

# Dr. Richard Cordero, Esq.

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

59 Crescent St., Brooklyn, NY 11208  
[Dr.Richard.Cordero.Esq@gmail.com](mailto:Dr.Richard.Cordero.Esq@gmail.com)  
tel. (718)827-9521

**[Sample of individualized cover letter of complaint sent to each of the Committee chair and staffers(ri:113fn2)]**

February 25, 2010

Thomas N. Trevett, Esq.  
Chair, Attorney Grievance Committee  
for the Seventh Judicial District  
50 East Avenue, Suite 404  
Rochester, NY 14604-2206

tel. (585)530-3180; fax (585)530-3191

Dear Mr. Trevett,

This is a misconduct complaint against the named attorneys. (GC:1 infra). It summarizes the evidence of misconduct found in close to 5,000 pages of court records (CD attached to back cover) accumulated in three related federal bankruptcy cases, two of which went all the way to the Supreme Court on petition for a writ of certiorari to the Court of Appeals for the 2<sup>nd</sup> Circuit<sup>1</sup>.

The Complaint Overview (3) describes the attorneys' key violations of the law and the Rules of Professional Conduct and their interrelationship. The Statement of Facts (14) begins with two attorneys repeatedly attempting to suborn perjury at an evidentiary hearing and a judge tolerating their doing so. The transcript (Tri) officially recorded their egregious misconduct and is attached at the back hereto because the whole of it consists of a series of acts of misconduct in open court that defies imagination and shocks the conscience<sup>2</sup>. Each of these three file components helps understand what creates the opportunity for the attorneys to engage in misconduct: When a judge leads the way into misconduct, the attorneys and court staff that can benefit from following him will do so. They are allowed as insiders into biased proceedings. The Statement tracks their misconduct steps through the three cases: *Premier* (17), *Pfuntner* (21), and *DeLano* (41). In them they appear acting in coordination under the two most insidious and corruptive motive and means: the enormous amount of money at stake in the thousands of bankruptcy cases that they have concentrated in their hands and the strongest power to break the law, i.e., that which also ensures immunity. They have coordinated their misconduct into a bankruptcy fraud scheme.

The attorneys and their scheme pose a systemic present danger to the public, not just to one complainant, for they deprive of property people with whom they do not even deal directly and deny them economic and due process rights. This calls for your investigation of this complaint to be resolute and in-depth. It can be pinpointed and expedited by the Demand for Information and Evidence. (GCd:1) In turn, great pressure will be brought to bear upon you to stop the investigation or conduct it merely pro-forma. Here is where your enlightened self-interest comes into play.

Your courageous investigative and expository actions can put you at the center of attention far beyond the local scene because the complained-against attorneys and other court officers have engaged in misconduct in the federal bankruptcy system and judiciary, whose scopes are national. No amount of money can trump doing the right thing or buy as much publicity as defending millions of debtors, creditors, and the collaterally affected during their worst financial predicament –in FY09 1,402,816 cases were filed in the U.S. Bankruptcy Courts<sup>3</sup>– almost all of whom stand no chance against entrenched insiders wielding corrupt power<sup>4</sup>. For them, the Committee as a whole or its most principled and ambitious members can become Champions of Justice<sup>5</sup>. In a Congressional elections year, their gratitude can lay the foundation for a bid for national office to tackle a national problem, which those who knew did nothing about<sup>6</sup>. In the process, you can become our generation's Senator Sam Ervin of Watergate fame. (61§A) Hence, I respectfully request (68§B) that you investigate this complaint and keep me informed thereof. Thus, I look forward to hearing from you.

Sincerely, *Dr. Richard Cordero, Esq.*

[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/1DrRCordero-Att\\_Grievance\\_Com.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-Att_Grievance_Com.pdf)

GC:i

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February 19, 2010

**COMPLAINT**  
**to the Attorney Grievance Committee for**  
**the New York State Seventh Judicial District**  
**against attorneys engaged in misconduct contrary to law and/or**  
**the New York State Unified Court System, Part 1200 -**  
**Rules of Professional Conduct<sup>7</sup>**

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<sup>1</sup> [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_v\\_DeLano\\_ScT\\_3oct8.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_ScT_3oct8.pdf); dkt. 08-8382  
[http://Judicial-Discipline-Reform.org/docs/DrCordero\\_v\\_TrGordon\\_ScT.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_ScT.pdf); dkt. 04-8371

<sup>2</sup> See the analysis of the transcript (fn. 19 infra; Pst:1255§E)

<sup>3</sup> <http://www.uscourts.gov/bnkrpctystats/statistics.htm#fiscal> and fn. 10 infra

<sup>4</sup> [http://Judicial-Discipline-Reform.org/ScT\\_nominee/JSotomayor\\_v\\_Equal\\_Justice.pdf](http://Judicial-Discipline-Reform.org/ScT_nominee/JSotomayor_v_Equal_Justice.pdf) >¶4

<sup>5</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/Champion\\_of\\_Justice.pdf](http://Judicial-Discipline-Reform.org/Follow_money/Champion_of_Justice.pdf)

<sup>6</sup> [http://Judicial-Discipline-Reform.org/ScT\\_nominee/Senate/DrRCordero-SenCSchumer.pdf](http://Judicial-Discipline-Reform.org/ScT_nominee/Senate/DrRCordero-SenCSchumer.pdf)

<sup>7</sup> 22 NYCRR Part 1200; <http://www.courts.state.ny.us/rules/jointappellate/index.shtml>; with enhanced bookmarks to facilitate navigation also at [http://Judicial-Discipline-Reform.org/docs/NYS\\_Rules\\_Prof\\_Conduct.pdf](http://Judicial-Discipline-Reform.org/docs/NYS_Rules_Prof_Conduct.pdf). Hereinafter referred to as the Rules or Rule #.

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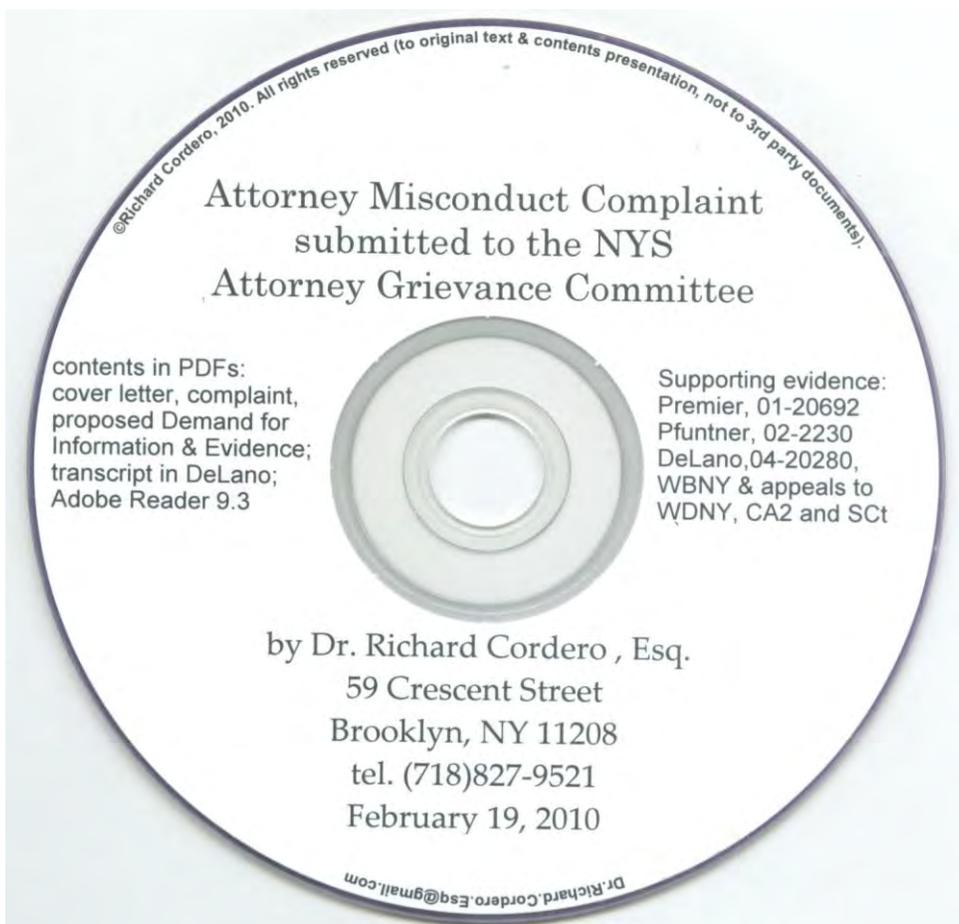
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# Dr. Richard Cordero, Esq.

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

59 Crescent St., Brooklyn, NY 11208  
[Dr.Richard.Cordero.Esq@gmail.com](mailto:Dr.Richard.Cordero.Esq@gmail.com)  
tel. (718)827-9521

## I. List of Attorneys Complained-Against And Judges Who Are The Subject Of A Demand For Information<sup>8</sup>

1. Kenneth W. [Gordon](#), Esq.  
Chapter 7 Trustee (in *In re Premier*,  
Gordon & Schaal, LLP 01-20692, WBNY  
1039 Monroe Avenue and *Pfuntner v. Gordon et*  
Rochester, NY 14620 al., 02-2230, WBNY)  
tel. (585)244-1070; fax (585)244-1085  
[kengor@rochester.rr.com](mailto:kengor@rochester.rr.com)  
<http://www.gordonandschaal.com/aboutus.html>
2. David D. [MacKnight](#), Esq. (for James Pfuntner  
Lacy, Katzen, Ryen & Mittleman, LLP in  
The Granite Building, 2nd Floor *Pfuntner v.*  
130 East Main Street *Gordon et al.*, 02-2230,  
Rochester, NY 14604-1686 WBNY)  
tel. (585)324-5724; fax (585)269-3047  
[dmacknight@lacykatzen.com](mailto:dmacknight@lacykatzen.com)  
<http://lacykatzen.com/bio-dmacknight.aspx>
3. George Max [Reiber](#)  
Chapter 13 Trustee (in *In re DeLano*,  
4. James W. Weidman, Esq. 04-20280, WBNY)  
Attorney for Trustee George Reiber  
Winton Court, 3136 Winton Road S., Ste. 206  
Rochester, NY 14623-2928  
tel. (585)427-7225; fax (585)427-7804  
[trustee13@roch13.com](mailto:trustee13@roch13.com)
5. Christopher K. [Werner](#), Esq., and (for Debtors  
6. Devin Lawton [Palmer](#), Esq. David Gene  
Boylan, Brown, Code, and Mary Ann DeLano  
Vigdor & Wilson, LLP in *In re DeLano*,  
2400 Chase Square 04-20280, WBNY)  
Rochester, NY 14604  
tel. (585)232-5300; fax (585)232-3528  
<http://www.boylanbrown.com/attorneys.aspx>  
[cwerner@boylanbrown.com](mailto:cwerner@boylanbrown.com)  
[dpalmer@boylanbrown.com](mailto:dpalmer@boylanbrown.com)
7. Michael J. [Beyma](#), Esq. (for M&T Bank and Officer  
Underberg & Kessler, LLP David Gene DeLano  
300 Bausch & Lomb Place in *Pfuntner v. Gordon et*  
Rochester, NY 14604 al., 02-2230, WBNY)  
tel. (585)258-2890; fax (585)258-2821;  
[mbeyma@underbergkessler.com](mailto:mbeyma@underbergkessler.com), &  
assistant [breed@underbergkessler.com](mailto:breed@underbergkessler.com)  
<http://www.underbergkessler.com/Attorneys/Detail/?ID=30>
8. Kathleen Dunivin [Schmitt](#), Esq.  
Assistant United States Trustee  
Office of the United States Trustee  
100 State Street, Room 609  
Rochester, NY 14614  
tel. (585)263-5812, fax (585)263-5862  
<http://www.justice.gov/ust/r02/rochester.htm>
9. Ms. Diana G. [Adams](#)  
U.S. Trustee for Region 2
10. Ms. Deirdre A. [Martini](#) and
11. Ms. Carolyn S. [Schwartz](#)  
Former U.S. Trustees 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  
<http://www.justice.gov/ust/r02/>
12. 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;  
<http://www.nywb.uscourts.gov/>
13. Bankruptcy Judge John C. [Ninfo](#), II<sup>8</sup>  
U. S. Bankruptcy Court  
1400 U.S. Courthouse, 100 State Street  
Rochester, NY 14614  
tel. (585)613-4200;  
<http://www.nywb.uscourts.gov/>;  
[http://www.nywb.uscourts.gov/about\\_judge\\_ninfo\\_46.php](http://www.nywb.uscourts.gov/about_judge_ninfo_46.php);  
[http://www.nywb.uscourts.gov/rochester\\_court\\_directory\\_11004.php](http://www.nywb.uscourts.gov/rochester_court_directory_11004.php).
14. District Judge David [Larimer](#) (ret.)<sup>8</sup>  
U.S. District Court, Western District of New  
York, WDNY  
Federal Building  
100 State Street, Rochester, NY 14614  
tel. (585)613-4000;  
<http://www.nywd.uscourts.gov/mambo/>

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## II. Complaint Overview

### Key Elements of the Attorneys' Misconduct and Their Opportunity and Motive For Engaging In Coordinated Misconduct

1. The attorneys engaged in misconduct in this complaint have developed among themselves and with the judges the same harmful and corrupt relation that Congress found and tried to eliminate by adopting FRBP 2013.<sup>9</sup> The Advisory Committee on Rules of Practice and Procedure of the Judicial Conference of the U.S. summarized the Congressional findings in its note in 1979 to that rule (at that time titled Rule 2005) thus:

A basic purpose of the rule is to prevent what Congress has defined as "cronyism." Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.

Subdivision (b) provides a convenient source for public review of fees paid from debtors' estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were **frequent appointments of the same person**, contacts developed between the bankruptcy bar and the courts, and **an unusually close relationship between the bar and the judges** developed over the years. A major purpose of the new statute is **to dilute these practices and instill greater public confidence in the system**. Rule 2005 implements that laudatory purpose. (emphasis added)

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<sup>8</sup> Under [Rule 8.3\(b\)](#), the Committee is authorized to demand information from "A lawyer who possesses knowledge or evidence concerning...a judge [and] the lawyer...shall not fail to respond", regardless of whatever authority that the Committee may have to impose disciplinary measures on, or take any other action regarding, such judge.

<sup>9</sup> Federal Rules of Bankruptcy Procedure, FRBP, with the Notes of the Advisory Committee, <http://www.law.cornell.edu/rules/frbp/rules.htm>; and also with added navigational bookmarks at [http://Judicial-Discipline-Reform.org/docs/FRBkrP\\_1dec9.pdf](http://Judicial-Discipline-Reform.org/docs/FRBkrP_1dec9.pdf). The official version but without the Notes is at <http://www.uscourts.gov/rules/index.html> >Rules and Forms in Effect, Federal Rules of Bankruptcy Procedure.

Keep in mind, however, that those files contain the current Rules as amended. To determine whether a rule has been amended since those in force at the time of the facts stated here, go to <http://uscode.house.gov/download/downloadPDF.shtml> >choose and click on a year >click on the equivalent of [2008usc11a.pdf](#) for the chosen year; or consult even *Bankruptcy Code, Rules and Forms, 2010 ed.*, published by West Thomson, which provides information on amendment and applicability dates;

<http://west.thomson.com/productdetail/160035/22035157/productdetail.aspx?promcode=600582C43556&promtype=internal>. See also [fn. 16](#) infra.

[www.uscourts.gov/rules/Reports/ST09-1979.pdf](http://www.uscourts.gov/rules/Reports/ST09-1979.pdf) >Rule 2005  
<http://www.law.cornell.edu/rules/frbp/nrule2013.htm>  
[http://Judicial-Discipline-Reform.org/docs/FRBP\\_Rules\\_Com\\_79.pdf](http://Judicial-Discipline-Reform.org/docs/FRBP_Rules_Com_79.pdf)  
>Rule 2005

2. The complained-against attorneys together with judges and court staffers are insiders of the bankruptcy and legal systems. As such they have the opportunity, when handling petitions for bankruptcy, to engage in misconduct as well as the most enticing motive to do so: riskless enormous benefits. The benefits may be material, for federal bankruptcy judges rule on \$10s of billions every year<sup>10</sup>, or they may be moral, that is, avoidance of being shunned as treacherous pariahs for abiding by their duty of filing complaints against blameworthy colleagues<sup>11</sup>, and gain of the valuable interpersonal relations of camaraderie, complicit confidentiality, and reciprocal support from grateful colleagues whose misconduct they have willfully ignored, tolerated, or covered up. Judicial power provides the means for engaging in misconduct risklessly. In the first instance, it is exercised by U.S. Bankruptcy Judge John C. Ninfo, II, WBNY.<sup>12</sup> In his court, the misconducting attorneys are fixtures, who benefit from the extension to them of the de facto impunity that he enjoys as a federal judge and the appointee under 28 U.S.C. §152(a)<sup>13</sup> of the Court of Appeals for the Second Circuit (CA2). Indeed, the number of cases that, according to PACER<sup>14</sup>, they have brought before Judge Ninfo allows for the development of “an unusually close relationship between the[m]”. (¶1 quoted text, supra)
3. **Att. Kenneth W. Gordon**<sup>15</sup> is the standing 11 U.S.C. Chapter 7<sup>16</sup> Trustee<sup>17</sup>, who out of his

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<sup>10</sup> Cf. “November 25, 2009 — Bankruptcy cases filed in federal courts for fiscal year 2009 totaled 1,402,816, up 34.5 percent over the 1,042,993 filings reported for the 12-month period ending September 30, 2008, according to statistics released today by the Administrative Office of the U.S. Courts.” These statistics are collected, with links to their source, at: [http://Judicial-Discipline-Reform.org/statistics&tables/bkr\\_stats/Bkr\\_filings\\_25nov9.pdf](http://Judicial-Discipline-Reform.org/statistics&tables/bkr_stats/Bkr_filings_25nov9.pdf).

<sup>11</sup> E.g., Rule 8.1(a) on Reporting Professional Misconduct; and 18 U.S.C. §3057(a) on Requesting Bankruptcy Investigations, <http://Judicial-Discipline-Reform.org/docs/18usc3057.pdf>

<sup>12</sup> Bankruptcy Judge John C. Ninfo, II, U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614; tel. (585)613-4200; <http://www.nywb.uscourts.gov/>; [http://www.nywb.uscourts.gov/about\\_judge\\_ninfo\\_46.php](http://www.nywb.uscourts.gov/about_judge_ninfo_46.php); [http://www.nywb.uscourts.gov/rochester\\_court\\_directory\\_11004.php](http://www.nywb.uscourts.gov/rochester_court_directory_11004.php).

<sup>13</sup> [http://Judicial-Discipline-Reform.org/docs/28usc151-159\\_bkr\\_judges.pdf](http://Judicial-Discipline-Reform.org/docs/28usc151-159_bkr_judges.pdf)

<sup>14</sup> <http://www.pacer.uscourts.gov/index.html>

<sup>15</sup> Kenneth W. Gordon, Esq., Chapter 7 Trustee, Gordon & Schaal, LLP, 1039 Monroe Avenue, Rochester, NY 14620-1730; tel. (585)244-1070; fax (585)244-1085; formerly at 1099 Monroe Avenue, Suite 2, Rochester, NY 14620-1730; and before that at 100 Meridian Centre Blvd., Suite 120, Rochester, NY 14618; [kengor@rochester.rr.com](mailto:kengor@rochester.rr.com);

3,383 cases had 3,382 before Judge Ninfo, as of June 26, 2004<sup>18</sup>, <sup>19</sup>. By comparison, a judicial emergency is defined as “any vacancy in a district court where weighted filings are in excess of 600 per judgeship”<sup>20</sup>. Trustee Gordon was appointed to liquidate the moving and storage company Premier Van Lines, Inc.,<sup>21</sup> owned by David J. Palmer,<sup>22</sup> who had filed for voluntary bankruptcy in *In re Premier Van Lines, Inc.*, 01-20692, WBNY, (docket at A:565-578a; *Premier*)<sup>23</sup>, which came before Judge Ninfo. The Trustee first declared *Premier* to be a case with

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<http://www.gordonandschaal.com/aboutus.html>.

<sup>16</sup> Taking into account the caveat at fn. 9 supra, the most current digital version on the Internet of title 11 of the U.S. Code, that is, the Bankruptcy Code, is downloadable from <http://uscode.house.gov/pdf/2008/2008usc11.pdf> and is also found at [http://Judicial-Discipline-Reform.org/docs/11usc\\_Bkr-Code\\_08.pdf](http://Judicial-Discipline-Reform.org/docs/11usc_Bkr-Code_08.pdf), where useful navigational bookmarks have been added.

For earlier editions of the Code go to <http://uscode.house.gov/download/downloadPDF.shtml> >choose and click on a year >click on the equivalent of [2008usc11.pdf](http://uscode.house.gov/pdf/2008/2008usc11.pdf) for the chosen year.

For the 2010 edition of the Code printed by West Thomson, see fn. 9 supra.

<sup>17</sup> <http://www.justice.gov/ust/r02/rochester/ch7-trustees.htm>

<sup>18</sup> [http://Judicial-Discipline-Reform.org/docs/TrGordon\\_3383\\_as\\_trustee.pdf](http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf); (Add:891§III)...

<sup>19</sup> ...the references bearing the format D:#, Add:#, Pst:#, SApp:#, CA:#, and US:# lead to pages # of the *DeLano* file; from D:1 to US:2547 all numbers are consecutive. The A:# references point pages # in the *Pfuntner* file, from A:1 to A:2229. If followed by §§#,# = sections #, #, or ¶¶#,# = paragraphs #, #, page # is the page where the first section or paragraph appears.

<sup>20</sup> “Beginning in December 2001, the definition of a judicial emergency [is] any vacancy in a district court where weighted filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship, or any court with more than one authorized judgeship and only one active judge.” Federal Judicial Caseload, Recent Developments, 2001, prepared by the Office of Human Resources and Statistics of the Administrative Office of the U.S. Courts (AO), p. 13, fn. 15; <http://www.uscourts.gov/caseloadstatistics.html>; also at [http://Judicial-Discipline-Reform.org/docs/FedJud\\_Caseload\\_2001.pdf](http://Judicial-Discipline-Reform.org/docs/FedJud_Caseload_2001.pdf) >p. 13, fn.15.

Cf. 2008 Annual Report of the AO Director, p. 38; <http://www.uscourts.gov/library/annualreports.htm> >Director’s Annual Report, 2008; also at [http://Judicial-Discipline-Reform.org/docs/AO\\_Dir\\_Report\\_08.pdf](http://Judicial-Discipline-Reform.org/docs/AO_Dir_Report_08.pdf).

<sup>21</sup> Premier Van Lines, Inc., Tax ID: 16-1542181, c/o 1829 Middle Road, Rush, NY 14543 (A:431); it was doing business from space rented in the warehouse at 900 Jefferson Road, Rochester, NY, 14623, which is owned and/or operated by Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607. Before that, Premier was doing business from 10 Thruway Park Drive, West Henrietta, NY 14586. (A:51)

<sup>22</sup> David J. Palmer (A:432/3), 1829 Middle Road, Rush, NY 14543; tel. (585)292-9530; owner of Premier Van Lines, Inc., Tax ID: 16-1542181 (A:1403).

<sup>23</sup> The docket of *Premier* indicates that Trudy Nowak, U.S. Trustee, was in office at least during the early party of *Premier* bankruptcy proceedings. (A:565/15, 28/ 29, 52, 77, 83.

assets to distribute to the creditors. Dr. Richard Cordero, Esq., a Premier creditor, charged him with going about that liquidation in a negligent and reckless manner. Thereupon the Trustee filed a report that there were no assets to distribute, even though he had just applied to hire Auctioneer Roy Teitsworth<sup>24</sup> to auction Premier's assets and Judge Ninfo had approved his application. Then no more entries were made on the *Premier* docket concerning either those assets or anything else until the entries stating that the case had been closed and that Trustee Gordon had been paid a fee.<sup>25</sup> In this matter, he was abetted by the following insider and court staffer.

