (e) title documents and other documents reviewing title, such as abstracts of title;
- (f) prize documents, such as lottery and gambling documents;
- (g) service documents, wherever in the world such service was, is being, or may be received or given; and
- (h) documents concerning the college expenses of each of the DeLanos' children,

including but not limited to tuition, books, transportation, room and board, and any loan extended by a government or a private entity for the purpose of such education, regardless of whose name appears as the borrower on the loan documents;

2) the production of such documents 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.

20. The holder of the original of any of the documents 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 only upon order of this Court, the court to which *DeLano* may be transferred, the Supreme Court of the United States, or the Judicial Conference of the United States.

21. *DeLano* and *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, (hereinafter *Pfuntner*), are withdrawn from the District and Bankruptcy Courts to this Court pursuant to 28 U.S.C. §157(d).and the inherent power of this Court over lower courts in the Second Circuit.

22. The orders of Judge Ninfo, II, of August 9, 2005, confirming the DeLanos' Chapter 13 plan and of February 7, 2007, discharging the DeLanos after completion of their plan are hereby revoked; his order of August 8, 2005, to M&T Bank shall continue in force and the Bank shall continue making payments to Trustee Reiber until the appointment of a trustee to succeed him and from then on to the successor trustee, to the custody of whom all funds held by Trustee Reiber in connection with *DeLano* shall be transferred.

23. The notice signed by Clerk Warren, dated January 24, 2007, releasing employer from making further payments to Trustee Reiber is hereby withdrawn and the situation preceding it is reinstated as if the notice had never been given or acted upon.
24. Trustee George Reiber is removed pursuant to 11 U.S.C. §324(a) as trustee in *DeLano*, but shall continue subject to the jurisdiction of this Court and this Order, and such jurisdiction shall continue after appointment of a successor trustee or transfer of *DeLano* to any other court;
25. The Court recommends that:
 - a. the successor trustee be an experienced trustee from a district other than WDNY, such as a trustee based in Albany, NY, who shall:
 - b. certify that he or she:
 - 1) is unfamiliar with any aspect of *DeLano*,
 - 2) is unrelated and unknown to any party or officer in WDNY and WBNY;
 - 3) will faithfully represent pursuant to law the DeLanos' unsecured creditors;
 - c. exhaustively investigate the DeLanos' financial affairs on the basis of the documents described herein and similar documents, such as those already produced by the DeLanos to both Trustee Reiber and Dr. Cordero, to determine whether they have committed bankruptcy fraud, particularly concealment of assets,
 - d. produce a report of the inflow, outflow, and current whereabouts of the DeLanos' assets - whether such assets be earnings, real or personal property, rights, or otherwise, or be held jointly or severally by them directly or indirectly under their control anywhere in the world- since January 1, 1975, to date; and
 - e. file in the court under whose jurisdiction this case shall be at the time, and serve upon the DeLanos and Dr. Cordero a copy of, such report together with a copy of its related

documents, which shall include all documents obtained during the course of such investigation and any previous investigation conducted while the case was in the Bankruptcy Court or the District Court.

26. The Court recommends that the successor trustee employ under 11 U.S.C. §327 a reputable, independent, and certified accounting and title firm, such as one based in Albany, to conduct the investigation and produce the report referred to in ¶25 above; and such firm shall produce a certificate equivalent to that required therein.
27. Court Reporter Mary Dianetti, who shall have no part in the transcription of any document within the scope of this Order, is referred to the Judicial Conference of the United States for investigation of her refusal to certify that the transcript of her recording of the evidentiary hearing held in the Bankruptcy Court, WBNY, on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim would be complete, accurate, and tamper-free; Dr. Cordero's motion of July 18, 2005, for the District Court, WDNY, to make such referral under 28 U.S.C. §753 and all its exhibits are referred to the Judicial Conference as his statement on the matter; and the Conference is hereby requested to designate an individual other than Reporter Dianetti to make such transcript and produce it for review and evaluation to the Conference, this Court, and Dr. Cordero.
28. Notwithstanding the above and without detriment to any party's duty to it carry out, *DeLano* and *Pfuntner* are reported under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the U.S. Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either of those cases and unacquainted with any of the parties to either of them, or court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that

may be investigated, and that no staff from the offices of the Department or the FBI in either Rochester or Buffalo participate in any way in such investigation.

29. *DeLano* and *Pfuntner* are transferred in the interest of justice and judicial economy under 28 U.S.C. §1412 to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a visiting judge from a circuit other than the Second Circuit who is unfamiliar with either of those cases and unrelated and unacquainted with any of the parties to either of those case, or any court officers, whether judicial or administrative, or trustees, directly or indirectly involved in, concerned with, or affected by either of those cases or that may be investigated in connection therewith.
30. All proceedings concerning this matter shall be recorded by the Court using, in addition to stenographic means, electronic sound recording, and any party shall be allowed to make its own electronic sound or video recording of any and all such proceedings.

FOR THE COURT:

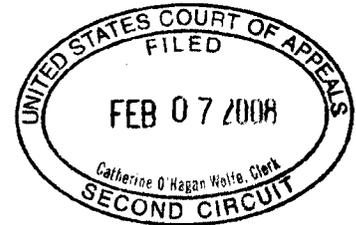
Date

United States Court of Appeals
FOR THE
SECOND CIRCUIT

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

Present:

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



Dr. Richard Cordero,

Creditor-Appellant,

v.

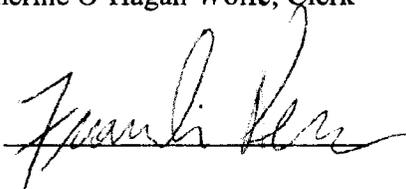
06-4780-bk

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

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

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: 

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

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, N.Y. 10007

Catherine O'Hagan Wolfe
CLERK OF COURT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9th day of May two thousand and eight,

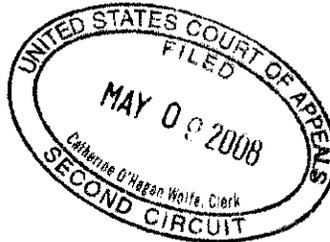
Dr. Richard Cordero,

Creditor-Appellant,

v.

David DeLano, Mary Ann DeLano,

Debtors-Appellees.



06-4780-bk

Appellant Dr. Richard Cordero, having filed a petition for panel rehearing, and for rehearing *en banc*, and the panel that determined the appeal having considered the request for panel rehearing, and the active members of the Court having considered the request for rehearing *en banc*,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:
Catherine O'Hagan Wolfe, Clerk

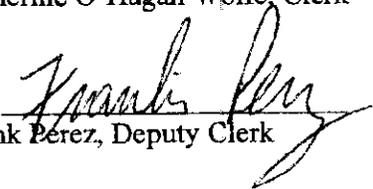
By: 
Frank Perez, Deputy Clerk

Table of the Key Documents
submitted to
the U.S. Senate Judiciary Committee
concerning Justice Nominee Judge Sotomayor and her withholding
of personal financial information and the *DeLano* Case,
and useful to conduct a *Follow the money!* investigation
of a judge-run and tolerated bankruptcy fraud scheme

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(as of June 29, 2007)

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cf. briefhttp://Judicial-Discipline-Reform.org/DeLano_record/brief_DeLano_CA2.pdf

II. RETRIEVAL **Bank of Hyperlinks**

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Transcript of the evidentiary hearing in *In re DeLano* held in Bankruptcy Court, WBNY, on March 1, 2005: Tr

Downloadable Bank of Hyperlinks

http://judicial-discipline-reform.org/Bank%20of%20Links.htm#Table_of_Exhibits.htm