4. **Paul R. Warren, Esq.**, Clerk of Court, WBNY,<sup>26</sup> is charged with the duty under FRBP 5003(a) to keep the docket of cases and under FRBP 2013(a) with maintaining a public record of fees paid. Clerk Warren failed to provide the information on fees paid to Trustee Gordon and Auctioneer Teitsworth requested by Dr. Cordero. Revealingly enough, after Dr. Cordero charged with fraud Mr. Palmer and the latter failed to appear or defend, Dr. Cordero applied under FRCP 55<sup>27</sup> for default judgment against him. However, Clerk Warren failed to enter his default, that is, to certify the fact of Mr. Palmer's non-appearance and failure to file any paper. When the Clerk

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<sup>24</sup> Auctioneer Roy Teitsworth; (A:431, 576/97; 834, 835¶B.5); 6502 Barber Hill Road, Geneseo, NY 14454; tel. (585)243-1563, fax (585)243-3311; <http://www.auctionzip.com/NY-Auctioneers/13102.html>; [www.teitsworth.com](http://www.teitsworth.com).

<sup>25</sup> Sources of information about Trustee Gordon's handling of *Premier* are:

- a) his attorney, William E. Brueckner, Esq.; (A:431, 573/72; 834, 835¶B.4);
  - i) at the time at Ernstrom & Drete, LLP, 2000 Winton Road South, Building One, Suite 300, Rochester, NY 14618-3922; tel. (585)473-3100, toll-free (800)650-9009, fax (585)473-3113; <http://www.ernstromdreste.com/>;
  - ii) now at Underberg & Kessler, 300 Bausch & Lomb Place, Rochester, NY 14604; tel. (585)258-2892, fax (585)258-2821; [wbrueckner@underbergkessler.com](mailto:wbrueckner@underbergkessler.com); <http://www.underberg-kessler.com/Attorneys/Detail/?ID=78>. (cf. ¶10 infra)
- b) the accounting firm Bonadio & Co. LLP; (A:431, 567/16, 22, 26, 27, 29, 30, 39, 40, 44, 49; 834, 835¶B.6);  
Corporate Crossings, 171 Sully's Trail, Suite 201, Pittsford, NY 14534-4557; tel. (585)381-1000; fax (585)381-3131; <http://www.bonadio.com/Profile/Locations/>.

<sup>26</sup> Paul R. Warren, Esq., Clerk of Court, U.S. Bankruptcy Court, WBNY, 1220 U.S. Courthouse, 100 State Street, Rochester, NY 14614 (585)613-4200; [http://www.nywb.uscourts.gov/rochester\\_court\\_directory\\_11004.php](http://www.nywb.uscourts.gov/rochester_court_directory_11004.php).

<sup>27</sup> FRCP: <http://www.law.cornell.edu/rules/frcp/> (with access to the Notes of the Advisory Committee, as of December 1, 2009); the official edition but without the Notes is at <http://www.uscourts.gov/rules/index.html> >Rules and Forms in Effect, Federal Rules of Civil Procedure.

Cf. *fn. 9* supra. For earlier editions of the FRCP, go to <http://uscode.house.gov/download/downloadPDF.shtml> >choose and click on a year >click on the equivalent of 2008usc28a.pdf <http://uscode.house.gov/pdf/2008/2008usc11a.pdf> for the chosen year.

finally entered it at Dr. Cordero's instigation, Judge Ninfo would not summon Mr. Palmer to court and recommended to the District Court, WDNY,<sup>28</sup> that Dr. Cordero's application not be granted. The totality of these circumstances show that none of them could risk giving cause to Mr. Palmer to disclose what had happened with Premier's assets or the proceeds from the auction. In how many of Trustee Gordon's 3,382 cases before Judge Ninfo have assets disappeared and undisclosed fees paid? How many thousands of creditors have been harmed by assets not being distributed to cover at least partially their debts and, as a result, how many others have been injured collaterally? (See also ¶15 infra.)

5. **Att. David D. MacKnight**<sup>29</sup> had appeared before Judge Ninfo in 442 out of 559 cases, as of June 6, 2005<sup>30</sup>. He commenced *James Pfunter v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, (docket at A:548-564i; *Pfunter*) for his client, James Pfunter,<sup>31</sup> as an adversary proceeding spun by *Premier*. On his behalf, he sought from Judge Ninfo two orders only to disobey them with impunity, while Dr. Cordero had to comply with them to his detriment. What is more, Mr. MacKnight engaged in ex-parte conversations with Judge Ninfo to get one of the orders modified for Mr. Pfunter's benefit. By so doing, he disregarded what the Advisory Committee on Bankruptcy Rules considered self-evident:

#### 1979 note on FRBP 9003. Prohibition of Ex Parte Contacts

This rule [then titled Rule 5001] should be unnecessary because there should not be ex parte communications with a bankruptcy judge by any party in interest including a trustee or his attorney or the debtor or his attorney, in a chapter 7, 9, 11, or 13 case....[It] is included to make clear that no party in interest, person representing a party in interest, or employee of a party in interest should have ex parte communications with a bankruptcy judge about the case.

Contacts and relationships exist between the bankruptcy courts and the bar which are problems that the new law seeks to solve. **The system should not only operate fairly but it must appear to operate fairly.** H. Rep. No. 95-595, 95<sup>th</sup> Cong., 1st Sess. 95 et seq. (1977). [emphasis added] [www.uscourts.gov/rules/Reports/ST09-1979.pdf](http://www.uscourts.gov/rules/Reports/ST09-1979.pdf); also at

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<sup>28</sup> U.S. District Court for the Western District of NY, WDNY, Federal Building, 100 State Street, Rochester, NY 14614; tel. (585)613-4000; <http://www.nywd.uscourts.gov/mambo/>

<sup>29</sup> David D. MacKnight, Esq., Lacy, Katzen, Ryen & Mittleman, LLP, The Granite Building, 130 East Main Street, Rochester, NY 14604-1686; tel. (585)324-5724; fax (585)269-3047; [dmacknight@lacykatzen.com](mailto:dmacknight@lacykatzen.com); <http://lacykatzen.com/bio-dmacknight.aspx>.

<sup>30</sup> [http://Judicial-Discipline-Reform.org/docs/MacKnight\\_442\\_before\\_JNinfo.pdf](http://Judicial-Discipline-Reform.org/docs/MacKnight_442_before_JNinfo.pdf)

<sup>31</sup> James Pfunter, tel. (585)738-3105, fax (585)538-9858, owner of the warehouse at 2140, Sackett Road, Avon, NY 14414; also officer of Western Empire Truck Sale, 2926 West Main Street, Caledonia, NY 14423, tel. (585)538-2200.

6. Dr. Cordero raised motions for sanctions against Att. MacKnight and Mr. Pfuntner, but Judge Ninfo disregarded them. Thus, Att. MacKnight was the beneficiary of the bias of the Judge, who takes care of his own at the expense of outsiders, such as Dr. Cordero. What do attorneys have to do in their cases before Judge Ninfo to contribute to corrupting “Equal Justice Under Law” so as to become such beneficiaries and what is in it for Judge Ninfo? Their conduct, described in greater detail in the Statement of Facts (GC:14§III infra), begs that question recurrently.
7. **Att. George Max Reiber**<sup>32</sup>, the standing 11 U.S.C. Chapter 13 Trustee<sup>33</sup>, had before Judge Ninfo 3,907 cases out of the Trustee’s 3,909 *open* cases, as of April 2, 2004<sup>34</sup>. He was the trustee for another insider and party to *Pfuntner*, Mr. David Gene DeLano.<sup>35</sup> The latter had already spent 39 years in the financing and banking industries when he, together with his wife, Xerox Technician Mary Ann DeLano, filed for bankruptcy relief under Chapter 13 in *In re DeLano*, 04-20280, WBNY, (docket at D:496-508j; *DeLano*). In fact, he was precisely a bankruptcy officer of a major financial institution, M&T Bank.<sup>36</sup> He kept working in that capacity since, after all, he was „only“ exploiting his insider knowledge and connections to prepare his exit from work light of debt into a golden retirement. One of those connections was Trustee Reiber, whose duty as trustee is to inform himself about the assets of the estate so as to collect and distribute them to the creditors. Yet, Trustee Reiber had not requested, let alone reviewed, a single document to corroborate the DeLanos’ self-serving declarations, made in the schedules and statements that are required of all debtors in bankruptcy, by the day the Trustee was going to submit to Judge Ninfo for confirmation the proposed plan, drawn up by the DeLanos themselves, for repaying

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<sup>32</sup> George Max Reiber, Esq., Chapter 13 Trustee, Winton Court, 3136 Winton Road South, Suite 206, Rochester, NY 14623-2928; tel. (585)427-7225; fax (585)427-7804; [trustee13@roch13.com](mailto:trustee13@roch13.com).

<sup>33</sup> <http://www.justice.gov/ust/r02/rochester/ch13-trustees.htm>

<sup>34</sup> [http://Judicial-Discipline-Reform.org/docs/Trustee\\_Reiber\\_3909\\_cases.pdf](http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf) A Chapter 13 trustee with 3,909 *open* cases cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith through time-consuming, statutorily required investigation of their financial affairs. (A:1083¶IX)

<sup>35</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/DeLano\\_docs.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf) >§II

<sup>36</sup> Manufacturers & Traders Trust Bank, 255 East Avenue, Rochester, NY 14604, tel. (585)258-8207, fax (585)325-5105; Customer Service tel. (800)724-2440; locations <http://mandtbank.spatialpoint.com/PrxInput.aspx>. See also fn. 41 infra.

their creditors only 22¢ on the dollar. Dr. Cordero, also a party to *Pfuntner* and to *DeLano*, where he had been named by the DeLanos among their creditors, objected and Judge Ninfo had no choice but to suspend the confirmation of their plan. Dr. Cordero requested that Trustee Reiber discharge with respect to the DeLanos his duty to investigate the financial affairs of debtors, but the Trustee would not request them to produce their bank account statements. Yet, such statements are obviously critically important to establish the state of the debtors' financial affairs and tracking their assets. Then Judge Ninfo denied Dr. Cordero's motion to remove the Trustee or order him to obtain and produce those documents. As a result, Trustee Reiber and Judge Ninfo allowed the DeLanos to sprightly walk away into a very comfortable retirement after being discharged of their debt burden but while carrying with them at least \$673,657. That was the value of unaccounted-for assets that Dr. Cordero had been able to show, to the indifference of the Trustee, the Judge, and other similarly situated insiders, that the DeLanos had earned, according to their own schedules and statements, or otherwise received. In how many of his 3,907 cases before Judge Ninfo has Trustee Reiber conveniently relied on the say-so of debtors to allow them not to account for even considerable amounts of money? Who are the beneficiaries of the Trustee's misconduct, whether insiders or others willing to share their unaccounted-for assets with insiders so as to avoid paying them to outsiders, and how many creditors and collaterals has the Trustee injured by his dereliction of duty?

8. **Att. Christopher K. Werner**<sup>37</sup> had brought 525 cases before Judge Ninfo, as of February 28, 2005<sup>38</sup>. He was the bankruptcy attorney for Insider DeLano and his wife. Since they had named Dr. Cordero among their creditors, Att. Werner treated him as such for six months while pretending to be looking for the documents that Dr. Cordero requested to corroborate the declarations that the DeLanos had made and the Attorney had signed off on in their bankruptcy petition's schedules and statements. Dr. Cordero analyzed the trickle of documents produced and showed that they disproved those declarations and pointed to bankruptcy fraud through concealment of assets. Only then did Att. Werner come up with the artifice of a motion to disallow Dr. Cordero's claim as a creditor. Judge Ninfo took the initiative to call an evidentiary

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<sup>37</sup> Christopher K. Werner, Esq., Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604; tel. (585)232-5300, ext. 254; fax (585)238-9054; [cwerner@boylanbrown.com](mailto:cwerner@boylanbrown.com);  
<http://www.boylanbrown.com/attorneys/Christopher%20K.%20Werner.aspx>.

<sup>38</sup> [http://Judicial-Discipline-Reform.org/docs/Werner\\_525\\_before\\_Ninfo.pdf](http://Judicial-Discipline-Reform.org/docs/Werner_525_before_Ninfo.pdf)

hearing on the motion and ordered discovery therefor. Att. Werner denied Dr. Cordero *every single document* that he requested from the DeLanos, thus showing contempt for his duty to comply with the order or abide by his duty to provide discovery. Dr. Cordero moved for an order of compel production, but Judge Ninfo denied him *every single document* that he requested, thus showing that his initial order of discovery had been a sham. So was the evidentiary hearing, at the end of which the Judge explicitly disregarded as “confused” Mr. DeLano’s testimony that confirmed Dr. Cordero’s claim, disallowed that claim, and deprived Dr. Cordero of standing in the case. Thereby he achieved Mr. Werner’s objective: To strip Dr. Cordero of the right to request documents that would incriminate both his clients in bankruptcy fraud and him in aiding and abetting it. So Att. Werner, in coordination with Judge Ninfo, with whom he had ex-parte contact, engaged successfully in abuse of process in furtherance of a cover-up. Such connivance is shown by his egregious and undeniable misconduct at the evidentiary hearing, captured in its transcript attached hereto ([Tri](#) infra) and described in the next section. ([GC:14§A](#) infra)

9. **Att. Devin Lawton Palmer**<sup>39</sup> took over, as appellate attorney, from Mr. Werner in *DeLano*, and participated in the cover-up of the DeLanos’ bankruptcy fraud. (CA:1804, 1895)
10. **Michael J. Beyma, Esq.**,<sup>40</sup> is the attorney for M&T Bank and its Bankruptcy Officer DeLano in *Pfuntner*. M&T “had over \$65 billion in assets as of December 31, 2007, and is one of the 20 largest commercial bank holding companies headquartered in the U.S.”<sup>41</sup>. Att. Beyma is also a partner in Underberg & Kessler<sup>42</sup>, the same law firm in which Judge Ninfo was a partner at the time of his appointment by CA2 to his first 14-year term as bankruptcy judge in 1992.<sup>43</sup> Att. Beyma “was a founding partner of Boylan, Brown LLP in 1974”<sup>44</sup>, the law firm<sup>45</sup> in which Att.

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<sup>39</sup> Devin Lawton Palmer, Esq., Boylan, Brown, Code, Vigdor & Wilson, LLP, 2400 Chase Square, Rochester, NY 14604; tel. (585)232-5300, ext. 212; fax (585)238-9012; [dpalmer@boylanbrown.com](mailto:dpalmer@boylanbrown.com); <http://www.boylanbrown.com/attorneys/Devin%20L.%20Palmer.aspx>.

<sup>40</sup> Michael J. Beyma, Esq., Underberg & Kessler, LLP, 300 Bausch & Lomb Place, Rochester, NY 14604; tel. (585)258-2890; fax (585)258-2821; [mbeyma@underbergkessler.com](mailto:mbeyma@underbergkessler.com) and (assistant’s) [breed@underbergkessler.com](mailto:breed@underbergkessler.com); <http://www.underbergkessler.com/Attorneys/Detail/?ID=30>.

<sup>41</sup> [http://Judicial-Discipline-Reform.org/docs/M&TBank\\_2007.pdf](http://Judicial-Discipline-Reform.org/docs/M&TBank_2007.pdf); for a current description of M&T, see <https://www.mtb.com/aboutus/Pages/WhoIsMT.aspx>. See also [fn. 36](#) supra.

<sup>42</sup> <http://www.underberg-kessler.com/>

<sup>43</sup> [http://www.nywb.uscourts.gov/about\\_judge\\_ninfo\\_46.php](http://www.nywb.uscourts.gov/about_judge_ninfo_46.php)

<sup>44</sup> <http://www.underberg-kessler.com/Attorneys/Detail/?ID=30>

<sup>45</sup> Boylan, Brown, Code, Vigdor & Wilson, LLP; <http://www.boylanbrown.com/>

Werner was a partner and is currently of counsel<sup>46</sup>. Att. Beyma engaged, just as Att. Werner did, in egregious, undeniable misconduct, at the evidentiary hearing, reported in the attached transcript (Tr:1 infra) and described below. (GC:14§A infra) Judge Ninfo allowed them to do so, for after all, they were all defending their own interests and those of M&T Bank, without doubt one of their largest clients. None was deterred by their duty to avoid conflict of interests and the appearance of impropriety. On the contrary, they benefit from impunity through the abuse of judicial power and the self-preservation interest of those complicitly in the know by ensuring that everybody involved in misconduct is „in the family“ of insiders.

11. **Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee**<sup>47</sup> is in the family too. Her office is just above Judge Ninfo’s chambers and courtroom in the same small federal building in Rochester, NY. It is a little, cozy place where they can meet day in and day out in the parking lot, the lobby, the corridors, the elevators, the food areas, and, of course, their more private office and chambers. What a propitious setting for professional and personal relationships to intertwine tightly enough until they become a web of confidences about misconduct and its benefits that nurture the coordination of riskless misconduct. Tangible, daily, immediate contacts among physical insiders of such a place suffocate abstract, legal relationships to outsiders, particularly those in faraway places, such as Dr. Cordero, who resides in NY City, who initially are nothing but a blot of ink on a piece of paper and subsequently become nothing more than a one-time pro se party, deemed too blurred a figment of law to have the necessary consistency to be a credible match for the concreteness of face-to-face contacts. Repeated improper contacts give rise to the exchange of information about past and on-going misconduct so that they produce actual knowledge and impute knowledge in those whose duty it is to find out but who indulge in willful ignorance. The heat of self-interest that they generate burns away any sense of duty, objectivity, and impartiality. It energizes the process of coordination that fuses officers of the court into a family of misconducting insiders with a warm operational home in a little, cozy federal building.
12. Trustee Schmitt plays a key role in keeping a small, closely-knit family. She participates in selecting standing trustees and is the direct supervisor of Trustees Reiber and Gordon. She has allowed them to amass their unmanageable number of thousands and thousands of cases despite

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<sup>46</sup> <http://www.boylanbrown.com/attorneys/Christopher%20K.%20Werner.aspx>

<sup>47</sup> Kathleen Dunivin Schmitt, Esq., Assistant U.S. Trustee, U.S. Department of Justice, 100 State Street, Suite 609, Rochester, NY 14614; tel. (585)263-5812, fax (585)263-5862; <http://www.justice.gov/ust/r02/rochester.htm>.

the evidence that such heavy burden impairs their performance and is not justified by budgetary considerations since standing trustees are not government employees on a fixed salary, but rather private agents that work for a per case fee and on commission. Hence, the more cases, the more money. (§131 infra) By the First Rule of Misconduct Coordination, it is easier, safer, and more beneficial to engage in misconduct with the smallest number of people, except to grow the „business“, so that when it comes to dividing the pie each should get a bigger slice, such as when...

13. **James W. Weidman, Esq.**,<sup>48</sup> the attorney for Trustee Reiber, was allowed by Trustee Schmitt to conduct the meetings of creditors, including that of the DeLanos, in her own office even though a trustee is required to conduct such meetings personally, a requirement so important that failure to comply with it is one of the causes under 28 C.F.R. §58.6(a)(1) and (11)<sup>49</sup> for removing a trustee from office. In perfect coordination, at that same time Trustee Reiber was downstairs using Judge Ninfo's courtroom to conduct his own business with other debtors. (GC:45§2) So well coordinated was Att. Weidman with the other insiders of the family that he only allowed Dr. Cordero to ask of the DeLanos two questions before terminating the meeting abruptly because Dr. Cordero would not answer Att. Weidman's unjustifiable question to state how much he knew about the DeLanos having committed bankruptcy fraud. That meeting was officially tape-recorded by Trustee Reiber and Att. Weidman, and the tapes were kept by Trustee Schmitt, as they are supposed to. However, when Dr. Cordero exercised his right to request a copy of them, Trustee Schmitt manipulated the tape to remove the part recording the DeLanos' meeting. So she engaged in tampering with the evidence of Att. Weidman's triggering of the cover-up of the DeLanos' bankruptcy fraud.
14. **Former U.S. Trustees for Region 2, Carolyn S. Schwartz and Deirdre A. Martini, and current incumbent Diana G. Adams**<sup>50</sup> were or are responsible for supervising Trustee Schmitt and, through her, Trustees Reiber and Gordon. They have been informed of these trustees' misconduct and being served by Dr. Cordero with his papers in both *Pfuntner* and *DeLano*. (e.g. A:101; D:77; SApp:1512, respectively) Nevertheless, instead of investigating the evidence of misconduct, they have either tried to prevent any investigation or deliberately ignored the facts

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<sup>48</sup> James W. Weidman, Esq., Winton Court, 3136 Winton Road South, Suite 206, Rochester, NY 14623-2928; tel. (585)427-7225.

<sup>49</sup> [http://Judicial-Discipline-Reform.org/docs/28\\_cfr\\_58.pdf](http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf)

<sup>50</sup> <http://www.justice.gov/ust/r02/>

by never once responding to his communications.<sup>51</sup> Their attitude is in line with the findings on which Congress justified the need for adopting the Bankruptcy Abuse Prevention and Consumer Protection Act of April 20, 2005, Pub. L. 109-8, 119 Stat. 23, “Representing the most comprehensive set of reforms in more than 25 years”. Congress stated that:

The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system...[to] respond to...**the absence of effective oversight to eliminate abuse in the system** [and] deter serial and abusive bankruptcy filings. (emphasis added) HR Report 109-31

[http://Judicial-Discipline-Reform.org/docs/BAPCPA\\_HR\\_109-31.pdf](http://Judicial-Discipline-Reform.org/docs/BAPCPA_HR_109-31.pdf)

15. **Paul R. Warren, Esq.**, (fn. 26 supra) owes his clerkship to the bankruptcy judges, WBNY, who appoint the clerk under 28 U.S.C. §156(b)<sup>52</sup>. Among them is Judge Ninfo, who was the chief judge from January 1, 2000 to December 31, 2006 (fn. 43 supra), and thus at the time of the commencement of *Premier*, *Pfuntner*, and *DeLano*, and for years thereafter. Presumably the bankruptcy judges can also remove Clerk Warren, just as under 28 U.S.C. §751(a), “[e]ach district court may appoint a clerk who shall be subject to removal by the court”. He repeatedly disregarded objectively unambiguous provisions of law, whether to avoid providing Dr. Cordero public information on the fee paid a trustee and an auctioneer (¶4 supra); to deprive him of the right to have default judgment entered against Premier Owner Palmer (*id.*); or to prevent him from obtaining transcripts incriminating insiders in blatant disregard for the law and the facts and other forms of misconduct. Clerk Warren’s disregard for his duties worked consistently in line with Judge Ninfo's unlawful support of the insiders and only to the detriment of Outsider Dr. Cordero. (in *Pfuntner*, A:334, 337, 290, 303, 343, 872, 1011, 1012; in *DeLano*: D:106, 232§I, 397§1, 416§F; Add:692, cf. 695; 831, cf. 836; 839, 922§III, 1084§II; Pst:1264¶22; CA:2072¶¶142-150; see also ¶4 supra)

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<sup>51</sup> Cf. Table of officers that have disregarded their statutory duty to investigate the DeLano Debtors (SApp:1609)

<sup>52</sup> [http://Judicial-Discipline-Reform.org/docs/28usc151-159\\_bkr\\_judges.pdf](http://Judicial-Discipline-Reform.org/docs/28usc151-159_bkr_judges.pdf)

### III. Statement of Facts In Support of the Complaint

#### A. The officially recorded subornation of perjury by Attorneys Werner and Beyma and its egregious disregard by Judge Ninfo illustrate how judicial power is the means that enables overconfident insiders to coordinate their misconduct to run a bankruptcy fraud scheme

16. The irrefutable evidence of attorney misconduct bears an official imprimatur, for it consists of the transcript by the Bankruptcy Court Reporter, Mary Dianetti<sup>53</sup>, of the evidentiary hearing called by Judge Ninfo at his own initiative and held before him in *In re DeLano*, 04-20280, WBNY, (docket at D:496-508j) on March 1, 2005. It is attached hereto at the back (Tr:#) and included in the accompanying CD.
17. At that evidentiary hearing, Mr. DeLano<sup>54</sup> was on the witness stand, to Judge Ninfo's left, while being examined by Dr. Cordero, who remained seated at his table. At the other table, five feet to Dr. Cordero's right, was Insider Werner, appearing as bankruptcy attorney for Mr. DeLano, who was in front of Mr. Werner. In the first bench behind the bar and to Mr. Werner's right, was Att. Beyma, appearing as Mr. DeLano's attorney in *Pfuntner*. So they were positioned thus:

	<b>Judge Ninfo</b>	<b>Mr. DeLano</b>
<b>Law Clerk</b>	<b>Court Attendant</b>	<b>Court Reporter</b>
Megan E. Dorr	Lorraine Parkhurst	Mary Dianetti <sup>55</sup>
	<b>Dr Cordero</b>	<b>Att. Werner</b>
		<b>Att. Beyma</b>

18. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look away from him and toward his attorneys and as Dr. Cordero looked at them he caught one or the other waving their arms to signal answers to Mr. DeLano! (in the *DeLano* file: Transcript, page 28, line 13 to page 29 line 4 = Tr.28/13-29/4:Beyma; 75/8-76/3:Beyma; 141/20-143/16:Werner)<sup>56</sup>

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<sup>53</sup> Bankruptcy Court Reporter Mary Dianetti, 612 South Lincoln Road, East Rochester, NY 14445, tel. (585)586-6392. See the description of her own pattern of misconduct in [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_to\\_JConf\\_CtReporter\\_28jul5.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_to_JConf_CtReporter_28jul5.pdf).

<sup>54</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/DeLano\\_docs.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf) >§II

<sup>55</sup> Judicial Assistant Andrea Siderakis was there also and Dr. Cordero spoke with her when he asked Reporter Dianetti to tell him the number of folds and packs of stenographic paper that she had used to record the evidentiary hearing. (Add:846) While the Reporter counted them, Dr. Cordero asked and Mrs. Siderakis told him that her last name was Greek, from her Greek husband.

<sup>56</sup> Court Reporter Dianetti wrote a substandard transcript in which all people appear to be speaking Pidgin English. She did likewise when she prepared the transcript of the

19. Dr. Cordero protested to Judge Ninfo such utterly censurable conduct: a blatant attempt to suborn perjury. Yet, the Judge found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything. Nevertheless, from his higher seat on the bench only a few feet from the tables, he had an unobstructed view of the two insiders and Dr. Cordero, all of whom were in the Judge's central field of vision. So it was impossible for him not to catch the distraction of either of them flailing their arms at Mr. DeLano. On the contrary, from the vantage point of his bench, the normal reaction of an impartial person would have been an incredulous exclamation of '*What are you talking about?! They are in front of my eyes and I saw them do no such thing!*' Now imagine the outburst of such an impartial judge the third time Dr. Cordero had protested opposing counsel signaling that the judge had seen not to have taken place at all. Judge Ninfo had no such outburst because he could not flatly deny the occurrence of what the other people in the courtroom had so undeniably seen occur. So he covered up for the other insiders by pretending that he had not seen them flail their arms at Mr. DeLano.
20. Equally telling is the counter-expected reaction of Atts. Beyma and Werner: Neither of them had the normal, reflexive reaction of people accused of doing something liable to cause their being held in contempt, that is, to blurt an indignant denial, and all the louder if they were innocent. Instead, both remained silent. These insiders felt no need to defend themselves given that they had the best possible defender: Fellow Insider Judge Ninfo. Hence, they were not even asked the question that an impartial person in authority would have asked who had received a complaint about the contemptuous conduct of other persons in his presence: Did you do it? The Judge did not want to find out either. So Insiders Werner and Beyma were not warned not to signal answers with their arms to Mr. DeLano, which implicitly encouraged them to repeat their perjury-suborning conduct despite Dr. Cordero's outraged protest. Thereby Judge Ninfo showed that he would allow anything to go, however violative of due process, so long as it went in favor of the insiders. In what court where the judge and all the parties were unrelated would the attorneys for one party ever dare do something so dishonest and risky even once, let alone several times? Since Atts. Beyma and Werner were allowed to do so in open court and for the record, what

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evidentiary hearing in *DeLano*, at which the participating parties, including Dr. Cordero were present in the courtroom. On the significance of the acceptance of such perfunctory work, see Dr. Cordero's appeal to the Judicial Conference of the U.S. for the investigation and replacement of the Reporter.

[http://Judicial-Discipline-Reform.org/docs/DrCordero\\_to\\_JConf\\_CtReporter\\_28jul5.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_to_JConf_CtReporter_28jul5.pdf)

would they not feel confident to do with Judge Ninfo's approval in private elsewhere in that little, cozy federal building (§11 supra) and beyond?

21. The fact is that the Insiders did not incur any risk at all. So much so that the official transcript shows that Judge Ninfo abandoned his duty to impartially take in evidence and behaved as Chief Advocate for Mr. DeLano, while his lawyers adopted the subservient attitude of second chairs. Who ever heard that neither of two lawyers for a party went through an evidentiary hearing that lasted more than five hours without ever raising a single objection? They did not have to because Judge Ninfo went so far to protect their common clients -namely, Mr. DeLano, on the bench, and his employer, the wealthy M&T Bank, represented by Att. Beyma- as to coach Mr. DeLano how to answer Dr. Cordero's questions. So the Judge's disingenuous denials that he had not seen the reprehensible signaling that occurred several times right before his eyes cast an insidious meaning on his emphatic admonition to Mr. DeLano that „you are not listening to Dr. Cordero's questions and you have to “think about the answer”. (Tr.97/17-98/12, 114/9-115/2). What is more likely: to have to think a truthful answer or to “think” how to fabricate a lie for an answer?
22. The hearing was a sham. The insiders had to win it at all cost, which they did. Why? Why did they behave with such blatant disregard for their duties as officers of the court? It is time now to state the facts from the beginning of *Premier*, *Pfuntner*, and *DeLano*, for they evince a series of acts so blatantly contemptuous of the law and the facts and so consistently in favor of the insiders and injurious to the outsider, that is, Dr. Cordero, the one-case, pro se party who lives in the far off City of New York, as to form a pattern of non-coincidental, intentional, and coordinated misconduct from which a reasonable person informed of the facts can realize what their driving force was: the running of a bankruptcy fraud scheme.<sup>57</sup> (D:392§I)

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<sup>57</sup> On how a bankruptcy fraud scheme works and generates lots money, see A:1146§V, 1666§1; and [http://Judicial-Discipline-Reform.org/Follow\\_money/How\\_fraud\\_scheme\\_works.pdf](http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf).

## **B. The *Premier* Case: reckless liquidation leads to the disappearance of assets and non-disclosure of fees paid**

- 1) In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and avoids a review of his performance and fitness to serve by filing false and defamatory statements about Dr. Cordero with Judge Ninfo and his supervisor, Trustee Schmitt**

23. Dr. Richard Cordero, Esq., who resides in NY City, entrusted his household and professional property, valuable in itself and cherished to him, to a moving and storage company in Rochester, NY, in August 1993, and from then on paid it storage and insurance fees. Early in January 2002, he contacted Mr. David Palmer (fn. 22 supra), the owner of the company storing his property, Premier Van Lines, Inc. (fn. 21 supra), to inquire about it. Mr. Palmer and his attorney, Raymond Stillwell, Esq.<sup>58</sup>, assured him that his property was safe and in his warehouse at Jefferson Henrietta Associates in Rochester<sup>59</sup>, which was owned and managed by Mr. David Dworkin<sup>60</sup>. (A:18) Only months later, after Mr. Palmer had disappeared, did his assurances reveal themselves as lies: As far back as March 5, 2001, he had filed for bankruptcy *-In re Premier Van Lines, Inc.*, 01-20692, WBNY (dkt. at A:565-578a; *Premier*)-, a fact that he kept from Dr. Cordero just as he hid the fact that in December 2001 Kenneth W. Gordon, Esq., the standing Chapter 7 Trustee (¶3 supra), had been appointed to liquidate Premier. What is more, Mr. Palmer had negligently handled Dr. Cordero's property, for it was eventually determined not to be in Mr.

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<sup>58</sup> Raymond C. Stilwell, Esq., Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, (A:18); now known as Adair Law Firm, LLP; tel. (585)419-9000, fax (585)248-4961; <http://www.adairlaw.com>; [rcstilwell@adairlaw.com](mailto:rcstilwell@adairlaw.com).

<sup>59</sup> Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607; tel. (585)442-8820; fax (585)473-3555.

<sup>60</sup> David Dworkin, manager of the warehouse of Jefferson Henrietta Associates in Rochester, NY, and of Simply Storage, tel. (585)442-8820; officer also of LLD Enterprises, tel. (585) 244-3575; fax (716)647-3555. From the Jefferson Henrietta warehouse Mr. Palmer operated Premier at some point in time. Mr. Dworkin lied to Dr. Cordero about his property being safe and in his warehouse, even billed him for storage fees (A:91-93), and concealed from him the fact that Premier was not only in bankruptcy, but also in liquidation. However, it turned out that Dr. Cordero's property was never at Mr. Dworkin's warehouse because it had been abandoned by Mr. Palmer at Mr. Pfuntner's warehouse. (A:79, 81, 88, 90-92)

The attorney for both Mr. Dworkin and Jefferson Henrietta at the pre-trial conference and still today is Karl S. Essler, Esq., Principal at Fix Spindelman Brovitz & Goldman, P.C., 295 Woodcliff Drive, Suite 200, Fairport, NY 14450; tel. (585)641-8000, ext. 242; fax (585)641-2702; [kessler@fixspin.com](mailto:kessler@fixspin.com); <http://fixspin.com/attorneys/karl-s-essler/>; <http://fixspin.com/>.

Dworkin's Jefferson Henrietta warehouse. Nobody knew the property's whereabouts.

24. As he kept searching for his property, Dr. Cordero was referred to Trustee Gordon. (A:2) He did not know the Trustee because the latter had failed, just as Mr. Palmer had, to give him notice of the liquidation. Yet, Dr. Cordero was a creditor of Premier as a client of that company, which had custody of his property and the contractual responsibility for its safekeeping. Worse still, the Trustee did not provide Dr. Cordero any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him. (A:16, 17)
25. Eventually Dr. Cordero found out from third parties (A:48, 49; 109, fn. 5-8; 352) that Mr. Palmer had abandoned Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfunter (fn. 31 supra). However, the latter refused to release his property lest Trustee Gordon sue him; he too referred Dr. Cordero to the Trustee. When Dr. Cordero contacted him again, not only did the Trustee fail to provide any information or assistance in retrieving his property, but also enjoined Dr. Cordero not to contact him or his office anymore. (A:1, 2)
26. As Chapter 7 trustee, Trustee Gordon is charged with collecting the assets of the debtor's estate in order to distribute them to its creditors and thereby liquidate the estate. (11 U.S.C. §704(a)(1)) (fn. 16 supra) To share in the distribution, the creditors need to be notified thereof by the debtor so that they may file a claim or the debtor may file it for them under 11 U.S.C. §501(c). Since Mr. Palmer failed to do either, it fell to Trustee Gordon to file under that section Dr. Cordero's claim as creditor of Premier; otherwise, he would be discriminating against Dr. Cordero by ignoring his claim and either giving away his share in the distribution to other creditors, leaving it with the debtor, or disposing of it to benefit somebody else.
27. Trustee Gordon failed to make a filing on behalf of Dr. Cordero. Actually, his performance in liquidating Premier was so negligent and reckless that he failed to realize from the docket of *Premier*, the very case to which he had been appointed as trustee, that Premier Owner Palmer had stored his clients' property, such as Dr. Cordero's, in a warehouse owned by Mr. Pfunter (A:433 entry 17 =A:433/17; 434/19, 21, and 23; 437/52) Nor did he examine Premier's business records, to which he had the right to access under 11 U.S.C. §521(a)(4) (¶103 quoted text infra) as well as actual access (A:45,46 [earlier A:48,49]; 109, fn. 5-8; 352). As a result, he failed to discover the income-producing storage contracts that belonged to the estate. (A:442/94 and 95) But if Trustee Gordon did become aware of the existence of such contracts by asking pertinent questions of Debtor Palmer or reviewing Premier's bank accounts and records, which would have

shown that Dr. Cordero was still paying Premier its monthly storage and insurance fees, then the Trustee intentionally failed to notify Dr. Cordero of Premier's bankruptcy and his liquidation of it and to act timely upon such information by filing a claim on his behalf.

28. Dr. Cordero found out who was the judge in charge of the Premier bankruptcy case, namely, U.S. Bankruptcy Judge John C. Ninfo, II, WBNY. (fn. 12 supra) He applied for the Judge to review Trustee Gordon's performance and fitness to serve. (A:7, 8) Since a judge can remove a trustee for cause under 11 U.S.C. §324(a), it is obvious that the judge can review a statement of such cause regardless of what the U.S. trustee may have to say on the subject. Nevertheless, Judge Ninfo pretended that he could not do so at the time and merely passed the complaint on to his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt (§11 supra), whose office is upstairs in the same small federal building as the Judge's courtroom and chambers. (id.; A:29)
29. Dr. Cordero had copied Trustee Gordon on his application to Judge Ninfo to review his performance as Premier's trustee. (A:11) The Trustee submitted to the Judge false statements and statements defamatory of Dr. Cordero to persuade the Judge that "Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application". (A:19; 38) Dr. Cordero sent his rejoinder to Trustee Schmitt. (A:30, 37) All she did in response was a substandard investigation based on a "quick contact" (§78 infra) with Trustee Gordon followed by a letter to Dr. Cordero that was as superficial as it was severely flawed. (A:53) That „quick contact“ was all Trustee Schmitt needed to do to dispose of the matter, for she had been the one who had moved to have *Premier* converted to a liquidation case under Chapter 7 (A:572/53, 60) more than 9 months after Owner Palmer had voluntarily filed it as a reorganization case under Chapter 11. Yet, Mr. Palmer repeatedly failed to comply with his legal obligations during all those months. His manifest disrespect for such obligations should have alerted Trustee Schmitt and led her to make sure that Mr. Palmer had listed all his creditors or to file those claims herself to protect their interests. Moreover, Trustee Gordon had by now worked on the case for 10 months under her supervision. Had Trustee Schmitt found that Trustee Gordon had failed to notify all creditors or file claims on their behalf and negligently and recklessly gone about liquidating Premier, Trustee Schmitt would also have indicted her own performance as trustee and supervisor. Did she in self-interest pervert her judgment in deciding Dr. Cordero's complaint against Trustee Gordon in order to exonerate herself from any blame? (Cf. §35 infra et seq.)
30. Dr. Cordero showed how Trustee Schmitt's decision was plagued with mistakes of fact and

inadequate coverage of the issues raised by analyzing it in detail in his appeal to her supervisor, U.S. Trustee for Region 2 Carolyn S. Schwartz. (¶14 supra; A:101, 102; 551/19) It was all to no avail because Trustee Schwartz would not investigate the performance of Trustee Gordon, let alone remove him as Premier's trustee. (Cf. GC:36§7). By remaining on the case, Trustee Gordon was able to participate in the disappearance of Premier assets and benefit from the failure of the Clerk of Court, Paul R. Warren (¶4 supra), to state fees paid, as the discussion of the *Pfuntner* case will show. (GC:21§C infra)

**C. The *Pfuntner* Case: Coordinated misconduct to protect Trustee Gordon and Premier Owner Palmer from being implicated in the disappearance of assets in *Premier* and exposing the bankruptcy fraud scheme**

- 1) **The commencement of *Pfuntner* led to cross-claims for negligence and reckless trusteeship of Premier against Trustee Gordon, who again made false representations in his motion for dismissal and Judge Ninfo again disregarded them as he did the absence of discovery and the applicable standard of genuine issues of material facts when granting the motion**

31. Mr. Pfuntner too found Trustee Gordon's performance objectionable. Through his attorney, David D. MacKnight, Esq., (¶5 supra), he filed adversary proceeding *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY (dkt. at A:548-564i; *Pfuntner*). (A:21, 22, 56) That case too landed before Judge Ninfo. Moreover, Mr. Pfuntner had been unable to collect fees from his client, Mr. Palmer, who had sought the benefit of the stay on his creditors' collections concomitant with his filing for bankruptcy relief. So Mr. MacKnight tried to recoup those fees from Mr. Palmer's clients. Hence, he also sued them, including Dr. Cordero, never mind that there was no privity of contract between them and Mr. Pfuntner whatsoever and that at least Dr. Cordero had paid his fees to Mr. Palmer. In fact, Att. MacKnight was so negligent in his filing that before conducting "an inquiry reasonable under the circumstances", as required under FRBP 9011(b), he named Rochester Americans Hockey Club, Inc., among the defendants even though that Club had never stored anything in Mr. Pfuntner's warehouse, whether directly or through Mr. Palmer. (A:364; 401§IV; A:514¶19)

32. In answering the claims in *Pfuntner* against Dr. Cordero, the latter cross-claimed against Trustee Gordon. (A:70, 83, 88) So the Trustee moved to dismiss the cross-claims summarily. (A:133, 135) Dr. Cordero applied for Judge Ninfo to defer his decision until trial (A:142, 143) on the strength of a sound reason: Although *Pfuntner* had been commenced two and a half months earlier, neither the required meeting of the parties nor disclosure –except by Dr. Cordero, who disclosed numerous documents (A:11, 13, 15, 34, 45, 63, 68, 90)- let alone any discovery, had taken place. Consequently, the record had not been developed factually. This prevented the summary disposition of the cross-claims given the genuine issues of material facts raised by Dr. Cordero concerning the Trustee's negligence and recklessness in liquidating Premier. (A:148) Moreover, the Trustee's claim of immunity was wrong as matter of law given that "The trustee in a case under this title has capacity to sue and be sued". (11 U.S.C. §323(b)) Since "[t]he

trustee in a case under this title is the representative of the estate”, (§323(a)), which is collected for the purpose of distributing it to the creditors in order to satisfy their claims on the debtor, the trustee represents the interests of the creditors and parties with an interest in such estate distribution. Hence, the trustee is liable for the wrongful representation of the estate, the creditors, and parties in interest.

33. At the hearing, Judge Ninfo blatantly disregarded the legal standard applicable to a dismissal motion and the need for fact-finding before determining whether the Trustee had performed his trusteeship negligently and recklessly. He did likewise as to the issue whether the Trustee had made false and defamatory representations to the court in violation of FRBP 9011(b)(3). Far from showing any concern for the integrity and fairness of judicial process, he even excused the Trustee’s statements as merely “part of the Trustee just trying to resolve these issues”. (A:275) Thereby he condoned the Trustee’s use of falsehood, astonishingly acknowledging in open court his acceptance of unethical behavior, and showing gross indifference to its injurious effect on Outsider Dr. Cordero. The transcript shows that Judge Ninfo reached the predetermined decision to dismiss the cross-claims summarily, the law and the facts notwithstanding. His subsequent conduct and the efforts by other insiders to suppress that transcript confirm it.

**2) Trustee Gordon declared *Premier* to be a case with assets for the creditors, hired an auctioneer with Judge Ninfo’s approval, and then declared the case with no assets; the docket has no explanation for the disappearance of assets; and Clerk Warren failed to disclose the amount of the Trustee’s or the auctioneer’s fees**

34. Right there at the hearing, Dr. Cordero, appearing by phone, gave notice that he would appeal Judge Ninfo’s decision in *Pfuntner* to dismiss his cross-claims against Trustee Gordon. (A:281/13-16) That very day “Trustee’s report of no assets (KST)<sup>61</sup> ([was] Entered: 12/18/2002)” on the *Premier* docket. (A:577/107)

35. It was Trustee Schmitt who a year earlier had moved to convert, rather than dismiss, *Premier* from a Chapter 11 Reorganization to a Chapter 7 Liquidation of assets case. (A:572/55, 60) Presumably, by her choice of motion she had indicated that there were assets. In fact, by that time, the record of the bankruptcy of *Premier* had been built for more than nine months. Trustee Schmitt knew that there were, not just assets, but also a business to sell and to buy. (A:571/50,

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<sup>61</sup> KST are the initials of WBNY Case Administrator Karen S. Tacy;  
[http://www.nywb.uscourts.gov/rochester\\_court\\_directory\\_11004.php](http://www.nywb.uscourts.gov/rochester_court_directory_11004.php)

55) Then Trustee Gordon was appointed. (A:572/63) To be sure, the docket shows that before and after his appointment there were assets for Premier to sell and for a buyer to buy. (A:571/50, 52, 55, 58; 572/70; 573/71, 575/89 [note the reference to “titled vehicles”]; 575/90, 94, 95) After holding a meeting of creditors (11 U.S.C. §§341, 343; FRBP 2004; A:572/63), the Trustee stated officially “This is an asset case”. (A:572/70) In the same vein, the following allegation in Plaintiff Pfuntner’s complaint pointed to the existence of assets:

“17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002.” (A:24)

36. To begin with, this allegation clearly raised a genuine issue of material fact relating to the negligent and reckless performance of Trustee Gordon, as charged in Dr. Cordero’s cross-claims against him, and established the need to resolve it only after discovery. Consequently, it highlights how arbitrary and unlawful it was for Judge Ninfo to disregard discovery together with the standard for deciding Trustee Gordon’s motion to dismiss those cross-claims summarily.
37. The allegation also contains a reference to the fact that seven months after the meeting of creditors there were enough assets for an “Order [97-1], To employ Auctioneer Roy Teitsworth” to be entered after Trustee Gordon’s application for his employment was approved by Judge Ninfo. (A:576/97) But then no entry was ever made concerning Auctioneer Teitsworth’s auction of Premier assets, any proceeds, and their disposition, or how much he was paid for his auctioning or for his readiness to perform under any auction contract or agreement with the hiring Trustee. More telling yet, after the entry of the Trustee’s no-assets report, no other entry reports on any activity conducted by either Trustee Gordon or Trustee Schmitt even though the case was not closed in the following 10 months. (A:577/below 107) Nor is there an entry concerning how Trustee Gordon disposed of the assets previously identified or what event triggered the closing of the case and the payment of his fee. (A:578/above 108) Nevertheless, it is reasonable to assume that the Trustee did not simply sit back to watch how the *Premier* case wound itself up.
38. Therefore, when Trustee Gordon’s no-assets report was filed (A:577/107), Trustee Schmitt had to inquire what Trustee Gordon had been doing for a whole year. Her cause for investigating him was all the stronger because his own asset case declaration and consonant acts during that year

contradicted his unexpected no-assets report. These circumstances only rendered even more compelling the reason to inquire whether he had discharged this specific duty:

U.S. Trustee Manual, §2-2.1.

[T]he trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**". (emphasis added).

[http://www.usdoj.gov/ust/r05/pdfs/Ch\\_7\\_Case\\_Admin\\_Manual.pdf](http://www.usdoj.gov/ust/r05/pdfs/Ch_7_Case_Admin_Manual.pdf)

39. Similarly, his hiring of Auctioneer Teitsworth purportedly to auction assets that then disappeared opened another line of inquiry in connection with this other duty:

Chapter 7 Case Administrative Manual

2-2.1. A chapter 7 case should be administered to maximize and expedite dividends to creditors and facilitate a fresh start for the debtors entitled to a discharge. A trustee should not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. Id.

40. Trustee Schmitt had an independent obligation as his supervisor to investigate why Trustee Gordon had hired Auctioneer Teitsworth and whether either or both had unduly benefited therefrom and, if so, to what extent. She also owed it to the creditors to investigate whether the Trustee had wasted the estate by hiring the Auctioneer or by not distributing to them the proceeds of the auction.

Chapter 7 Case Administration Manual, §2.2.1.

Pursuant to 28 U.S.C. §586(a), the United States Trustee must supervise the actions of trustees in the performance of their responsibilities. The principal duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. The trustee is a fiduciary charged with protecting the interests of the various parties in the estate. Id.

41. The missing information about Premier asset disposition and absence of docket entries were suspicious enough as to provide further causes for Trustee Schmitt to investigate Trustee Gordon. The suspicion arose from a solid source, namely, regulatory provisions,<sup>62</sup> of which she

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<sup>62</sup> Since circa October 17, 2005, a statutory provision furthers the public interest in information and thereby in eliminating bankruptcy misconduct by insiders thus:

11 U.S.C. 589b. Bankruptcy data

(b) Reports. –Each report referred to in subsection (a) [trustee’s final and periodic reports] shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and **maximum possible access of the public**, both by physical inspection at

had to be aware well before Dr. Cordero ever found out.

42. Indeed, Dr. Cordero requested specific information about these matters from the Bankruptcy Clerk, Paul R. Warren, Esq., (¶¶4, 15 supra), and Deputy Todd Stickle. They alleged that such information could not be produced because Dr. Cordero had not provided the docket entry number. (A:834, 836, 872, 1011-1022) However, the docket itself (A:548-564i) patently shows that not all entries have numbers, yet some entries make reference to documents. The latter should have been entered on the docket or a public record pursuant to either FRBP 5003(a) Records Kept By The Clerk or:

FRBP 2013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals

(a) Record to be kept.

The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the firm individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.

FRBP 6005. Appraisers and Auctioneers

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employment of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer....

43. The Advisory Committee Notes on this rule is illustrative of the type of conduct that judges engaged in before the rule, namely, favoritism, and in which they may still engage even if now the beneficiaries of favoritism are “a small select group of [non-Judiciary and non-DoJ] individuals” (¶1 quoted text, supra):

Advisory Committee Notes:

...The second sentence of the former rule is retained to continue to safeguard against imputations of favoritism which detract from public confidence in bankruptcy administration.

44. It follows that Trustee Schmitt’s failure to investigate Trustee Gordon upon not just Dr. Cordero’s initial request (A:37, 38), but also the Trustee’s questionable conduct, warranted in

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one or more central filing locations, and by electronic access through the Internet or other appropriate media. (emphasis added)

turn her being investigated either for favoritism or worse yet, for participating in the cover-up of his and her own misconduct. This is particularly so because the misconduct of other insiders warranted their being investigated too. Was there a common motive and activity? Let's see.

**3) The efforts of Trustee Gordon, Clerk Warren, Judge Ninfo, and other court officers to prevent at all cost an administrative investigation and appellate review of *Premier* and their role in the liquidation of the assets**

45. Clerk Warren issued on December 30, 2002, Judge Ninfo's order dismissing at the December 18 hearing Dr. Cordero's cross-claims against Trustee Gordon. (A:151) When it arrived in New York City after the New Year's holiday, Dr. Cordero mailed to the Bankruptcy Court, as required, the notice of appeal to the District Court the next Thursday, January 9, timely under FRBP 8002(a). (A:153) It was filed in the Bankruptcy Court the following Monday, January 13. (A:1381) Trustee Gordon moved to dismiss it as untimely filed (A:156), even though under FRBP 9006(e) "notice by mail is complete on mailing". (A:164§II; 247§A).
46. Nevertheless, Dr. Cordero moved under FRBP 8002(c)(2) to extend time to file the notice. The Trustee himself acknowledged in his brief in opposition that the motion to extend had been filed timely on January 29. (A:235) No doubt, he had checked the docket to see whether he could resort to the same technicality of untimeliness to escape again liability for his negligent and reckless performance as Premier's trustee, just as when he had claimed that the notice of appeal had been filed untimely on January 13. (A:1245¶c) He would not have volunteered, much less simply assumed, that the motion to extend had been filed timely unless he had convinced himself that it was so. Nevertheless, Judge Ninfo disregarded the law and the facts once more and arbitrarily stated that it had been filed untimely on January 30 (A:241). Thereby the Judge conjured up an excuse for sustaining his dismissal of Dr. Cordero's cross-claims against Trustee Gordon. The latter kept silent and thus joined in, and benefited from, a travesty of justice by Judge Ninfo and the manipulation of the docket by Clerk Warren and his deputies<sup>63</sup>.
47. In so doing, Trustee Gordon and Clerk Warren violated their duty under the NYS Unified Court System, Part 1200, Rules of Professional Conduct, which provides thus:

**RULE 8.4: Misconduct (emphasis added)**

A lawyer or law firm shall not:

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<sup>63</sup> On the manipulation of the docket by Clerk Warren and his deputies, see below and also A:684§1, 702§F, 1244§II, and 1372¶¶141-150. Cf. A:261-262, 283, 288.

- (a) violate or attempt to violate the Rules of Professional Conduct, **knowingly assist** or induce another to do so, or do so **through the acts of another**;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (f) **knowingly assist a judge** or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (g) [discrimination]
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

48. Trustee Gordon unwittingly revealed his motive for having handled Premier's liquidation negligently and recklessly when in his "Memorandum of Law in Opposition to Cordero's Motion to Extend Time to Appeal" he stated: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is \$60.00."<sup>64</sup> (A:238-239) What the Trustee was implicitly saying was that he had no financial incentive to do his job and did not recognize that his "fiduciary's obligation is to render loyal and disinterested service which his position of trust has imposed upon him".<sup>65</sup>

49. But why did Trustee Gordon ever think that arguing how little he would earn from liquidating Premier would in Judge Ninfo's eyes excuse his having done a hack job? After having brought thousands of cases before the Judge (fn. 12 supra), the Trustee knew that the Judge condoned his attitude of working as trustee only for the money and lacking any sense of fiduciary responsibility toward those for whose benefit he was supposed to act, namely, the creditors and parties in interest. Bound by a complicit relationship, neither deemed that they owed a duty of

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<sup>64</sup> This statement, based on 11 U.S.C. §330(b), does not exclude the application under subsection (a)(1)(A) and (B) for "reasonable compensation for actual, necessary services rendered by the trustee...and reimbursement for actual, necessary expenses". Consequently, the question of how much Trustee Gordon was paid under any concept for his work as trustee for Premier is valid and still remains unanswered. If such application was made, it had to comply with Appendix A to Part 58 [28 C.F.R.]-Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330. These Guidelines provide that "(a)(2) The United Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994". 61 FR 24890, May 17, 1996. The text of the Appendix is found in the Bankruptcy Code by West, fn. 16 supra.

<sup>65</sup> Revision note to §330. Compensation of officers, in the 1978 Senate Report 95-989. <http://uscode.house.gov/pdf/2008/2008usc11.pdf>

trust to all parties, including One-time, Pro se Outsider Dr. Cordero. They only understood their common motive: money. What they owed to each other was what all insiders still do among themselves, to wit, to protect each other, for if one falls, he or she can bring down the others. That is why Premier Owner Palmer, who knew how and for whose benefit his company's assets had been disposed of, had to be protected from any liability and any risk thereof. Consequently, all the insiders had to do their part in keeping him away from the court. (Cf. [fn. 88](#) infra)

#### **4) Clerk Warren and his Case Administrator disregarded their duties in handling Dr. Cordero's application for default judgment against Premier Owner Palmer**

50. Mr. Palmer lied to Dr. Cordero about the safety and whereabouts of his property, which he had abandoned at Mr. Pfunter's warehouse, even though he continued to take in his storage and insurance fees. So Dr. Cordero impleaded him in *Pfunter* as third party defendant. (A70, 78§A, 87§§A-B) As debtor in *Premier* (A:433/13, 12), Mr. Palmer was already under the bankruptcy court's jurisdiction. What is more, he had filed a voluntary bankruptcy petition, which means that he had been the one to subject himself to the court's jurisdiction in order to receive its protection from creditors. Yet, he never answered the summons or a single paper served on either him or his attorney, Mr. Raymond Stilwell<sup>66</sup>, by Dr. Cordero, and never appeared in court, whether in person or through an attorney. As a result, Dr. Cordero timely applied on December 26, 2002, under FRCP 55 for default judgment for a sum certain. (A:290-296) (A:294, 1392)
51. Under Rule 55, Bankruptcy Clerk Paul Warren, an attorney,<sup>67</sup> had an unconditional obligation upon receiving such an application: "the clerk **shall** enter the party's default". (emphasis added; ¶4 supra) Yet, he failed to do so. Nor was any communication sent from either his office or any other to Dr. Cordero concerning his application. So he called both the District and the Bankruptcy Courts. In the latter, Case Administrator Karen Tacy<sup>68</sup> told him that his application was just in the chambers of Judge Ninfo, who had not taken action on it because he considered the issue of damages premature. It should be noted that the issue of damages does not alter in any way whatsoever the clerk's unconditional duty to enter default, for the duty flows from the

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<sup>66</sup> Raymond C. Stilwell, Esq., Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, (A:18); now known as Adair Law Firm, LLP; tel. (585)419-9000, fax (585)248-4961; <http://www.adairlaw.com>; [rcstilwell@adairlaw.com](mailto:rcstilwell@adairlaw.com).

<sup>67</sup> [http://www.nywb.uscourts.gov/rochester\\_court\\_directory\\_11004.php](http://www.nywb.uscourts.gov/rochester_court_directory_11004.php)

<sup>68</sup> Id.

failure of the summoned party to appear and answer the summons. Entry of default simply certifies that fact. So, why did Clerk Warren and Case Administration Tacy even show Judge Ninfo Dr. Cordero's application for defaulting Mr. Palmer?

52. Dr. Cordero wrote to Judge Ninfo stating the grounds why the application should be granted and requesting that to effectuate such grant he make the corresponding recommendation and transmit it to the District Court, which was the one with the authority to enter default judgment. (A:302) Indeed, it was not for Judge Ninfo to become the advocate of Mr. Palmer, who had shown contempt for judicial process –that is, when it did not protect him from his creditors- by ignoring the summons, the complaint, and every other paper served on him or his attorney. Rather, if after being defaulted Mr. Palmer wanted to contest damages on any grounds, then he had to do what any other person dealing at arm's lengths with all the other parties before an unbiased court would have to do: appear and defend himself. But that was precisely what Judge Ninfo, Clerk Warren, and the other insiders could not allow to happen; so they protected Mr. Palmer.
53. It was only on February 4, that Clerk Warren entered default against Mr. Palmer. (A:303) That was 41 days after Dr. Cordero had applied for it. (A:290) The Clerk lacked any legal justification for his delay (A:335, 337)...but not a motive, for it was not by chance that he entered default on that date. It was on February 4, that Judge Ninfo made his recommendation to District Judge Larimer, his Colleague upstairs in the same little, cozy federal building (§11 supra), not to enter default judgment against Mr. Palmer. (A:304) This showed that Clerk Warren was taking orders from Judge Ninfo in disregard of his duty under law.
54. Likewise, Clerk Warren's deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (A:553/51; 554/46, 49, 50, 52, 53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer. The arbitrary placement, numbering, and untimeliness of docket entries are evidence that these officers of the court engaged in docket manipulation that served the same purpose as Judge Ninfo's recommendation to Judge Larimer, that is, to deny Dr. Cordero's default judgment application and thereby protect Mr. Palmer and themselves. The insiders were acting intentionally; they had coordinated their misconduct. (A:640§§K, L; 1370§D)<sup>69</sup>

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<sup>69</sup> See also Clerk Warren's pattern of disregard for his duties and unlawful attempt to deprive Dr. Cordero of transcripts, GC:52§6) infra.

5) **District Judge Larimer joined the insiders' coordinated misconduct to protect themselves by denying the application for default judgment against a party that could involve them in the disappearance of assets and the non-publication of questionable fees**

55. District Judge Larimer accepted Judge Ninfo's recommendation not to enter default judgment against Premier Owner Palmer based on Judge Ninfo's astonishing prejudgment that upon inspection of Dr. Cordero's property that had been stored by Premier "it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993". (A:306) To make this statement Judge Ninfo disregarded the only available evidence concerning the condition of the property and which led to the reasonable conclusion that it had sustained damage or loss. (A:324¶¶46-50)

56. Dr. Cordero raised a motion (A:314) to request that Judge Larimer disregard Judge Ninfo's imposition of the arbitrary requirement to establish damage or loss sustained by his property and his prejudgment of the property's condition, and abide by the law by entering default judgment. In his letter accompanying his motion, he reproduced the warning in bold letters written across the face of the summons (A:311):

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

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**PAUL R. WARREN**

*Clerk of the Bankruptcy Court*

57. Judge Larimer did not even acknowledge either the motion or the letter. Instead, he stated that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate...the Bankruptcy Court is the proper forum for conducting [that] inquest". (A:339-340) The District Judge did not cite any authority at all for anything, let alone for disregarding the plain language of FRCP 55 and imposing a requirement not only not contained therein, but also contrary to the rationale for default judgment, namely, that the defendant received notice of judicial process against him, ignored it by neither timely appearing and defending it, and thereby consented by his inaction to satisfy the claim against him.

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deprive Dr. Cordero of transcripts, [GC:48§6](#) infra.

58. Worse yet, Judge Larimer compounded his rubberstamping of Judge Ninfo's recommendation by basing his own March 11 order denying entry of default judgment on a gross mistake of fact, to wit, that the application for default judgment did not involve a sum certain. (A:339) To make that mistake, he disregarded five papers stating that the application did involve a sum certain:
- a. the Affidavit of Amount Due (A:294);
  - b. the Order to Transmit Record and Recommendation (A:304);
  - c. the Attachment to the Recommendation (A:306);
  - d. Dr. Cordero's March 2 motion to enter default judgment (A:314, 327¶¶57-58), and
  - e. his March 19 motion for rehearing re implied denial of his earlier motion (A:342, 344§6).
59. Dr. Cordero moved the District Court for a rehearing (A:342) of his unanswered motion, denied by implication, so that Judge Larimer could correct his outcome-determinative mistake of fact and acknowledge that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement was perfected pursuant to the plain language of FRCP 55. In addition, he pointed out that Judge Ninfo could not provide the "proper forum" to conduct any such "inquest" precisely because he had prejudged its outcome in disregard of the only evidence available pointing to the loss and damage of his property.
60. All reasoning was to naught, for Judge Larimer dashed off a no-reason, "in all respects" denial of the motion. (A:350) His role was to support the insiders by protecting Mr. Palmer. Why?
61. The insiders had and still have to prevent Mr. Palmer from being investigated. If he were deposed or examined under oath, he would be asked about what he told Trustee Gordon about his clients or what the Trustee revealed that he knew about them. Those clients had contractually entrusted their property for storage and paid storage and insurance fees to him. They could legally file claims against Mr. Palmer as creditors in his own bankruptcy of Premier, either because he had failed to maintain such property under the safety conditions provided for in the contract or because he had abandoned it, as in the case of Dr. Cordero's. Mr. Palmer's testimony could support the charge that the Trustee had performed negligently and recklessly to the detriment of Mr. Palmer's clients, to whom the Trustee owed a fiduciary duty as creditors or parties in interest.
62. Even more risky from the insiders' point of view, Mr. Palmer could tell what happened between the Trustee's surprising "no-assets report" entered on December 18 (A:577/107), and the next entry over 10 months later concerning the Trustee's "Report of No Distribution", the closure of the case, and even the "fee" or other compensation that the Trustee was paid (A:577/below 107).

In particular, Mr. Palmer could testify to what happened with the assets of Premier, their auction by Auctioneer Roy Teitsworth, and the proceeds thereof. He could take the 5<sup>th</sup> Amendment in order not to incriminate himself in the crime under 18 U.S.C. §152(5-7) of „knowingly and fraudulently receiving, transferring, or concealing any of the property involved in a case under title 11 or obtaining a benefit for acting or forbearing to act in such case“; or he could confess to having split the proceeds of the auction or being allowed to keep the assets in exchange for payment to insiders. In either case, he would trigger a criminal investigation. It would start with him, but would not stop there, for he could engage in plea bargaining in order to secure a measure of immunity (11 U.S.C. §344 and 18 U.S.C. §6001 et seq.) or leniency in exchange for testifying against „bigger fish“ coordinating their misconduct as insiders of the legal and bankruptcy systems in thousands of cases involving a huge aggregate dollar value to further a common motive: to benefit unlawfully from a bankruptcy fraud scheme.(fn. 57 supra)

63. The investigation of such scheme, not to mention incrimination in it, could have devastating rippling consequences. It could lead to the reopening of *Premier* due to fraud (11 U.S.C. §350(b)) and the removal of Trustee Gordon not just from that case, but automatically also from all his thousands of cases. (11 U.S.C. §324; 28 C.F.R. §58.6(a)(1) and (11)<sup>70</sup>) Any insider could deem it in his or her interest to cut a deal with the authorities to implicate yet „bigger fish“ in the scheme. “Bigger fish” could include, not just Judge Ninfo<sup>71</sup> and Judge Larimer (A:1332§7; Add:1007§V), but also the circuit judges who have protected them from any investigation and disciplinary action and who reappointed Judge Ninfo in 2005 despite compelling evidence of his bias, arbitrariness, and abuse of power in *Premier*, *Pfuntner*, and *DeLano* to participate in the scheme or his toleration of it<sup>72</sup>. The much “bigger fish” could be, as discussed below, Former Circuit Judge Sonia Sotomayor, who was the presiding judge in *DeLano* (CA:2180) and is now Justice Sotomayor; and Justice Ginsburg, who as the Circuit Justice (28 U.S.C. §42, 45(b)) for the Second Circuit has supervisory responsibility for it, is kept current of developments affecting the administration of justice in the Circuit, was informed repeatedly of the evidence of the

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<sup>70</sup> [http://Judicial-Discipline-Reform.org/docs/28\\_cfr\\_58.pdf](http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf)

<sup>71</sup> a. [http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition\\_25feb9.pdf](http://Judicial-Discipline-Reform.org/JNinfo/25Committee/2DrCordero-petition_25feb9.pdf);  
b. [http://Judicial-Discipline-Reform.org/docs/DrRCordero\\_v\\_JJNinfo\\_WBNY\\_11aug3.pdf](http://Judicial-Discipline-Reform.org/docs/DrRCordero_v_JJNinfo_WBNY_11aug3.pdf)

<sup>72</sup> [http://Judicial-Discipline-Reform.org/docs/1DrCordero\\_v\\_reappoint\\_JNinfo.pdf](http://Judicial-Discipline-Reform.org/docs/1DrCordero_v_reappoint_JNinfo.pdf) of 17mar5  
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scheme in *Pfuntner* and *DeLano*, and had the duty to report it to the U.S. attorneys for the sake of the integrity of judicial process.<sup>73</sup> (18 U.S.C. §3057(a); A:1265<sup>74</sup>)

64. The scandal would shake the Federal Judiciary to its foundation. The biggest fish would wield their ultimate judicial power, pull the strings of their most influential connections in the Department of Justice and Congress, and shift all the blame on the small fish in the recesses of the pond. The small fish could soon find themselves kicked out of the water and fluttering convulsively on the shore. That explains why in order to avoid such risk, Judge Ninfo had to protect the misconduct of every insider and be biased against Dr. Cordero at every turn.

**6) Att. MacKnight and Client Pfuntner disobeyed two orders of Judge Ninfo that they had sought, approached him ex-parte, and made disingenuous submissions to him, but benefited from their insider status when the Judge disregarded the law and the sanctions requested by Dr. Cordero while imposing on him strict discovery orders**

65. At the only meeting ever held in the adversary proceeding, the pre-trial conference<sup>75</sup>, Judge Ninfo orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfuntner's warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The Judge stated that within two days of receiving them, he would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to Judge Ninfo and the parties (A:365, 368). Nonetheless, the Judge never answered that letter or informed Dr. Cordero of the most convenient date.

66. Dr. Cordero asked why at a hearing on February 12, 2003. The Judge said that he was waiting to hear from Mr. Pfuntner's attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The Judge took no action and the six dates lapsed.

67. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Att. MacKnight contacted Judge Ninfo on March 25 or 26 ex parte –in violation of FRCP 9003(a). (A:372). Reportedly, the Judge stated that he would

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<sup>73</sup> [http://Judicial-Discipline-Reform.org/docs/SCt\\_knows\\_of\\_dismissals.pdf](http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf)

<sup>74</sup> [http://Judicial-Discipline-Reform.org/docs/make\\_18usc3057\\_report.pdf](http://Judicial-Discipline-Reform.org/docs/make_18usc3057_report.pdf)

<sup>75</sup> At the pre-trial conference, Att. Karl Essler (fn. 60 supra) represented Mr. David Dworkin and Jefferson Henrietta Associates, the warehouse that he owned and managed; both had been brought in as third party defendants by Dr. Cordero.

not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfunter to agree mutually.

68. Dr. Cordero raised a motion on April 3 to ascertain this reversal of Judge Ninfo's position and ensure that the necessary transportation and inspection measures were taken. (A:378) On April 7, the same day of receiving the motion (A:557/75, 76) and thus, without even waiting for a responsive brief from Att. MacKnight, the Judge wrote to Dr. Cordero denying his request to appear by telephone at the hearing –as he had been allowed to do on four previous occasions– and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester. (A:386)
69. Then Att. MacKnight raised a motion. (A:389) It was so disingenuous that, for example, it was titled "Motion to Discharge Plaintiff from Any Liability..." and asked for relief under FRCP 56 without ever stating that it wanted summary judgment while pretending that "as an accommodation to the parties" Plaintiff had not brought that motion before. Yet, it was his client, Plaintiff Pfunter, who had sued parties even without knowing whether they had any property in his warehouse, just because their names appeared on labels. (A:364) Dr. Cordero analyzed in detail the motion's mendacity and lack of candor. (A:396, 410) Despite its obligations under Rule 56(g) to sanction a party proceeding in bad faith, Judge Ninfo disregarded Att. MacKnight's disingenuousness, just as he had shown no concern for the false statements that Trustee Gordon had submitted to him to avoid the review requested by Dr. Cordero of his performance as trustee for Premier. How much commitment to fairness and impartiality would you expect from a judge that exhibits an „anything goes“ standard that includes the admission of dishonest statements? If that is what Judge Ninfo allows attorneys to get away with, what will he not allow or ask in-house court officers to engage in?
70. Nor did Judge Ninfo impose on Plaintiff Pfunter and Att. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the Judge's first order to choose among the dates proposed by Dr. Cordero for the inspection of his property at Mr. Pfunter's warehouse. By contrast, when it suited Mr. Pfunter, Judge Ninfo ordered Dr. Cordero to carry out the inspection within four weeks or the Judge would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.
71. Mr. Pfunter and Att. MacKnight agreed with Dr. Cordero that the inspection of his property at

Mr. Pfunter's warehouse in Avon, NY, would take place on May 19, 2003. (A:426, 427, 491, 492) Dr. Cordero informed Judge Ninfo and all the parties of that agreement and the date. (A:490, 493, 494) On May 19, Dr. Cordero flew to Rochester and inspected the property in Avon. He did so in spite of the fact that neither Att. MacKnight nor Client Pfunter showed up for the very inspection that they had urged Judge Ninfo to order. Worse yet, they had taken none of the measures necessary for the inspection. (A:365)

72. At the hearing two days later, on May 21, Dr. Cordero reported on the damage and loss that his property had sustained. His report was uncontroverted and approved by Judge Ninfo. He also moved for sanctions and compensation due to Att. MacKnight's and Mr. Pfunter's failure to comply with the discovery orders. Judge Ninfo asked that Dr. Cordero submit a motion therefor separate from his earlier motion (A:396) and even took the initiative to ask that he resubmit his application for defaulting Premier Owner David Palmer, who had abandoned his property at Mr. Pfunter's warehouse.
73. Dr. Cordero complied with the instruction, moving for sanctions against Att. MacKnight and Mr. Pfunter for disobeying the discovery orders (A:508, 510) and reapplying for default judgment against Mr. Palmer (A:474). Moreover, because of false representations that Att. MacKnight made to Judge Ninfo after the inspection (A:495), Dr. Cordero moved for sanctions against him (A:500, 503). Once again Judge Ninfo protected these insiders from any harm and granted neither the motions nor the application. Far from it, he required Dr. Cordero to travel to Rochester to argue the false representations motion. (A:505) Then he objected to the absence of Dr. Cordero's travel tickets in the discovery sanctions motion. But even though Dr. Cordero provided it (A:730-733), Judge Ninfo still did not grant it.
74. The Judge also raised objections to the proper service of Mr. Palmer. However, the Judge himself had found that "on November 22, 2002, an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint". (A:305, 689§2) After Dr. Cordero's first application to default Mr. Palmer, it was enough for the Judge simply to recommend to his Co-Insider District Judge Larimer that the application not be granted and that Dr. Cordero be forced to inspect his property to determine damage and loss to it (A:306; GC:30§5). But after he requested that Dr. Cordero resubmit it, he had to devise another pretext to deny it again; so he came up with that one about defective service on Mr. Palmer without caring to check his own earlier negative recommendation, whereby he missed his statement

therein attesting to proper service; but if he did check his recommendation and see his own statement, then he disregarded it with wanton indifference to the truth.

75. By showing such blatant bias, arbitrariness, and abuse of judicial power, Judge Ninfo has encouraged the misconduct of insiders, whether attorneys or court staff. Through that showing, he has also given them proof that he will not hesitate to abuse his power either to their detriment if they cross him or to their benefit if they tolerate or even join his misconduct in coordination with other insiders to run a bankruptcy fraud scheme. The degrading effect of the standard of conduct that he has set by example manifests itself in the facts of blatant misconduct by attorneys and others in the *DeLano* case. (GC:41§D infra)

**7) Trustee Schwartz relied on the self-serving statements of Complained-against Trustees Gordon and Schmitt, whereby she intended the reasonable consequences of her misreliance: she joined their cover-up of the bankruptcy fraud scheme and illustrated the Congressional finding of “absence of effective oversight”**

76. After Dr. Cordero made an application to Judge Ninfo to review Trustee Gordon’s performance as trustee of Premier (A:7, 8), and the Judge passed it on (A:29) to Trustee Schmitt, her investigation (A:53) was so flawed that Dr. Cordero appealed (A:101, 102) to her supervisor, U.S. Trustee for Region 2 Carolyn S. Schwartz (¶14 supra). She pretended to rely on the rulings of Judge Ninfo to support her decision. Yet, she only misstated what he did, for it was objectively wrong to affirm that “We understand that the Bankruptcy Court...ruled that Mr. Gordon was not negligent in his administration of this bankruptcy estate” (A:364a) and “I understand that the Bankruptcy Court ruled that Mr. Gordon did not defame you” (A:364b). Far from it, what the Judge did was precisely the opposite, namely, to grant the Trustee’s motion for summary dismissal under FRBP 7012 (A:133-135) and thus, without deciding substantively the cross-claims that Dr. Cordero had brought against him (A:83§F). That is why Dr. Cordero had applied for the deferment of the dismissal motion until trial given that his cross-claims raised genuine issues of material fact that could only be decided after discovery and on the merits. (A:142, 143) But discovery had not even started. Nevertheless, the Judge arbitrarily disregarded the applicable standard of decision so as to grant the motion for the benefit of Trustee Gordon, himself, and the other insiders.

77. In fact, Judge Ninfo’s dismissal order of December 30 (A:151) did not even contain the terms

“negligence” or “recklessness” or “defamation”, nor did it state any reasons for dismissal. It was merely a fiat. Therefore, when in her letter of the following January 9 (A:364a) Trustee Schwartz wrote what „we or I understood“ the Judge to have ruled, her understanding could not possibly have resulted from reading the Judge’s order. Nor was it from reading the transcript of the hearing (A:263), which was not requested orally by Dr. Cordero until the second week of January, not requested in writing until the fourth (A:261); and not sent to him until the end of March (A:283). This only leaves the possibility of Trustee Schwartz having „understood“ what Judge Ninfo had ruled by learning about it in a conversation with the Judge himself during an improper ex-parte contact with him or by relying on hearsay, that is, whatever somebody else told her the Judge had said at the hearing. If the persons on whom she relied to find out about the hearing were Trustee Gordon or Trustee Schmitt, then the information that she received was not only wrong, but also self-servingly so. Her reliance on their information was her fault, though.

78. Indeed, in her letter Trustee Schwartz did not affirm that she conducted an independent investigation, but simply that she reviewed the materials submitted by Dr. Cordero and „Trustee Schmitt’s letter of October 22 (A:53) and the material on which she relied“. However, Trustee Schwartz failed even to notice that the gravamen of Dr. Cordero’s appeal from Trustee Schmitt’s letter was precisely that her investigation was substandard because it consisted of a “Quick contact conducted instead of “thorough inquiry”” (A:107§C) This “thorough inquiry” is what Judge Ninfo had written “I am confident that Ms. Schmitt will make” in his letter (A:29) informing Dr. Cordero that he had referred to her his application for the Judge to review Trustee Gordon’s performance as trustee for Premier. But Trustee Schwartz showed, just as Trustee Schmitt had, a “Failure to realize the inadequacy of a mere chatty supervisory „contact””. (A:121§22) That could only have been the extent of Trustee Schmitt’s „contact“ with Trustee Gordon given that Trustee Schmitt only gave herself one, and at the most two, days before dashing off her October 22 letter (A:53) in response to Dr. Cordero’s detailed analysis and request to her (A:37, 38) to review Trustee Gordon’s performance. Moreover, her own previous letter (A:30) to Dr. Cordero in reaction to the initial review application referred to her by Judge Ninfo indicated the meager extent of her “investigation into this matter”: “we have contacted Mr. Gordon for response”. Any other “part” of that investigation appears from her October 22 letter to have been limited to “speaking with David MacKnight” and learning that Client Pfunter’s was “a Complaint to determine, inter alia, what property stored at the Avon location belongs to whom.” (A:54) Since

that „chatty contact“ was what underlay Trustee Schmitt’s letter on which Trustee Schwartz relied for her January 9 letter (A:364a) to Dr. Cordero, her letter was equally superficial and flawed. To realize how it was a classic example of „garbage in, garbage out“, compare their reliance on such „chatty contact“ and its product with what conducting the “thorough inquiry” that Judge Ninfo had expressed confidence Trustee Schmitt would make would have entailed at a minimum, as described at A:103¶5.

79. Moreover, Trustee Schwartz inexcusably misstated a key issue of Dr. Cordero’s review application and appeal: Quite clearly he did not claim that Trustee Gordon had failed to take possession of his stored property as part of Premier’s estate to subject it to distribution. Rather, he faulted Trustee Gordon for failing to protect his claim against Premier as client-creditor of it by either filing a claim on his behalf or notifying him of his liquidation of Premier so that Dr. Cordero could file his claim and share in the distribution. (cf. A:104§§5-6)
80. Likewise, Trustee Schwartz failed to realize that if she considered satisfactory the “several actions” taken by Trustee Gordon (A:364a 3rd¶), then she indicted him on another key issue of Dr. Cordero’s review application and appeal, i.e., Trustee Gordon’s failure to “furnish such information concerning the estate and the estate’s administration as is requested by a party in interest” (11 U.S.C. §704(a)(7); A:1, 2), to the point of enjoining Dr. Cordero not to contact his office anymore. (A:104§§11, 13, 14, 15; cf. 2, 9¶¶8-9) If it is assumed *arguendo* that Trustee Gordon obtained adequate information through satisfactory “several actions”, then his refusal to provide any information to Dr. Cordero was intentional and blameworthy. The inconsistency of Trustee Schwartz makes the charges of inconsistency leveled against Trustee Schmitt applicable to her too. (A:104§§17, 18)
81. In the same vein, the application/appeal pointed out specifically the numerous instances of Trustee Gordon’s failure to take action and to finally take it only in reaction to Dr. Cordero’s prodding. (A:104§§6, 10, 19, 20) These belated and reluctant actions by Trustee Gordon were what Trustee Schwartz pretended to constitute the satisfactory “several actions” taken by him, for what else was there to constitute such? Let’s see.
82. Trustee Gordon declared *Premier* a case with assets for distribution, spent nine months on the case, hired Auctioneer Roy Teitsworth with Judge Ninfo’s approval, and according to Trustee Schwartz’ own statement, then “the trustee moved to sell the trailers only to learn that they also had liens on them”. (A:364b) Thereby Trustee Schwartz only confirmed the pertinence of Dr.

Cordero's question: "Failure to wonder „what has Trustee Gordon been doing [during all that time]?!“ (A:118§20). Since the objective answer is that he was only getting ready to file a no-assets report (A:577/107) and a Report of No-Distribution (A:577 last entry), which was incompatible with his duty (§§38, 40 supra), it follows that Trustee Gordon's trusteeship of Premier was negligent and reckless.

83. Therefore, the evidence before Trustee Schwartz raised questions that she conveniently failed to investigate: Was hiring Auctioneer Teitsworth a way to create fictitious work for an insider? Was he paid? Was the estate wastefully diminished thereby? Was Clerk Warren's failure to disclose the fees paid part of the cover up? Was Judge Ninfo's denial of Dr. Cordero's application to enter default judgment against Mr. Palmer or even summon him to court part of the cover-up of an unlawful distribution of assets or of the proceeds of their auction? Was the failure to make any entries on the docket concerning the assets to be auctioned part of the cover up of the disappearance of those assets?
84. These and many other incisive questions warranted an investigation by both Trustee Schwartz and Trustee Schmitt had they wanted to get to the bottom of the opaque, questionable, and suspicious conduct of Trustee Gordon, Judge Ninfo, Clerk Warren, and other insiders of the bankruptcy and legal systems. But they preferred willful ignorance limited to „chatty contacts“ among themselves that did not upset their relation to those insiders.
85. It follows that Trustee Schwartz committed the crass managerial offense of limiting what she “reviewed” (A:364a) to the very same people that had the most pressing vested interest in distorting the facts and concealing them under fabricated explanations: Complained-against Trustees and Attorneys Gordon and Schmitt. Her offense was compounded by her own vested interest in preventing her own supervision of her supervisees and appointees from being found so inadequate as to constitute misconduct. Had Trustee Schwartz conducted the type of “thorough inquiry” that Judge Ninfo had been confident Trustee Schmitt would make (§78 supra), she could have found Trustee Gordon involved in the disappearance of Premier assets and in taking undue fees or arranging for “professional persons” (11 U.S.C. §327) or even others to receive them too. Such findings would open the way for more of his 3,383 cases (§3 supra) to be investigated. This would in turn lead straight to Trustee Schmitt being investigated for her deficient or complicit supervision that injudiciously allowed single trustees to concentrate in their hands such an unmanageable number of cases as to make it impossible for them to “collect and reduce to

money the property of the estate...investigate the financial affairs of the debtor...furnish such information concerning the estate and the administration of the estate as is requested by a party in interest”, let alone everything else that a trustee is charged with doing personally. (11 U.S.C. §704(a)(1, 4, 7) et seq.; 28 C.F.R. §58) One after the other, they would be found to have intended the reasonable consequences of their acts: the setting up of a rubberstamping bankruptcy petition mill that by its own nature would inevitably further degenerate into a bankruptcy fraud scheme.

86. By Trustee Schwartz failing to pursue those questions in a “thorough inquiry”, she confirmed a key finding by Congress that led to its passage of the Bankruptcy Fraud Prevention and Consumer Protection Act: “absence of effective oversight”. (¶14 quoted text, supra) It falls now to the Attorney Grievance Committee to investigate her and the other misconducting attorneys.

**D. The DeLano Case: bankruptcy fraud through concealment of assets covered up to make a retirement gift to an insider**

87. M&T Bank (fn. 36 and 41 supra) extended a loan to Mr. David Palmer (fn. 22 supra) and his moving and storage company, Premier Van Lines, Inc., (fn.21 supra). It took a security interest in, among other things, the storage crates that he had bought with the loan proceeds. Mr. Palmer stored some of those crates containing the property of his clients, including Dr. Richard Cordero, Esq., in the warehouse of Mr. James Pfunter in Avon, NY, (fn. 31 supra), and others in that of the Jefferson Henrietta Associates in Rochester, NY, owned and managed by Mr. David Dworkin (fn. 60 supra). At some point after Mr. Palmer filed for bankruptcy relief from his creditors (*In re Premier Van Lines*, 01-20692; (docket at A:565-578a), Mr. Dworkin told M&T Bankruptcy Officer David Gene DeLano (fn. 35 supra) that either M&T moved the Palmer crates out of his warehouse or paid storage fees. Mr. DeLano was working in M&T bankruptcy department collecting money from delinquent commercial borrowers and even liquidating their companies. (Transcript page 17, lines 14-19 = Tr:17/14-19) Actually, he was in charge of the defaulted loan to Premier. Mr. DeLano moved the crates out as soon as possible to cut M&T's losses and did so without regard for the owners of the property. This follows from his own testimony at the evidentiary hearing held at the initiative of and before Judge John C. Ninfo, II, WBNY, (fn. 12 supra) on March 1, 2005. (Pst:1285¶70 and GC:14§A supra)
88. At that evidentiary hearing, Mr. DeLano admitted that he told Dr. Cordero that he had seen the crates with his property in Mr. Dworkin's warehouse and that they were safe, but that in fact he never saw those crates at all. At the time, Dr. Cordero relied on Mr. DeLano's statement only to be filled with anxiety when his property turned out never to have been in Mr. Dworkin's warehouse. Mr. DeLano did not know its whereabouts; neither did Mr. Dworkin; Mr. Palmer had disappeared; and the trustee liquidating Premier, Kenneth Gordon, Esq., (¶3 supra) even enjoined Dr. Cordero not to contact his office to ask about the matter. (A:1, 2, 7) As a result, Dr. Cordero was forced to spend considerable effort, time, and money to figure out and find where his property was. He eventually found it in the warehouse of Mr. James Pfunter. (fn. 31 supra) So after the latter commenced *Pfunter v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, (docket at A:548-564i; GC:21§C supra), Dr. Cordero brought Mr. DeLano into it as a third-party defendant. (A:70, 82§D, 87§A) When Mr. DeLano and Wife Mary Ann, filed for bankruptcy under Chapter 13 (D:23-60), they named Dr. Cordero among their creditors (D:40).

**1) Who the DeLanos are and their incongruous, implausible, and suspicious declarations in their bankruptcy petition**

89. Mr. DeLano is not an average debtor in bankruptcy, but rather the most unlikely one. At filing time, he had worked in financing for 7 years and at two banks as an officer for 32 years: 39 years managing money!...and counting, for he continued working as an officer in precisely M&T bankruptcy department. (Tr:15/17-16/15) As such, he qualified as an expert in how to assess creditworthiness and remain solvent to be able to repay his creditors. Thus, Mr. DeLano is a member of a class of people who should know better than to go bankrupt. For her part, Mrs. Mary Ann DeLano was a specialist in business Xerox machines, and as such a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines. Hence, the DeLanos are<sup>76</sup> professionals with expertise in borrowing, dealing with bankruptcies, and learning and applying technical instructions. They must be held to a high standard of responsibility.
90. Mr. DeLano is certainly among the longest insiders of the local bankruptcy and legal systems. He wanted to end the rainbow of his and his wife's careers in the golden pot of assets that they had been stashing away as they prepared their retirement. The elimination of their debts through a fraudulent bankruptcy petition was the last step in that preparation. So exactly three years before Mr. DeLano, age 62 (Add:939), planned to retire, they filed for bankruptcy under "Chapter 13-Adjustment of Debts of An Individual With Regular Income", thereby avoiding liquidation under Chapter 7 after retirement. Likewise, he used his experience with borrowers that use or abuse the bankruptcy system, his connection with key insiders of both the bankruptcy and legal systems, and his knowledge of how to petition them even wrongfully but successfully for bankruptcy relief.
91. Consequently, their bankruptcy petition warrants close scrutiny. This is particularly so because their declarations in the Schedules A-J (D:29-46) and Statement of Financial Affairs (D:47-53) attached to their petition (D:27-28) are so incongruous, implausible, and suspicious as to raise red flags even for lay persons, such as those that make up juries and examine with a fair mind, general knowledge, and common sense the evidence presented to them. So the DeLanos declared, among other things:
- a. that they had in cash and on account only \$535 (D:31); yet, they also declared that, after

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<sup>76</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/DeLano\\_docs.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf) >§II

their own liberal deductions of living expenses from their monthly income, their monthly excess income was \$1,940 (D:45), and stated, in their Financial Affairs Statement (D:47) and their 1040 IRS forms for 2001-2003 (D:186-188), that they had earned \$291,470 in just the three years prior to their filing;

- b. that their only real property was their home (D:30), bought in 1975 (D:342) and appraised in November 2003 at \$98,500, as to which their mortgage was still \$77,084 and their equity only \$21,416 (D:30)...after making mortgage payments for 30 years! and receiving during that period through a string of eight mortgages (D:342-354<sup>77</sup>; SApp:1654<sup>78</sup>) at least \$382,187, which they did not account for (Add:1057¶53). *Mind-boggling!*
- c. that they owed \$98,092 on credit cards –spread thinly over 18 of them (D:38) to ensure that their issuers would find a write-off more cost-effective than litigation to challenge the discharge in bankruptcy of such debt– while they valued their household goods at only \$2,810 (D:31), although they earned over 100 times -\$291,470- that amount in only the previous three years and had more than that in disposable income in less than two months. 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 year;
- d. that their total assets were worth \$263,456 while their total liabilities only \$185,462 (D:29), yet they proposed to repay only 22¢ on the dollar (D:23, 59¶4.d(2)); but they managed to end up paying less than 13¢ on the dollar<sup>79</sup> (Pst:1174).

92. So what did they do with all their disposable income if allegedly it was not in cash or on account, in home equity, or household goods? Or was it? In answering that question it is very revealing that the DeLanos’ bankruptcy attorneys, Christopher K. Werner, Esq., and Devin Lawton Palmer, Esq. (¶¶8, 9, and 17 supra), knew that the DeLanos had money to pay for their legal

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<sup>77</sup> For each of those mortgages they had to pay closing costs. For example, just for the last known mortgage they had to pay \$3,444. (D:351, 354 lines 1400 and 1602) None of the trustees or any of the judges that had the duty to review the facts could have either competently or honestly believed that Career Banker DeLano would waste on closing costs for eight mortgages more money than the equity he ended up with in his home. They had to ask: “What did you do with all that money received from eight mortgages for which you paid so dearly in closing costs?”

<sup>78</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/DeLano\\_docs.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf) >§§VIII and X

<sup>79</sup> While the DeLanos’ plan provided for paying only 22¢ on the dollar (D:59; 23), what they actually paid was far less than that, as shown by Trustee Reiber’s motion of December 7, 2005 (Pst:1175) to forgive 87.39% of the claims. (Cf. D:508h/169; 508o) This means that they paid less than 13¢ on the dollar, that is, when they paid anything at all.

services far beyond the initial \$1,350 for assisting them in filing their petition. (D:54) They ran up a bill for an additional \$16,654 to protect the DeLanos from having to produce to Dr. Cordero documents, such as their bank account statements, to corroborate such incongruous, implausible, and suspicious declarations. (Add:871-875) Those documents were obviously necessary for Att. Werner to inform himself of the DeLanos' financial affairs so as to decide whether to sign off "under penalty of perjury" (D:28, 252¶12) on their bankruptcy petition. Similarly, the Standing Chapter 13 Trustee, Att. George Max Reiber (¶7 supra), needed those documents to decide whether to recommend to Judge Ninfo the approval of the DeLanos' plan of debt repayment (D:59). The Judge himself needed them to determine whether their "plan has been proposed in good faith and not by any means forbidden by law". (11 U.S.C. §1325(a)(3); 18 U.S.C. §§152-157)

93. Nonetheless, far from ordering them produced, Trustee Reiber recommended the payment by the DeLanos to their attorneys of fees incurred in preventing their production and Judge Ninfo approved the payment of \$18,005. (Add: 938, 942) Neither of them wondered where the DeLanos would come up with that kind of money, much less why the DeLanos, if they were really bankrupt, would prefer to pay their attorneys thousands of dollars rather than just produce the documents to Dr. Cordero. Actually, they preferred to pay even more, for Atts. Werner and Palmer provided further services for the same purpose, which Att. Werner billed at \$9,948 and Trustee Reiber allowed. (Pst:1175) What is more, the sum of \$27,953 for such services was only a partial total, for the DeLanos, according to Att. Palmer (SApp:1628¶4; 1645§1), would „continue to incur legal fees“ to prevent the production of such documents to Dr. Cordero...and the attorneys would continue to provide them their services for a fee. The attorneys knew that the DeLanos were good for the money and that their declaration that they only had \$535 in hand and on account (D:31) was false and made only in furtherance of their bankruptcy fraud through concealment of assets.<sup>80</sup> From those assets the DeLanos paid Complicitly Misconducting Atts.

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<sup>80</sup> While the DeLanos never produced their bank account statements, Att. Werner blurted at the meeting of creditors eventually held on February 1, 2005, at Trustee Reiber's office, that he had obtained such documents from the DeLanos while preparing their bankruptcy petition and had reviewed them. It is reasonable to assume that Att. Werner did review those incriminating documents and learned through them that the DeLanos had enough assets to pay for the tens of thousands of dollars in legal fees that they incurred avoiding their production to Dr. Cordero and the consequent exposure of their bankruptcy fraud.

That meeting was officially recorded by Reporter Ms. Bonsignor of Alliance Shorthand, 183 East Main Street, Suite 1500, Rochester, NY 14604, tel. (585)546-4920. Although

Werner and Palmer. The \$27,953 and counting was the disclosed cost of doing the business of bankruptcy fraud with impunity. Even if undisclosed costs were incurred in services rendered by others, they paid off, for Trustee Reiber, the U.S. trustees (§103 infra), and Judge Ninfo allowed the DeLanos to dive into their golden pot without having to account for at least \$673,657. (SApp:1654)

94. That was the farewell gift that the bankruptcy and legal system insiders made to the DeLanos with the money, not of their own, but rather of the creditors. If the insiders enable similar fraud in other cases among the 3,907 *open* cases that Trustee Reiber brought before Judge Ninfo (§7 supra) –and Trustee Kenneth Gordon’s 3,382 (§§3 and 23 supra)– the amount of money that ends up in the wrong hands to the creditors’ detriment can be in the tens of millions of dollars. No wonder the insiders had a strong motive to cover up the following event, which undoubtedly showed that they knew that the DeLanos had engaged in bankruptcy fraud through concealment of assets.

**2) The events at and after the meeting of creditors confirm that Att. Weidman and Reiber as well as Judge Ninfo knew that the DeLanos had committed bankruptcy fraud**

95. Since Trustee Schmitt allowed Trustee Reiber to amass the unmanageable number of 3,909 *open* cases, according to PACER (§7 supra), he could not be at the same time in all places where he needed to be to take care of them. So she let him conduct the meeting of creditors (11 U.S.C. §341: D:23) of the DeLanos on March 8, 2004, not only in a room connected to her office, but also unlawfully by his attorney, James Weidman, Esq. (§13 supra). For a trustee not to conduct a meeting of creditors personally is such a serious violation of his duty that it is included among the causes for removal under 28 C.F.R. §58.6(10). (fn. 49 supra; SApp:1689) On that occasion, Trustee Reiber was taking care of business, of all places, downstairs in Judge Ninfo’s courtroom. In a well-coordinated scheme everybody has to pitch in. Trustee Schmitt’s friendly next-door neighbor is the local office of the U.S. Department of Justice in the little, cozy federal building in Rochester. (§11 supra)

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Trustee Reiber had stated to Dr. Cordero that he would give him a copy of the transcript (D:333), after the meeting he refused to do so (Pst:1263§19). That transcript can be obtained from either Trustee Reiber or Reporter Bonsignor. Moreover, the Trustee also tape-recorded the meeting.

96. Accompanying the DeLanos to the meeting were their one of a kind attorneys (D:79¶3): Att. Werner, who had brought 525 cases before Judge Ninfo (¶5 supra) and Att. Michael J. Beyma, who is also a partner in Underberg & Kessler, the same law firm in which Judge Ninfo was a partner at the time of his appointment (¶7 supra).
97. At that meeting of creditors, Att. Weidman examined the DeLanos under oath while being officially recorded on an audiotape. After examining them, he asked whether any of their creditors were in the audience. Dr. Cordero was the only of their creditors present. He identified himself and stated his desire to examine them. Att. Weidman asked him to fill out an appearance form (D:68) and to state what he objected to. Dr. Cordero submitted to him and Att. Werner copies of his Objection to Confirmation of the DeLanos' Plan of Debt Repayment. (D:63) No sooner had he asked Mr. DeLano to state his occupation –he answered „a bank loan officer“– and then how long he had worked in that capacity –he said 15 years, but see Tr:15/17-16/15– than Att. Weidman unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos' having committed fraud. When Dr. Cordero would not reveal what he knew, Att. Weidman put an end to the meeting even though Dr. Cordero had asked only two questions! (D:79§§I-III)
98. Later that afternoon at the hearing for the confirmation of debt repayment plans before Judge Ninfo and in the presence of Trustee Reiber and Att. Weidman, Dr. Cordero brought to the Judge's attention in open court and for the record being made by the court reporter how that Att. Weidman had prevented him from examining the Debtors. Nobody contradicted his account of the incident. Yet, rather than uphold the law and the right of Dr. Cordero thereunder, Judge Ninfo faulted him for applying the Bankruptcy Code too strictly and thereby missing "the local practice". He stated that Dr. Cordero should have phoned in to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. (D:99§C; Add:889§II) The Judge intentionally disregarded the statement that he had just heard from Dr. Cordero, to wit, that Att. Weidman had cut him off and terminated the meeting after Dr. Cordero had asked only two questions. Thereby Atts. Reiber and Weidman benefited from the unlawful protection given them as co-scheming "locals" by Judge Ninfo in breach of the national law of Congress. That law provides for not one, but rather a series of meetings where creditors can engage in an examination of the debtors of very wide scope. (11 U.S.C. §341(c); FRBP 2004(b); D:283¶¶a-b, 98§II, 362§2)

99. Trustee Reiber had been ready to recommend at that hearing the confirmation of the DeLanos' debt repayment plan even though he had not checked the petition underlying it against any supporting documents. Only Dr. Cordero's Objection (D:63) stopped him and Judge Ninfo from rubberstamping it. In how many of the thousands of cases of the Trustee do he and the Judge merely rubberstamp plans so as to enable debtors to repay their creditors far less than what they should if their financial affairs had been truly ascertained and the law applied? What is in it for them?
100. Subsequently, Dr. Cordero moved for Judge Ninfo to state what "the local practice" consisted of, but the Judge never provided a statement on the subject. (Add:891§III) Although Dr. Cordero gave notice of this event to Trustees Schmitt and Martini and requested the removal of Trustee Reiber for his misconduct in undeniable violation of the law and the evidence of coordinated misconduct, they did nothing about it. (D:79§§I-II, 94¶80) On the contrary, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:86§VI; Pst:1262¶¶13-20).

**3) Dr. Cordero requested documents and Att. Werner pretended to be searching for them while comforted by Trustees Reiber, Schmitt, and Adams evading their duty to demand their production for the sake of the integrity of the bankruptcy system**

101. For months after the meeting of creditors, Trustee Reiber and Att. Werner treated Dr. Cordero as a creditor of the DeLanos, pretending to be obtaining the documents that he had requested through Trustee Reiber. (D:63, 151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203) They also pretended to be available for an adjourned meeting of creditors where Dr. Cordero would use those documents to examine them under oath. But the documents only trickled in. Worse yet, the documents that they produced during the dragged-on period were incomplete, even missing pages! (D:194§II) Would Mr. DeLano have lasted 39 years in banking if his performance in producing his own documents had been a reflection of his competency to obtain the documents necessary for his employer, M&T Bank, to evaluate its clients' loan applications and current ability to repay loans and avoid defaulting on them? Of course not! Likewise, one can reasonably take for granted that Mr. Werner had learned during his 28 years in practice at the time and all those as a bankruptcy practitioner how to obtain documents that he wanted financial institutions to produce.

102. Similarly, Trustee Reiber failed to use the means at his disposal to obtain those documents. He is supposed to act as fiduciary to collect the assets of the estate and distribute them to the creditors (§40 quoted text supra) after discharging his duty to “investigate the financial affairs of the debtor [and] furnish such information concerning the estate and the estate’s administration as is requested by a party in interest” (11 U.S.C. §§1302(b)(1), 704(a)(1, 4, 7)), such as Dr. Cordero. Far from that, Trustee Reiber spared the DeLanos the production of documents that he too needed to determine whether to recommend the approval of their plan of debt repayment (D:59) and that Dr. Cordero requested repeatedly. (D:66§IV, 94¶80d, 113¶6, 126¶9, 148¶7, 321¶16; 161, 467, 494, 684)
103. Along the same line, Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq., (§§11-12 supra), disregarded both the evidence of fraud and the requests for the DeLanos and Trustee Reiber to be investigated. (D:84§IV, 94¶80a-f, 160, 309, 470, 471, 474, 476, 495, 685, plus all other documents filed with the District Court, WDNY; CA2; and the Supreme Court; cf. *fn. 1* supra) Her supervisor, U.S. Trustee for Region 2, Deirdre Martini, Esq. (§14 supra), also disregarded both her duty to investigate and the requests for documents. (D:90§VII, 94¶80g; 104, 137, 139, 141, 154, 158, 307, 330, 682, plus all other documents filed with the courts) The current U.S. Trustee for Region 2, Diana G. Adams (§14 supra), has also been served by Dr. Cordero with every paper that he has filed since she took office, but she has never communicated with him or filed anything concerning *DeLano* with any court, let alone investigated the DeLanos.<sup>81</sup>
104. Yet, all these trustees had the duty to obtain those documents, not just in general because they were necessary to find and collect the assets of the estate in the creditors’ behalf, but also in particular because Mr. DeLano’s superior knowledge of money management had rendered his petition for bankruptcy relief suspect, never mind his incongruous and implausible declarations therein. (§91 supra) What is more, they had the right to obtain those documents concomitant with the DeLanos’ duty to produce them, regardless of how damaging such production might be:

11 U.S.C. §521. Debtor’s duties

(a) The debtor shall-

- (4) ...surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title;

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<sup>81</sup> Cf. Table of officers that have disregarded their statutory duty to investigate the DeLano Debtors (SApp:1609)

105. The DeLanos' production of documents was so objectionable that Trustee Reiber himself moved to dismiss the petition "for unreasonable delay which is prejudicial to creditors, or to convert to a Chapter 7 proceeding", that is, liquidation. (D:164) This was for either show or leverage for another purpose given that the Trustee never even requested the DeLanos, despite Dr. Cordero's requests, to produce key documents, such as their bank account statements. Those statements are most threatening to all of them because they would enable creditors and investigators to track the DeLanos' bank deposits and transfers, which would show that they committed perjury when they declared under oath that they only had \$535 in cash and on account (D:31) and Att. Werner signed off on that declaration (D:28).

**4) Att. Werner used the artifice of a motion to disallow the claim of Dr. Cordero as creditor of the DeLanos in order to stop him from proving their bankruptcy fraud scheme**

106. Dr. Cordero continued analyzing the petition intrinsically and extrinsically for its consistency with the few documents produced. (D:23-60, 63, 165-188) In a written statement submitted to Judge Ninfo (D:193), he showed that the DeLanos had concealed assets, a violation of 18 U.S.C. §152(1), and thereby committed bankruptcy fraud. That crime is punishable by up to 20 years in prison and a fine of up to \$500,000 under 18 U.S.C. §§152-157, 1519, and 3571. (cf. D:46, 53) By that time, Att. Werner and the DeLanos, who had included Dr. Cordero among their creditors in Schedule F of their petition (D:40), had treated him as a creditor for six months.

107. Only after that statement did Att. Werner come up with the artifice of a motion (D:218) to disallow Dr. Cordero's claim. (D:142) He did not cite any authority at all for challenging the presumption of validity of a creditor's claim. (D:256§VII) Moreover, his challenge had become barred by waiver and laches. (D:255§VI) Indeed, the DeLanos named Dr. Cordero among their creditors precisely because Mr. DeLano had been aware for more than a year and a half that he had been brought into *Pfuntner* as a third party defendant by Dr. Cordero. (¶¶87-88 supra; Add:786¶5) In addition, months before the disallowance motion, Mr. DeLano had been reminded thereof by Dr. Cordero filing his proof of claim (D:142), which included a copy of the part of his third party complaint in *Pfuntner* that concerned Mr. DeLano (D:250§I). What is more, three months earlier the DeLanos had raised the objection, already untimely after treating Dr. Cordero as their creditor for months, that he "is not a proper creditor in this matter". (D:118) Within 10

days, Dr. Cordero countered their objection. (D:128) Then they dropped the issue...for months. Their conduct shows that their motion to disallow was a desperate attempt to get rid of Dr. Cordero and his overt charge that they had committed bankruptcy fraud as participants in the bankruptcy fraud scheme. (D:253§V)

108. Judge Ninfo came through to assist Insider Att. Werner with his disallowance motion artifice. Sua sponte, he issued an order for an evidentiary hearing to determine the motion. (D:272) He required that thereat Dr. Cordero introduce evidence to establish his claim against Mr. DeLano in *Pfuntner*, that is, in isolation from all the other parties, their claims and defenses, and issues. Dr. Cordero realized that he was being set up to try piecemeal in *DeLano* one claim severed from *Pfuntner*. So he moved in CA2 to quash the order of Judge Ninfo, who was that Court's appointee to a bankruptcy judgeship term. (D:441) CA2 merely "Denied" with no explanation Dr. Cordero's motion to quash. (D:312) Thereby it covered up its appointee's approval and use of Att. Werner's process-abusive motion and encouraged both the Judge and the Attorney to engage in even more abuse.
109. Judge Ninfo received the encouragement and engaged in even more egregious misconduct, knowing that he would soon be rewarded with his reappointment to a second 14-year term bankruptcy judgeship, as he was in 2005 (fn. 72), and that for Dr. Cordero to complain about his bias, arbitrariness, and abuse of power to CA2 would prove useless, as it already had (D:425; SApp:1655, 1657; CA:1721, 1859 fn.5; cf. fn. 71 supra). So the Judge required that discovery for the evidentiary hearing be completed within three and a half months, at the end of which he would set the date for the evidentiary hearing. (D:278¶3)
110. On the strength of that order, Dr. Cordero requested documents from the DeLanos, including those to which he was entitled not only as a creditor, but also as a party in interest and as a party to *Pfuntner*. (D:287) Nevertheless, Att. Werner denied him *every single document*, self-servingly characterizing all as irrelevant. (D:313, 314) Dr. Cordero moved for an order by Judge Ninfo to compel the DeLanos to comply with the discovery provisions of his order and respect his right to discovery under FRBP 7026-7037 and FRCP 26-37. (D:320§II) Disregarding his own order and showing contempt for the rules, Judge Ninfo aided and abetted Att. Werner's blatant violation of the right to discovery (D:325) and likewise denied him *every single document!* (D:327) Having thus ensured the non-production of incriminating evidence, the Judge scheduled the evidentiary hearing. (D:332)

**5) Att. Werner and Att. Beyma were willing participants in, and beneficiaries of, the sham evidentiary hearing of the motion to disallow Dr. Cordero's claim against Mr. DeLano in *Pfuntner***

111. With no documents to introduce, Dr. Cordero examined Mr. DeLano at the evidentiary hearing held on March 1, 2005. Mr. DeLano was represented by both (Tr:2 in the transcript attached hereto), Att. Werner as his bankruptcy attorney, and Att. Michael Beyma, (§10 supra), the attorney in *Pfuntner* for both Mr. DeLano and his employer, the very important client M&T Bank (fn. 36 supra). Nevertheless, as the transcript shows, during the whole examination it was Judge Ninfo who acted as Mr. DeLano's Chief Advocate, and as if he still were a partner in Mr. Beyma's law firm, Underberg & Kessler, in which he was actually a partner at the time of his appointment to the bench in 1992. (fn. 10 supra) The Judge objected on behalf of Mr. DeLano to Dr. Cordero's questions, warned him about how to answer them, and engaged Dr. Cordero in an adversarial discussion. (Pst:1255§E) For their part, Atts. Werner and Beyma never once during the more than five hours of the hearing raised an objection to their First Chair On The Bench. There is, of course, a pecking order in their bankruptcy fraud scheme.
112. Although Judge Ninfo reduced Atts. Beyma and Werner to deferential second chairs, they were not inactive at all. Far from it. So confident did they feel in the presence of Att. Beyma's old buddy John and Att. Werner's frequent trier of 525 of his cases (§8 supra) that they signaled answers to Mr. DeLano while he was on the stand being examined under oath by Dr. Cordero. (GC:14§A supra; Pst:1289§f) No doubt, these attorneys' experience with the Judge had assured them that they could suborn perjury right in front of his eyes with no adverse consequences for themselves or M&T Officer DeLano.
113. Att. Werner felt so confident that the Judge would grant his motion to disallow Dr. Cordero's claim against Mr. DeLano that neither of them had read Dr. Cordero's original complaint imploding Mr. DeLano in *Pfuntner* (Add:797§D, 802§A) or Dr. Cordero's proof of claim (D:142) or even brought a copy of either to the hearing. So in the middle of it, Att. Werner asked Dr. Cordero to lend them his copy of the complaint! (Tr.49/13-50/25; Pst:1288§e)
114. The cause for Atts. Werner's and Beyma's effort to suborn perjury and ask for that copy was that the testimony that Mr. DeLano was giving confirmed Dr. Cordero's claim against him in *Pfuntner*. (Pst:1285¶70) Far from Judge Ninfo finding that Att. Werner's ignorance of the claim that he had moved to disallow impugned his good faith and his motion's merit, the Judge arbitrarily disregarded Mr. DeLano's testimony against self-interest as "confused", although it

concerned his own conduct as the 39-year veteran M&T officer in charge of the Premier bankruptcy at stake in *Pfuntner*. The Judge found that Dr. Cordero had not introduced any documents to prove his claim, even though both he and Att. Werner had denied him *every single document* that he had requested during discovery. (Pst:1281§c) Then he entered the predetermined disallowance of Dr. Cordero's claim and his ruling that Dr. Cordero no longer had standing to participate in *DeLano*. Thereby Judge Ninfo managed to attain the benefit of self-protection that he and the other insiders had sought-for: to prevent Dr. Cordero from requesting and obtaining documents from the DeLanos that would incriminate all of them in tolerating or participating in a bankruptcy fraud scheme and its cover-up. (Pst:1281.d) Judge Ninfo can be "heard" as the partisan, leading voice of the schemers in the attached transcript. (Pst:1266§E) Dr. Cordero had in fact been set up.

**6) Bankruptcy Clerk Warren disregarded the law in coordination with District Judge Larimer in order to keep Dr. Cordero from obtaining the incriminating transcript of the sham evidentiary hearing to disallow his claim**

115. To appeal from Judge Ninfo's disallowance of his claim in *DeLano*, Dr. Cordero sent a notice of designation of items in the record and the statement of issues on appeal. (Add:690) Upon their receipt, Bankruptcy Clerk Paul R. Warren, Esq., (¶¶4, 15 supra) transmitted them that very same day to District Judge Larimer (Add:686) upstairs in the same little, cozy federal building (¶11 supra). However, he did not file the accompanying copy of Dr. Cordero's letter requesting Bankruptcy Court Reporter Mary Dianetti a transcript of the March 1 evidentiary hearing.<sup>82</sup> (Add:681) That letter gave Att. Warren notice that the Reporter had barely had time to receive the request, let alone prepare and submit the transcript. Consequently, Clerk Warren was indisputably violating FRBP 8007:

FRBP 8007. Completion and Transmission of the Record; Docketing of the Appeal

...

(b)...When the record is complete for purposes of appeal [(a)...On completion of the transcript by the reporter] the clerk shall transmit a copy thereof forthwith to the clerk of the district court.

116. Likewise, Clerk Warren disregarded FRBP 8006, which provides thus:

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<sup>82</sup> On Reporter Dianetti's refusal to certify to Dr. Cordero that her own transcript would be complete, accurate, and free of tampering influence, see Add:912 and [fn. 53, 56](#) supra.

FRBP 8006...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 the additional items to be included in the record...The record on appeal shall include the items so designated by **the parties**,... [emphasis added]

117. So Clerk Warren knowingly (Add:679) deprived another insider, Att. Werner, of time to file his designation and any statement in order to transmit immediately to Judge Larimer a record that could not possibly be complete but that would afford the Judge the opportunity to play his role in the scheme. He did: Judge Larimer dropped everything that he was doing and the following day he was already hard at work writing an order scheduling the submission of Dr. Cordero's appeal brief for 20 days hence. (Add:692) By contrast, he consistently took weeks to answer Dr. Cordero's motions, although such answers consisted in practice of nothing more than an arbitrary, no-reasons fiat "denied in all respects as lacking in merits". (Add:911Dia>991; 851, 881, 951>1021; 993>1019; 1081>1092; 1097>1155) Through this coordination between Pitcher Warren and Catcher Larimer, these court officers unlawfully maneuvered to deprive Dr. Cordero of an incriminating transcript that demonstrated how Judge Ninfo, acting as First Chair On The Bench of Atts. Werner and Beyma and Chief Advocate of Mr. DeLano, had conducted a sham evidentiary hearing. (Pst:1255§E; US:2448§D)
118. Dr. Cordero objected to such unlawful scheduling of his brief before the Reporter had even had time to respond to his letter requesting the transcript (Add:695, 831, 836, 839). It cost Dr. Cordero seven month's worth of effort and money (Add:834, 870, 911 and 912:Table of Letters Exchanged Between Dr. Cordero and Rep. Dianetti, 991, 993, 1019; 1027, 1031, 1072) to thwart their maneuver and have that transcript produced so that he could use it to write and support his appellate briefs to the District Court (Pst:1264¶22-26) and eventually to CA2 (CA1735§1) and the Supreme Court (US:2451§E).
119. Clerk Warren's attempt to deprive Dr. Cordero of his right to a transcript in *DeLano* is similar to his attempt to deprive him of the transcript of the hearing in which Judge Ninfo dismissed his cross-claims against Insider Trustee Kenneth Gordon in *Pfuntner*. (Add:1007§V; in the *Pfuntner* file, A:153, 155a, 157a-f, 183, 261-289; 1327§4) Those two attempts suffice to constitute a pattern of misconduct in furtherance of the bankruptcy fraud scheme. That pattern is confirmed by Clerk Warren's disregard of his duty in handling Dr. Cordero's application for default

judgment against Premier Owner David Palmer. (GC28§4) supra)<sup>83</sup>

120. Despite the transcript, Judge Larimer affirmed the disallowance of Dr. Cordero's claim against the DeLanos in a conclusory order (SApp:1501) that did not once make reference to it or to his brief on appeal (Pst:1231, summarizing headings at 1255§E). What is more, the Judge did not even use the term „fraud“ although it and „a bankruptcy fraud scheme“ were the express key notions of the four questions presented on appeal (Pst:1257§C; CA:1749§2) and permeated the brief. Actually, Judge Larimer did not address even one of those questions. On the contrary, he committed the gross mistake of stating that the „preserved, appellate issues“ had been “set forth” by the DeLanos“ attorneys“. (SApp:1502 2nd para.) However, those attorneys never filed a cross appeal and thereby could not present any issues on appeal at all. (CA:1746§1) The issues that Judge Larimer went on to name were those “set forth” by those attorneys in their response to Dr. Cordero's brief. (Pst:1365) Yet, he did not engage in any legal analysis of even those issues. (CA:1756§4) In fact, to write his order Judge Larimer need not have even read Dr. Cordero's brief; he only needed to skim over the DeLanos“ answer. (Pst:1361, 1398§§II-III, 1409§V) Judge Larimer and Clerk Warren did whatever they had to do, the law and the rules notwithstanding, to prevent their exposure as misconducting insiders participating in the bankruptcy fraud scheme. (CA:1743§VIII)

**7) Trustee Reiber's shockingly perfunctory and unprofessional report on the DeLanos shows the degree of connivance between him and Judge Ninfo, who accepted it to approve their plan of debt repayment and eventually discharge their debts**

121. Dr. Cordero requested Judge Ninfo to remove Trustee Reiber from *DeLano* due to his failure to discharge his duty to “investigate the financial affairs of the [DeLano] debtor[s]”. (111 U.S.C. §704(a)(4); D:201¶32) So sure was the Trustee that the Judge would instead protect him that he did not bother to oppose the motion. (Add:971¶¶56-60, 974§4; CA:1738§2) His silence was significant given that had the Judge granted it, if only by default, the Trustee would have been

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<sup>83</sup> Under RICO, 18 U.S.C. §1961(5), a “pattern of racketeering activity” requires at least two acts of racketeering activity...within ten years” of each other. However, the District Court has taken preemptive measures to protect the schemers from RICO by adopting Local Rule 5.1(h). (Add:633) It requires a party to plead over 40 discrete pieces of factual information before discovery has even commenced so as to make it practically impossible to file a claim under RICO. (US:2461§XI)

automatically removed from every other case and lost his livelihood. (11 U.S.C. §324)

122. Trustee Reiber went about his business and in July 2005 submitted to Judge Ninfo shockingly unprofessional and perfunctory undated scraps of papers titled “Trustee’s Findings of Fact and Summary of 341 Hearing”, and an untitled form in Pidgin English that began “I/We filed Chapter 13 for one or more of the following reasons”, which was undated too and unsigned to boot. (D:937-939) Dr. Cordero analyzed in detail such self-belittling bungle of a legal document. (Add:953§I) For instance, there is no such proceeding as a „341 Hearing“, either in the Bankruptcy Code, i.e., 11 U.S.C., or the FRBP. This fact would have sunk into the mind and made a groove into the repeatedly used terminology of even an attorney that had not handled 3,909 bankruptcy cases, as Trustee Reiber had at the time. (fn. 34 supra) That groove would be all the deeper because substantive in nature:

11 U.S.C. §341. Meetings of creditors and equity security holders

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

123. However, Trustee Reiber is the attorney who with Judge Ninfo’s knowledge and consent held meetings of creditors in his courtroom contiguous with his chambers while the Trustee had his lawyer, Att. James Weidman (§13 supra) hold unlawfully in his stead other meetings of creditors in a room contiguous with Assistant U.S. Trustee Schmitt’s office. (GC:45§2) What makes a substantive groove in his mind is the awareness of who is for every practical purpose very much in attendance and most certainly as presiding the meetings as if he were presiding a hearing and calling the shots, to wit, the judge who, whatever his benefit may be, is running the bankruptcy fraud scheme. (Cf. §129 infra)

124. Another substantive defect of Trustee Reiber’s “Report” was that its numbers did not even tally with those of the DeLanos’ Schedules (D:29-46) accompanying their bankruptcy petition:

- a. The Notice of Meeting of Creditors stated “unsecured creditors to be paid 22 cents on the dollar” (D:23), that means 22% of the debt, and the Summary of Schedules stated “F – Creditors Holding Unsecured Non-priority Claims 98,092.91” (D:29). However, the “Report” states “Repayment to unsecured creditors \$4646”, (D:937) which is only the pittance of 4.7%.
- b. The Summary of Schedules stated “E - Creditors Holding Unsecured Priority Claims 0.00” (D:29); but the “Report” states “Repayment to priority creditors \$16,655” (D:937).
- c. Schedule J. Current Expenditures of Individual Debtor(s) stated “D. Total amount to be

paid into plan each Monthly \$1,940.00” (D:45). The “Report” states “2. Plan: A. Summary: \$1940 [scribbling] MDI [presumably Monthly Disposable Income]” But see below “\$14145\*...Other: \* Payments decrease to \$635/month in July, 2004; then increase to \$940/month in August, 2006. Plus proceeds of accounts receivable”. There is no explanation why barely 5 months after the filing of the petition on January 27, 2004 (D:23), the payments decrease from \$1,940 by 67.3% to \$635 and remain so for the next 25 months out of 36 (3 years) and then increase to \$940 for the last five months or so. But then see further down: “B. Feasibility:...Excess for Wage Plan \$1940 Duration of Plan 3 years”. So which one is it!: \$1,940, mostly \$635, or \$960.

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

Plan:

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

Repayment to secured creditors \$ 6920  
 Repayment to priority creditors \$ 16,655  
 Repayment to unsecured creditors \$ 4646 15 % specific estimated

Classification of unsecured creditors None

Class	%	\$

Rejection of executory contracts None

Other: \* Payments decrease to \$635/month in July, 2004; then increase to \$940/month in August, 2006. Plus proceeds of accounts receivable

B. Feasibility:  **why the payment is not paid**

Total Indebtedness	\$ <u>185462</u>	including mortgages
Monthly Income (net)	\$ <u>4886.50</u> <del>2946.50</del>	(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

**92,920 TOTAL**

**why End of Sev & Unemployment**

Payments are not adequate to execute plan.

d. The “Report” states “Payments are not adequate to execute plan”. Note that the last word “...plan.” is followed by a period, not a colon as in „plan:“, which would have suggested that the “reporter” was supposed to state either yes or no. Is that a general assessment of non-feasibility that should have led Judge Ninfo not to confirm the plan rather than to confirm it? (Add:941)

- e. The Summary of Schedules stated “Total Assets 263,456.57” (D:29) But the second page of the “Report” states “3. Best interest of creditors test:...B. Total market value of assets: \$256,562”.
- f. In Schedule C. Property Claimed As Exempt the “Value of Claimed Exemption” adds up to \$178,361 (D:35); but the “Report” states “3....B...Less exempt property \$171732.
- g. Schedule A. Real Property stated “Amount of Secured Claim 77,084.49”. If in the “Report”, entry “3...B...Less valid liens \$83734” refers to that Secured Claim, then they do not match.
- h. The Objection To Confirmation of the Chapter 13 Plan of Debt Repayment, filed by Dr. Cordero (D:63) and entered on the docket (D:497/13), was not mentioned in the “Report”, which instead has some scribbling next to “7. Objections to Confirmation” (Add:938)
- i. On the third scrap of paper titled “I/We filed Chapter 13 for one or more of the following reasons:”, see Add:956§A.

125. What a perfunctory “Report”! It is unworthy of being accepted by a U.S. judge, never mind docketed and relied upon to confirm the plan of debt repayment and thereby deprive creditors of what the debtors owed them. If you were the judge receiving such an incompetently drawn up form, filled out with such shockingly unprofessional scribbles and doodles, and so disrespectfully submitted for you to fend with it, how much effort and time would you have wasted trying to figure out whatever it was that the „reporter“ was trying to „report“ to you?

126. The only documents with figures that the DeLanos or Trustee Reiber filed and that were docketed were the former’s petition (D:23-60) and the latter’s “Report” (Add:937-939). Hence, there was no other information available for Judge Ninfo, let alone the creditors and parties in interest, to reconcile the discrepancies between those two documents and determine whether the DeLanos’ plan of debt repayment should be confirmed or opposed. The Judge discussed no objection, much less the statement in the “Report” that “Payments are not adequate to execute plan”. (§124§d supra) He simply rubberstamped a form of his own to confirm the plan because from experience he knew that it was most unlikely for any creditor to challenge him, but if any did, the challenge would not be sustained by his buddy, District Judge Larimer upstairs, or his appointers at CA2.<sup>84</sup> Had Judge Ninfo denied confirmation, he would have risked giving cause for the 39-year veteran banker, M&T Bankruptcy Officer DeLano, to disclose what he knew

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<sup>84</sup> [http://Judicial-Discipline-Reform.org/Sct\\_nominee/JSotomayor\\_v\\_Equal\\_Justice.pdf](http://Judicial-Discipline-Reform.org/Sct_nominee/JSotomayor_v_Equal_Justice.pdf) >¶¶4-6

about the Judge's participation in the bankruptcy fraud scheme, either out of spite or in a plea bargain if as a result he were criminally investigated for bankruptcy fraud.

127. Dr. Cordero also moved in District Court for Judge Larimer to remove Trustee Reiber (Add:974¶4; Pst:1306¶123.d). Once more, the Trustee did not bother to file even a yellow stick-it in opposition. What other attorney would show such suspiciously arrogant indifference to a direct challenge to his competency and livelihood and shocking disregard for professional standards unless he was sure that, regardless of what he did or failed to do, the judges would not dare expose him to a fall for fear that he might take them down together with him? Would Trustee Reiber have manifested the aloofness of the untouchable if the case had been before both a judge unafraid of him or the CA2 bankruptcy judge appointers and a jury free to find him a participant in a bankruptcy fraud scheme? (D:425) This is the type of superficially innocuous circumstance that catches the attention of insightful investigators and drives them to investigate its underlying causes. (US:2339§B, 2359¶75c, f; 2417¶¶c-e, h-i); 2459§B, 2479¶b)

**8) CA2's admission that Trustee Reiber's motion to dismiss *DeLano* contained "deficiencies" and its disingenuous characterization of them as "minor" reveal its disregard for the rule of law by nevertheless granting the motion and thereby knowingly covering up the bankruptcy fraud scheme**

128. Trustee Reiber did not bother either to contest in CA2 Dr. Cordero's implication of him in the bankruptcy fraud scheme and his request for his removal and for compelled production of documents. (CA:1652¶c, 1773¶f) Actually, he did not care for over a year to file even an appearance in Dr. Cordero's appeal to CA2, just as he had not done so in the District Court, even though the finding that the DeLanos had committed bankruptcy fraud through concealment of assets would have incriminated him as one of the trustees that made it possible by failing to investigate their financial affairs. (SApp:1609 row 1; CA:2112§I)

129. Instead, Trustee Reiber filed a motion on October 30, 2007, to dismiss the appeal as moot. (CA:2102) He set the tenor of the quality of his motion literally in its first line, the title, where he addressed it to "UNITED STATES DISTRICT COURT OF APPEALS SECOND CIRCUIT". This gross mistake cast doubt on which court he had intended to have jurisdiction over his motion. Even after Dr. Cordero pointed this out (CA:2124¶39), the most that the Trustee could muster by way of a correction in his amended motion (CA:2130) was this "UNITED STATES COURT OF APPEALS SECOND CIRCUIT". However, even there he did not care to correct

any of the gross substantive mistakes that he had committed in his original motion. To oppose dismissal, Dr. Cordero set forth some of those mistakes. (CA: 2111, 2135) So the Trustee, who in both his motions' opening sentence insisted that he was "an attorney admitted to practice before this Court", had:

- a. failed to cite any authority for the proposition that failure to object timely by an unstated date to a trustee's final report...or perhaps it was to the judge's order approving it –the Trustee could not make up his mind (CA:2103¶¶15-16) or realize its importance for determining when the objection filing period began to run- had rendered the appeal moot and dismissible by some unexplained legal logic or factual connection and regardless of the grounds of the appeal;
- b. failed to identify what class of people of whom Dr. Cordero was supposedly representative had an obligation to object to whatever it was that he was supposed to object;
- c. failed to realize that Dr. Cordero's objections to:
  - 1) the DeLanos' bankruptcy petition (D:63, 196§IV);
  - 2) the Trustee's failure to perform his investigative duty (D:293; Add:962§II);
  - 3) the "Trustee's Report" (Add:937-939);
  - 4) Judge Ninfo's approval of it and confirmation (Add:941) of the DeLanos' debt repayment plan (Add:1038, 1066, 1095, 1097);
  - 5) Judge Ninfo's disallowance of Dr. Cordero's claim against the DeLanos (Pst:1306¶123.a and c); and
  - 6) Judge Larimer's affirmance (SApp:1501) in the appeal filed over 2½ years earlier (D:1; SApp:1508§I; CA:1719§V);

constituted clear evidence that Dr. Cordero objected to every other act flowing therefrom because if his contentions were sustained on appeal, such acts would be rendered null and void as deriving from the nullity of the DeLano's fraudulent bankruptcy petition of January 27, 2004, and the ensuing cover-up;

- d. failed to notice that Judge Ninfo had deprived Dr. Cordero of standing in DeLano (D:22), leaving him only the right to appeal, so that the Judge neither would serve, let alone do so timely, his report-approving order on Dr. Cordero nor could expect the latter to object to it;
- e. failed to assert that the alleged service on Dr. Cordero of "a summary of the account" (CA: 2103¶14) -whatever relation that bore to the Trustee's report or the Judge's order- was

timely, let alone to state on what date it was made;

f. failed to explain how service of such “summary” would impose any duty on the recipient to object to something else not served, which would presumably contain the substantive grounds on which an objection be based.

130. Dr. Cordero’s detailed analysis (CA:2111, 2135) of Trustee Reiber’s substandard motion (CA:2101) and its only-in-the-title “amended” version (CA:2130) was so accurate and fair that even CA2 subsequently admitted that “Appellant’s argument that the Trustee’s motion is deficient may be correct”. (CA:2180) It is also correct to state that the Trustee nevertheless raised them in CA2 in a display of complicit assurance that it would suffice for him to cobble together a pretext for dismissal, such as mootness, for CA2 to take the hint and carry it through. (CA:2191) After all, the one thing he was sure CA2 could not dare do was disavow its twice appointee, Judge Ninfo, through a reversal. Such action would risk causing Insider DeLano to be investigated for bankruptcy fraud, who would in turn incriminate the Trustee and the Judge, and thus trigger a domino effect that could topple CA2 itself for its knowing condonation of a bankruptcy fraud scheme and its systematic denial of due process<sup>85</sup> to cover it up. (US:2459§B)
131. The content and effect of these arrogantly perfunctory motions warrant investigating whether Trustee Reiber’s supervisors, namely, Trustees Schmitt, Martini, and Adams (¶¶11-14 supra), allowed their supervisee to amass 3,907 *open* cases before Judge Ninfo because of his capacity to handle them competently or because they, with reckless disregard for both their statutory duties to ensure the integrity of the local or regional bankruptcy system and the harmful consequences for debtors, creditors, and the public at large, deemed him in spite of his lack of such capacity a willing and pliable player in the bankruptcy fraud scheme that they tolerated or participated in.

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<sup>85</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/why\\_j\\_violate\\_due\\_pro.pdf](http://Judicial-Discipline-Reform.org/Follow_money/why_j_violate_due_pro.pdf)

## IV. Conclusion

### A. Strategic thinking to investigate this complaint and the rewards for principled, courageous, and ambitious investigators

132. The in-depth investigation of this complaint by the Grievance Committee and/or its most principled, courageous, and ambitious members can enable them to pursue their commitment to honest practice of law by law-abiding and ethical attorneys as well as to a legal system that aspires to attain the noble goal of “Equal Justice Under Law”. Through their investigation, they can advance the interest of the man in the street, who stands no chance of having his economic and due process rights (fn. 85 supra) respected by insiders, whether attorneys or judges, that have grown to deem themselves entitled to control the bankruptcy and legal systems for their personal and class benefit. Exposing them entails risk. But doing the right thing also offers the commensurable rewards of name recognition, support for a public office bid, and system-cleansing legal business.

#### 1) A complaint that offers the rare opportunity to begin investigating attorneys in a bankruptcy court and end up exposing that their coordinated misconduct is tolerated or participated in by a former CA2 judge, now a justice, and the Supreme Court

133. This complaint is detailed enough and so organized as to make it possible to pursue a narrowly targeted investigation. This is further facilitated by the proposed Demand for Information and Evidence, which identifies the key documents that can prove bankruptcy fraud and the coordinated misconduct that enables it. (GCd:1 infra) Such investigation begins by realizing that attorneys that once were only aware of coordinated misconduct, of which a bankruptcy fraud scheme is only one manifestation, but did nothing to expose it, and those who even participated in it, eventually became well-connected attorneys or district judges. They were not about to incriminate themselves due to their passivity or participation by exposing such misconduct or to stop benefiting from gaming the system. Then they became partners in law firms or even circuit judges with the authority to appoint bankruptcy judges and an interest in not indicting their good judgment by reversing, let alone removing, their own appointees.

134. This is the case of Former CA2 Judge Sonia Sotomayor. She was a prosecutor in the NYC Manhattan D.A. office from 1979-1984<sup>86</sup>; then a lawyer and a partner<sup>87</sup>; an SDNY judge from

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<sup>86</sup> Mr. Charles E. King, III, Assistant District Attorney, (FOIL) Records Access Officer, Special Litigation Bureau, District Attorney of the County of NY, One Hogan Place, New

1992 to 1998; a CA2 member from 1992-2009, and as such the presiding judge on the panel that decided the *DeLano* appeal (CA:2180), which was conveniently dismissed by summary order (US:2456§A).<sup>88</sup> Now she is on the Supreme Court. She illustrates how other justices moved up the judicial hierarchy with a baggage of incriminating knowledge (CA:1963§III) or conduct<sup>89</sup>.

135. Consequently, on the strength of the facts of this particular complaint as well as circumstantial evidence concerning the Federal Judiciary it can be responsibly affirmed that the investigation of this complaint offers the realistic possibility of exposing what underlies the bankruptcy fraud scheme involving the complained-against attorneys, namely, coordinated misconduct that has become the Federal Judiciary's institutionalized modus operandi. Expressed in terms of the Commentaries on Canons 2A and 1 of the Code of Conduct for U.S. Judges<sup>90</sup>:

"...reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude" that they constitute a "pattern of actual improprieties consisting of intentional and serious violations of law [and] court rules" ,by judges that with disregard for the harmful effect on others and the judicial system" run and cover up a bankruptcy fraud scheme. (US:2518§C; [http://Judicial-Discipline-Reform.org/US\\_writ/2DrCordero-SCT\\_rehear\\_23apr9.pdf](http://Judicial-Discipline-Reform.org/US_writ/2DrCordero-SCT_rehear_23apr9.pdf); cf. Add:621§1; CA:2025§C)

136. The Federal Judiciary is the most secretive, opaque<sup>91</sup>, and due to its members' life-tenure and their authority to declare what the other two branches of government do unlawful or unconstitutional, the most powerful of the three. Yet, its members recognize that they are subject to a very low threshold of sleaziness tolerance on the part of the public:

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

COMMENTARY ON CANON 2A: An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances

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York, NY 10013; tel. (212)335-4370, fax (212)335-4390; cf. [http://Judicial-Discipline-Reform.org/DANY/8DrCordero\\_FOIL\\_NYCDAoffice.pdf](http://Judicial-Discipline-Reform.org/DANY/8DrCordero_FOIL_NYCDAoffice.pdf).

<sup>87</sup> Sonia Sotomayor was an associate from 1984 to 1987 and a partner from 1jan88–30sep92 in the luxury goods boutique law firm of Pavia & Harcourt, LLP, 600 Madison Avenue, New York, NY 10022; tel.(212)980-3500, fax (212)980-3185; <http://www.pavialaw.com>; [http://Judicial-Discipline-Reform.org/SCT\\_nominee/Pavia&Harcourt\\_7feb10.pdf](http://Judicial-Discipline-Reform.org/SCT_nominee/Pavia&Harcourt_7feb10.pdf).

<sup>88</sup> Cf. *Pfuntner* in CA2 (A:1304§§VII-IX) conveniently dismissed on jurisdictional grounds (A:876; 885)

<sup>89</sup> [http://Judicial-Discipline-Reform.org/SCT\\_nominee/Senate/10DrCordero-SenLeahy&Sessions.pdf](http://Judicial-Discipline-Reform.org/SCT_nominee/Senate/10DrCordero-SenLeahy&Sessions.pdf); [http://Judicial-Discipline-Reform.org/SCT\\_nominee/JSotomayor\\_integrity/12table\\_JSotomayor-financials.pdf](http://Judicial-Discipline-Reform.org/SCT_nominee/JSotomayor_integrity/12table_JSotomayor-financials.pdf)

<sup>90</sup> [http://www.uscourts.gov/library/codeOfConduct/Revised\\_Code\\_Effective\\_July-01-09.pdf](http://www.uscourts.gov/library/codeOfConduct/Revised_Code_Effective_July-01-09.pdf); with bookmarks at [http://Judicial-Discipline-Reform.org/docs/Code\\_Conduct\\_Judges\\_09.pdf](http://Judicial-Discipline-Reform.org/docs/Code_Conduct_Judges_09.pdf)

<sup>91</sup> [http://Judicial-Discipline-Reform.org/docs/Sen\\_Specter\\_on\\_SCT.pdf](http://Judicial-Discipline-Reform.org/docs/Sen_Specter_on_SCT.pdf)

disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety...Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. Code of Conduct for United States Judges<sup>92</sup>

**2) The appearance of judges' and justices' impropriety of tolerating or participating in the bankruptcy fraud scheme or other forms of coordinated misconduct can be exposed through a Watergate-like highly professional investigation**

137. Thus, the appearance of impropriety is enough –at least in theory– to require a judge to disqualify herself from a case or to refrain from engaging in an activity, e.g. all expenses paid judicial junkets. In reality, it turns federal judges into the public officers most vulnerable to a well-orchestrated *publication* of evidence where they appear to tolerate or participate in misconduct, whether within their own ranks or by attorneys closely associated with them, that is, insiders. It is hardly conceivable that any of the justices of the Supreme Court could remain in office as long as President Richard Nixon did after the media reported on the break-in at the Democratic National Committee headquarters at the Watergate Complex in Washington, D.C., on June 17, 1972, and kept closing in on him until he was forced to resign on August 9, 1974.<sup>93</sup>

138. Just think of Watergate. It is last century's paradigm of a highly professional, determined, and intelligent investigation. Though originating in an apparently banal incident, it went on to expose a system of corruption in the Executive Branch that toppled all of its top officers. It was started by *Washington Post* Reporters Carl Bernstein and Bob Woodward. Both were initially ridiculed for pursuing a third rate story of a „garden variety burglary by five plumbers“.<sup>94</sup> Yet, their sheer doggedness and piercing insight paid off by producing shocking revelations that compelled one outlet after the other of the media establishment to jump on the investigative bandwagon. Eventually, the ensuing public outrage at political espionage and organized abuse of power masterminded in, and controlled from, the White House made it inevitable an official investigation in Congress by the Senate Watergate Committee. It led to the drafting of articles of

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<sup>92</sup> Id.

<sup>93</sup> [http://Judicial-Discipline-Reform.org/docs/WP\\_The\\_Watergate\\_Story.pdf](http://Judicial-Discipline-Reform.org/docs/WP_The_Watergate_Story.pdf)

<sup>94</sup> *All the President's Men*, Carl Bernstein and Bob Woodward; Simon & Schuster (1974); a best-seller and Pulitzer Prize winner, which provided the basis for the homonymous hit movie and Oscar winner, starring Robert Redford and Dustin Hoffman.

impeachment of President Nixon, who avoided their filing by his preemptive resignation.

139. The Committee and/or its most ambitious members can accomplish similar results. Actually, it is reasonable to expect much more dramatic results because the exposure by an official body with investigative authority, such as the Committee, of coordinated misconduct in the Federal Judiciary has the potential to shake the latter to its foundation and cause an unprecedented Constitutional crisis. Imagine the media frenzy to scoop what judges were involved in the coordination<sup>95</sup>, to what extent<sup>96</sup>, with what non-judges<sup>97</sup>, and the long-standing call<sup>98</sup> turned clamor for an inspector general of the Judiciary<sup>99</sup> or a citizens board for judicial accountability and discipline<sup>100</sup>. Add the flood of motions (cf. [fn. 10](#) supra) to review cases decided by judges and justices and argued by attorneys involved in coordinated misconduct or merely suspected thereof. One can envisage the attorneys most knowledgeable about coordinated misconduct in the Federal Judiciary being avidly sought out to file those motions individually or as a class action with a multidistrict litigation dimension. The Committee and/or its members would be in the middle of it all.

### **3) Publicizing the nature of the investigation and the call to lawyers and the public for similar information and evidence to proceed legally and effectively**

140. In pursuing its objective at the top of the Federal Judiciary, the Committee can make the most of its substantive advantage over reporters: All attorneys in NY are within its investigative jurisdiction and under the reporting duty of the Rules of Professional Conduct ([fn. 7](#) supra), which in practice has already served them with a subpoena:

#### **RULE 8.3: Reporting Professional Misconduct (emphasis added)**

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer *shall report* such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

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<sup>95</sup> [http://Judicial-Discipline-Reform.org/docs/Dynamics\\_of\\_corruption.pdf](http://Judicial-Discipline-Reform.org/docs/Dynamics_of_corruption.pdf)

<sup>96</sup> [http://Judicial-Discipline-Reform.org/docs/SCT\\_knows\\_of\\_dismissals.pdf](http://Judicial-Discipline-Reform.org/docs/SCT_knows_of_dismissals.pdf);

<sup>97</sup> [http://Judicial-Discipline-Reform.org/docs/DrCordero-CA2\\_clerks\\_wrongdoing.pfd](http://Judicial-Discipline-Reform.org/docs/DrCordero-CA2_clerks_wrongdoing.pfd)

<sup>98</sup> [http://Judicial-Discipline-Reform.org/docs/Sensenbrenner\\_on\\_Judicial\\_IG.pdf](http://Judicial-Discipline-Reform.org/docs/Sensenbrenner_on_Judicial_IG.pdf)

<sup>99</sup> Bills S.2678 and H.R.5219 "Judicial Transparency and Ethics Enhancement Act of 2006" creating an inspector general for the Judiciary;  
[http://judicial-discipline-reform.org/Follow\\_money/S2678\\_HR5219.pdf](http://judicial-discipline-reform.org/Follow_money/S2678_HR5219.pdf)

<sup>100</sup> Cf. [http://Judicial-Discipline-Reform.org/docs/Jud\\_Discipline\\_Audit\\_Comm\\_Act.pdf](http://Judicial-Discipline-Reform.org/docs/Jud_Discipline_Audit_Comm_Act.pdf)

- (b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to **respond to a lawful demand for information** from a tribunal or other authority empowered to investigate or act upon such conduct.

141. The initial requirement that the attorney “knows that another lawyer has committed a violation of the Rules” can be easily shown to have been met if the attorney had actual knowledge or knowledge can be imputed to him because he could not have not known, his efforts at willful ignorance notwithstanding, that the lawyer had violated the very general prohibition under [Rule 8.4](#), providing that “A lawyer or law firm shall not...(d) engage in conduct that is prejudicial to the administration of justice”. If so, the “subpoena” is deemed to have issued under Rule 8.3(b). It compels the attorney, not just to turn over in response to a demand, but also to volunteer, not verified information or hard evidence, but rather a “substantial question” concerning the lawyer’s dishonesty, untrustworthiness, and lack of fitness. That term is more akin to a reasonable doubt than a higher standard „reason to believe“. Rule 8.3 is a magic wand that has already opened all doors to limitless knowledge and evidence of that type without the need for a formal demand to wield it. This means that attorneys have a preceding duty to come forward before they ever receive a formal demand from the Committee or similar authority. If they have failed to voluntarily report their “substantial question”, they are already subject to discipline before the demand issues, never mind its being received by them. That provides leverage. Moreover, such duty to report is broadest, for it encompasses all other lawyers and their violations, thus going well beyond the four corners of any possible subpoena. If a demand issues, it covers both what the lawyer has in his mind as knowledge and what he has in his hands as evidence. When wielded by savvy and imaginative investigators, Rule 8.3 can be a most valuable information-gathering tool.
142. PACER can allow identifying lawyers with an oddly consistent record, who may be winning insiders or losing outsiders of some form of coordinated misconduct. All sorts of electronic case documents can be downloaded and information and evidence can be demanded from the lawyers. The Committee can also use PACER dockets to identify parties that have fallen victim to coordinated misconduct and invite them to testify or otherwise share their experiences with it.
143. Current and former clerks of judges and justices can be called. Court staffers that signed up in response to the noble calling to serve as Administrators of Justice only to be pressed into doing the dirty work of pawns of injustice can be disgusted enough as to hear the call and come forward as Deep Throats. Their leads can prove as invaluable as those of their illustrious namesake

during the Watergate Affair investigation. These and many other means<sup>101</sup> can allow the Committee to lawfully generate enough public outrage to cause its investigation to make progress and take a life of its own, while insulating itself from the pressures of insiders to shut it down.

144. Yet, to set in motion a Watergate-like series of events that build up a critical mass of public outrage, the Committee needs to publicize its investigation. It can work with the contacts that it or its members already have or can develop in the traditional media and with rising politicians. It can request information from the hundreds of Google- and Yahoogroups and websites that complain about dishonest and fraudulent attorneys and judicial bias and abuse of power. (fn. 4 >¶4 supra) It can tap the vigorously expanding Internet community of citizens investigative journalists. It can take advantage of the striking mass communication success of the social networking sites, e.g., Facebook, Utube, and Twitter. In so doing, the confidentiality of the investigation need not be violated. During the investigative stage preceding the lawful release of the investigatees' names or the charges and disciplinary measures brought against them, only the nature of the investigation and the call for information and evidence need be widely publicized.

#### 4) The Committee as a reluctant hero that becomes The Champion of Justice

145. The heft of this complaint requires a thoughtful investigative strategy; its gravitas warrants an unwavering investigation. Its foundation lies in three cases that ascended on appeal in a straight line from a bankruptcy to a district court, to a circuit court and a presiding judge (CA:2180), to a current justice and through her to the Supreme Court<sup>102</sup> (fn. 1, 73 supra), whose members are circuit justices<sup>103</sup> (28 U.S.C. §42) so that from them the line goes down to both the circuits<sup>104</sup>, which appoint bankruptcy judges (fn. 72 supra; A:990), and their chief judges (28 U.S.C. §352; fn. 71.b supra)<sup>105</sup>, from whom the line goes back up to the Judicial Conference of the U.S.<sup>106</sup>

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<sup>101</sup> Cf. [http://Judicial-Discipline-Reform.org/DeLano\\_course/3Journalism\\_to\\_trigger\\_history.pdf](http://Judicial-Discipline-Reform.org/DeLano_course/3Journalism_to_trigger_history.pdf)

<sup>102</sup> [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_to\\_Justices\\_4aug8.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_to_Justices_4aug8.pdf)

<sup>103</sup> [http://Judicial-Discipline-Reform.org/docs/DrCordero-JGinsburg\\_injunction\\_30jun8.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero-JGinsburg_injunction_30jun8.pdf)

<sup>104</sup> [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_appeal\\_CJWalker.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_appeal_CJWalker.pdf); fn. 106.c>N:36)

<sup>105</sup> <http://Judicial-Discipline-Reform.org/docs/28usc351-364.pdf>;

<http://Judicial-Discipline-Reform.org/docs/DrRCordero-Justices&judges.pdf>

<sup>106</sup> a. [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_to\\_Jud\\_Conference\\_18nov4.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_to_Jud_Conference_18nov4.pdf);

b. [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_2complaints\\_JConf.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_2complaints_JConf.pdf); fn. 53 supra;

c. [http://Judicial-Discipline-Reform.org/JNinfo/25Committee/7DrCordero-JConference\\_28feb9.pdf](http://Judicial-Discipline-Reform.org/JNinfo/25Committee/7DrCordero-JConference_28feb9.pdf)

146. Therefore, a thorough investigation of this complaint by the Committee holds out the realistic possibility of establishing a test case that can be mirrored or followed across the nation. While the jurisdictional foundation for the Committee's investigation is the misconduct of and among the named attorneys (GC:1§I supra), their coordination includes federal judges together with their staff. Those that have known or because of their supervisory duties should have known about the bankruptcy fraud schemes or other forms of coordinated misconduct have hushed it up recklessly to preserve in self-interest the Judiciary's esteem at the expense of the administration of justice and public welfare or even to benefit materially from the \$10bls. handled annually in the bankruptcy courts.<sup>107</sup> This warrants the Committee widening its investigative scope to the Federal Judiciary and framing the investigative question thus: What have the top members and bodies of the Federal Judiciary known about bankruptcy fraud schemes developing in the Second Circuit and in any other and all other circuits given that in all of them obtain the same mode of appointment of bankruptcy judges, the same "absence of effective oversight" (§14 supra), and the same opportunity in judicial proceedings as well as corruptive motive and means (GC:i supra)?

147. The investigation of this complaint can become a focal point of national attention. It all comes down to the Committee's and its members' commitment to ensuring that attorneys practice law in compliance also with those that apply to them and as a noble profession that aims to enable every person to assert and enjoy his or her rights and feel it fair to perform their duties just as others also do. The greater that commitment and the courage that must sustain it, the more realistic it will be for the Committee to emerge collectively as our generation's Senator Sam Ervin, the chairman of the Senate Watergate Committee. He became a national figure during the Senate hearings as he gave his TV audience in the millions the assurance that he would get to the bottom of a national political tragedy and bring calm through understanding to an outraged public. The Committee Co-chairman, Senator Howard Baker, summarized his examination of every witness in a simple but astonishingly effective question that he unfailingly asked of each of them. It became his hallmark and enduring legacy. It can be adapted for the Committee thus:

What do the justices and judges know about coordinated misconduct in the Judiciary and how have they benefitted from doing nothing about it?

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<sup>107</sup> In building a case as it investigates that question, the Committee can draw from the jurisprudence of the cases against the Catholic Church's coordinated effort to protect pedophile priests. What doctrines could be more effective in impeaching the Judiciary than those that it developed to apply to others in a very similar organizational position?

148. If the Committee can muster the necessary strength of character and display the requisite investigative expertise to find the answer to that question, it can set in motion the process of resolving a disturbing institutional problem that goes to the heart of how we conceive of ourselves: A people governed with its consent by the rule of law. If so, the Committee or its most principled, courageous, and ambitious members can become a new and permanent iconic figure of our national psyche: The Champion of Justice. (fn. 5 supra)

## **B. Requested action**

149. Therefore, Dr. Cordero respectfully requests that the NYS Attorney Grievance Committee:

- a. investigate, expose, and discipline the complained-against attorneys;
- b. to that end, invoke Rule 8.3.b to obtain information from those attorneys who possess knowledge or evidence concerning the subject of this complaint, an investigative undertaking that can be facilitated by the Demand for Information and Evidence (next infra), which identifies the documents most likely to pinpoint and expedite the investigation;
- c. provide Dr. Cordero with copies of the information and evidence obtained or produced by it and notify him of, and allow him to attend, the depositions and hearings that it may hold given that his command of the record will enable him to suggest pertinent questions and provide helpful comments in assessing the truthfulness, accuracy, and relevance of such information and evidence, including the statements made at the hearings; and
- d. post on its website or otherwise make publicly available the publicly filed documents in the records of the investigated cases, and call for submission of similar documents, which can help it to establish how widely coordinated misconduct has spread, how high it has reached in our legal and bankruptcy systems, and how detrimental its effect is on the public.
- e. interview Dr. Cordero so that he may provide further information or clarify the information furnished in the complaint or contained in the record of *Premier, Pfuntner, and DeLano*;
- f. consider this complaint an opportunity for the Committee and its members to emerge even unwillingly, reasonably scared, but morally compelled as reluctant heroes: Champions of Justice that make progress toward the realization in NYS and across the nation of the aspirational goal of “Equal Justice Under Law”.

Dated: February 19, 2010  
59 Crescent Street  
Brooklyn, NY 11208

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

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**Dr. Richard Cordero, Esq.**

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

59 Crescent St., Brooklyn, NY 11208  
[Dr.Richard.Cordero.Esq@gmail.com](mailto:Dr.Richard.Cordero.Esq@gmail.com)  
tel. (718)827-9521

**[Sample of individualized letter sent to each of the Committee chair and staffers named in the footnote.]**

March 19, 2010

Daniel A. Drake, Esq.  
Principal Counsel  
Attorney Grievance Committee  
for the Seventh Judicial District  
50 East Avenue, Suite 404  
Rochester, NY 14604-2206

tel. (585)530-3180; fax (585)530-3191

Dear Mr. Drake,

Last February 25, I sent you and each of the other four members of the Attorney Grievance Committee<sup>1</sup> an individualized original of a misconduct complaint against named attorneys together with supporting evidence in print and on a CD; it was delivered by the U.S. Postal Service at 8:55 a.m. on Monday, 1 instant. Its cover letter is attached hereto. Although I requested to be kept informed of your investigation of it, I have unfortunately not yet received even acknowledgment of receipt.

The following links will allow you to retrieve 1) the complaint and 2) the proposed demand for information and evidence for the Committee to issue in aid of its investigation:

- 1) [http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/1DrRCordero-AttDDrake.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-AttDDrake.pdf)
- 2) [http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/2DrRCordero-GC\\_infoDemand.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/2DrRCordero-GC_infoDemand.pdf)

Therefore, I would be most indebted to you if you would let me know the status of your processing of the complaint.

Sincerely, *Dr. Richard Cordero, Esq.*

---

<sup>1</sup> Thomas N. Trevett, Esq., Chair  
Gregory J. Huether, Esq., Chief Counsel  
Daniel A. Drake, Esq., Principal Counsel  
Andrea E. Tomaino, Esq., Principal Counsel  
Ms. Janet A. Montante, Investigator

SEVENTH JUDICIAL DISTRICT  
ROCHESTER

CHIEF COUNSEL  
GREGORY J. HUETHER

CHAIRPERSON  
THOMAS N. TREVETT, ESQ.



PRINCIPAL COUNSEL  
DANIEL A. DRAKE

PRINCIPAL COUNSEL  
ANDREA E. TOMAINO

INVESTIGATOR  
JANET A. MONTANTE

March 19, 2010

**CONFIDENTIAL**

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Dear Dr. Cordero:

I am writing in response to your complaint dated February 19, 2010, which was received in this office on March 1, 2010, under cover letter dated February 25, 2010.

Your complaint contains allegations against 14 different attorneys and judges, including United States Supreme Court Justice Sonia Sotomayor. I note that you are an attorney currently registered in the Second Department of New York State, and that your complaint was disseminated on the internet. I also note that your lengthy submission involves your role as a creditor in a number of bankruptcy cases, and your numerous complaints against everyone involved in those cases, including the Supreme Court Justice and Federal Judiciary.

Your allegations stem from your position that there is a vast conspiracy of "insiders" throughout the above framework, and that the adverse rulings at every level merely reinforce and support your theory of a "bankruptcy fraud scheme". Much of your complaint references conduct, filings, rulings, and exhibits, all of which have been reviewed during the many underlying proceedings before numerous courts. Your complaint arises from adverse rulings, and you cite those rulings as proof of the alleged bankruptcy fraud scheme. Many of your allegations are supported only by your rhetorical questions, essentially asserting "what else could be the situation? "

You have asked the Grievance Committee to take action in order to "possibly establish a test case that can be mirrored or followed across the nation." You have also requested us to widen the investigative scope to the federal judiciary. Further, you have requested specific action on page "68" at paragraph 149 of your complaint. After a thorough and careful review of your submission, we have determined that there is no basis for involvement by this office.

50 East Avenue, Suite 404 • Rochester, New York 14604-2206 • (585) 530-3180 • Fax (585) 530-3191  
[www.courts.state.ny.us/ad4](http://www.courts.state.ny.us/ad4)

Richard Cordero  
March 19, 2010  
Page 2

To begin, our investigative authority does not extend to complaints against judges or the Judiciary. Moreover, complaints must be individualized and may not be submitted collectively against groups of individuals. This is to comply with Section 90 of the New York State Judiciary Law, which states that all papers and proceedings in this office are sealed and deemed private and confidential. This confidentiality serves to promote the public's confidence in bringing matters to our attention, and to protect respondents against any adverse consequences of unfounded and meritless complaints. Unfortunately, your complaint contains allegations against a number of attorneys and judges, and has been publicized, apparently by you.

As previously mentioned, your complaint stems from a number of adverse rulings against you. Your allegations contain conclusory assumptions, innuendo, and rhetorical assertions. Your specific instances of alleged violations have been brought to the court of original jurisdiction or were matters that were preserved and considered on your appeals. Your complaint to this office simply seeks a further review of the same arguments, and that request stems not from identified ethical violations but from your obvious unhappiness with the decisions and outcome in the underlying matters.

Your requested action indicates an apparent misunderstanding of the authority of the Attorney Grievance Committee. Our purpose is not to "investigate, expose, and discipline" as you request, but rather to investigate matters of professional misconduct as prohibited by the Rules of Professional Conduct. Such matters, after investigation, may be presented to the Grievance Committee and ultimately the Appellate Division if warranted. Your request for broader action by this office is not possible.

Finally, this office does not compel attorneys to answer questions absent a pending investigation. Your characterization of Rule 8.3 as a "magic wand" is misplaced. This office does not conduct investigations in that manner.

I urge you to become more familiar with the rules of confidentiality pertaining to complaints filed with this office. While I appreciate your obvious unhappiness with the underlying proceedings, your complaint does not warrant investigation by this office. Thank you for contacting this office with your concerns.

Very truly yours,



Gregory J. Huether  
Chief Counsel  
GJH/km

**Dr. Richard Cordero, Esq.**

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

59 Crescent St., Brooklyn, NY 11208  
[Dr.Richard.Cordero.Esq@gmail.com](mailto:Dr.Richard.Cordero.Esq@gmail.com)  
tel. (718)827-9521

**[Sample of individualized front page of appeal sent to each of the Committee chair and staffers(ri:113fn2)]**

April 16, 2010

Gregory Huether, Esq.  
Chief Counsel, Attorney Grievance Committee  
for the Seventh Judicial District  
50 East Avenue, Suite 404  
Rochester, NY 14604-2206

tel. (585)530-3180; fax (585)530-3191

Dear Mr. Huether,

This is an appeal from the Committee’s decision in your letter of last March 19(GC:88 infra)<sup>1</sup>, not to investigate my February 19 misconduct complaint against the named attorneys (GC:1 infra).

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  - A. The judges and courts so much failed to review *DeLano* that they denied *every single document* requested.....GC:93
  - B. The judges and courts avoided reviewing *Pfuntner* by disposing of it summarily and through the expedient of a technicality.....GC:95
  - C. The Committee has no evidence of the judges or courts’ rulings reviewing the underlying cases or their review of any exhibits at all, let alone of the complaint under New York State law .....GC:96
- III. The Committee’s quick reading of the complaint disregarded the evidence that the therein mentioned judges had a common, self-preservation interest in not reviewing it so as to avoid being implicated in the described misconduct and that they cannot advance that interest by turning confidentiality into a gag on complainants.....GC:97
- IV. The Committee failed to avoid even the appearance of conflict of interests, thereby forfeiting public trust in its willingness and ability to handle the complaint fairly, impartially, and thoroughly enough to go all the way where the evidence will take it so that it must now disqualify itself.....GC:102
- V. Action Requested ..... GC:107
  - I. List of Attorneys Complained-Against..... GC:1

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<sup>1</sup> All GC:# references are to a page of the complaint, which can be downloaded through [http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/1DrRCordero-Att\\_Grievance\\_Com.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-Att_Grievance_Com.pdf), and as the case may be, followed by a numbered paragraph (GC:#¶#) or a numbered section (GC:##) on that page.

SEVENTH JUDICIAL DISTRICT  
ROCHESTER

CHIEF COUNSEL  
GREGORY J. HUETHER

CHAIRPERSON  
THOMAS N. TREVETT, ESQ.



State of New York  
**Attorney Grievance Committees**

PRINCIPAL COUNSEL  
DANIEL A. DRAKE

PRINCIPAL COUNSEL  
ANDREA E. TOMAINO

INVESTIGATOR  
JANET A. MONTANTE

April 23, 2010

**CONFIDENTIAL**

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

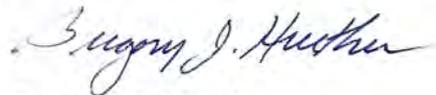
Dear Dr. Cordero:

This will acknowledge receipt of your letter of April 16, 2010, seeking to "appeal from the Committee's decision..." not to investigate your earlier complaint.

For the reasons set forth in my letter of March 19, 2010, I have determined there is insufficient proof to support the institution of a formal disciplinary proceeding. Pursuant to the Court's Rules, found at 22 NYCRR 1022.19 (d) (2)(I), that decision is final.

The further relief you have requested in your most recent submission is beyond the authority of this office to provide.

Very truly yours,



Gregory J. Huether  
Chief Counsel

GJH/km

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**Dr. Richard Cordero, Esq.**

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

59 Crescent St., Brooklyn, NY 11208  
[Dr.Richard.Cordero.Esq@gmail.com](mailto:Dr.Richard.Cordero.Esq@gmail.com)  
tel. (718)827-9521

July 15, 2010

**[Text of the individualized cover letter sent in separate envelopes to each...]**

Member of the Attorney Grievance Committee [ri:149§VII infra]  
Seventh District of the Fourth Judicial Department

Dear [Member],

I filed with the 7<sup>th</sup> District Grievance Committee chair and staffers(113fn2) a complaint, dated 2/19/10, against attorneys engaged in coordinated misconduct(GC:1 infra)<sup>1</sup>. I am addressing you as Committee member because I believe that neither you nor your colleagues would approve that in your collective name it was dismissed(GC:88) in disregard of the evidence and by solving self-servingly a conflict of interests. Hence, this is a request for you and the members to intervene.

Indeed, “the main purpose of the Committee is to protect the public against the small minority of lawyers who do not act in an ethical manner”<sup>2</sup>. The complaint meticulously presents *uncontested* evidence of misconduct based both on documents filed with the courts in three cases that twice went from a bankruptcy court all the way to the U.S. Supreme Court<sup>3</sup> and on applicable law(68a and 145 ToA) Among the attorneys is an Assistant U.S. Trustee, whose position is aggravated because as a public servant she was duty-bound to ensure the conformance of bankruptcy cases to the law<sup>4</sup> and bore responsibility for the conduct of her subordinate attorney-trustees<sup>5</sup>. Still, she allowed two trustees, required by regulation to handle their cases personally<sup>6</sup>, to lay their hands on an unmanageable 7,289 cases and bring them before the same judge<sup>7</sup>, who has in practice unreviewable power<sup>8</sup> to determine whether they earn their per case compensation<sup>9</sup> and are reimbursed for their expenses<sup>10</sup>. A bankruptcy petition mill<sup>11</sup> and a situation inherently fostering dependence and connivance degenerated naturally into a bankruptcy fraud scheme (114fn3). Run by trustees, attorneys, and judges(3§II), it unjustly enriches or unjustifiably harms debtors and creditors while inflicting upon the public the loss caused by every bankruptcy. Yet, the chair and staffers dismissed the complaint without even asking the attorneys to respond<sup>12</sup> or investigating it to validate its allegations<sup>2</sup>, thus showing reckless disregard for the truth by intentionally avoiding the means to ascertain the facts<sup>13</sup>(cf. 121§A). Court records show that the chair and staffers worked with the misconducting trustees, attorneys, and judge and are related to bankruptcies(134§A). Despite that conflict of interests(132§IV), they ignored their duty to disclose or recuse themselves and condoned the appearance of impropriety(139§B), thus enabling attorneys to continue harming me, the public, the legal profession, and the Committee’s reputation.

I trust you will not show the same indifference to evidence of misconduct and conflict of interests<sup>14</sup>. Thus, I respectfully request(140§V) that you and other members(149§VII):

- 1) call a meeting of the Committee to review the complaint and its dismissal;
- 2) cause the Committee to refer the original complaint and this one against the chair and staffers to the Appellate Division<sup>30</sup> under 22 NYCRR 1022.20(b)(4) (142¶c) for, among other things,
  - a) appointment of referees unrelated to any parties in the 4<sup>th</sup> Department and to bankruptcies and
  - b) their execution of the proposed Demand for Information and Evidence(Rd:151), which can focus and speed up the investigation; and
- 3) consider how you, your firm, and I can take action on behalf of the class of defrauded debtors and creditors and emerge, possibly with the support of a challenger in this mid-term election, as the Champions of Justice(144¶d)<sup>15</sup>.

Thus, I look forward to hearing from you.

Sincerely, *Dr. Richard Cordero, Esq.*

- 
- <sup>1</sup> The file containing the complaint is downloadable through the link at the footer; this letter and the request are also there with active links that retrieve their references by clicking them.
- <sup>2</sup> <http://www.courts.state.ny.us/ad4/AG/AGdefault.htm> >Attorney Grievance. “The Attorney Grievance Committee of the Fourth Judicial Department **investigates** and prosecutes **complaints** of misconduct against lawyers.” (emphasis added) Cf. [ri:132¶40](#).
- <sup>3</sup> 08-8382, SCt; [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_v\\_DeLano\\_SCt\\_3oct8.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_v_DeLano_SCt_3oct8.pdf); 04-8371, SCt; [http://Judicial-Discipline-Reform.org/docs/DrCordero\\_v\\_TrGordon\\_SCt.pdf](http://Judicial-Discipline-Reform.org/docs/DrCordero_v_TrGordon_SCt.pdf)
- <sup>4</sup> 28 U.S.C. Chapter 39-United States Trustees. §586 Duties. Cf. [GC:11¶¶11-12](#).
- <sup>5</sup> Id.; Rule 5.1(b) of the Rules of Professional Conduct; U.S. Trustee Manual:  
§2-2.1 Pursuant to 28 U.S.C. §586(a), the United States Trustee must supervise the actions of trustees in the performance of their responsibilities.  
§2-3.1 The primary functions of the United States Trustee in chapter 7 cases are the establishment, maintenance, and supervision of panels of trustees, and the monitoring and supervision of the administration of cases under chapter 7 of the Bankruptcy Code.  
[http://www.justice.gov/ust/eo/ust\\_org/ustp\\_manual/index.htm](http://www.justice.gov/ust/eo/ust_org/ustp_manual/index.htm) >Chapter 7 Case Administration  
§4-3.1 The primary responsibilities of the United States Trustee in chapters 12 and 13 cases are the appointment of one or more individuals to serve as standing trustees; the supervision of such individuals in the performance of their duties; and the supervision of the administration of cases under chapters 12 and 13.  
[http://www.justice.gov/ust/eo/ust\\_org/ustp\\_manual/index.htm](http://www.justice.gov/ust/eo/ust_org/ustp_manual/index.htm) >Ch. 12 & 13 Case Administration
- <sup>6</sup> 28 CFR §58.6(10); [http://Judicial-Discipline-Reform.org/docs/28\\_cfr\\_58.pdf](http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf)
- <sup>7</sup> [http://Judicial-Discipline-Reform.org/docs/Trustee\\_Reiber\\_3909\\_cases.pdf](http://Judicial-Discipline-Reform.org/docs/Trustee_Reiber_3909_cases.pdf)  
[http://Judicial-Discipline-Reform.org/docs/TrGordon\\_3383\\_as\\_trustee.pdf](http://Judicial-Discipline-Reform.org/docs/TrGordon_3383_as_trustee.pdf)
- <sup>8</sup> [http://Judicial-Discipline-Reform.org/SCt\\_nominee/JSotomayor\\_v\\_Equal\\_Justice.pdf](http://Judicial-Discipline-Reform.org/SCt_nominee/JSotomayor_v_Equal_Justice.pdf) >¶4;  
[http://Judicial-Discipline-Reform.org/Follow\\_money/unaccount\\_jud\\_nonjud\\_acts.pdf](http://Judicial-Discipline-Reform.org/Follow_money/unaccount_jud_nonjud_acts.pdf)
- <sup>9</sup> Compensation of trustee under Chapter 7, 11 U.S.C. §§326(a) and 330(a)(1)(A); under Chapter 13 if a panel trustee, §§326(b) and 1326(a)(2)-(3); and if a standing trustee, §1326(b)(2) and 28 U.S.C. §586(e); [http://Judicial-Discipline-Reform.org/docs/11usc\\_Bkr-Code\\_08.pdf](http://Judicial-Discipline-Reform.org/docs/11usc_Bkr-Code_08.pdf) and [http://Judicial-Discipline-Reform.org/28usc586\\_trustees\\_duties.pdf](http://Judicial-Discipline-Reform.org/28usc586_trustees_duties.pdf)
- <sup>10</sup> Reimbursement of expenses, 11 U.S.C. §330(a)(1)(B), (2), and (7); §330(a)(1)(B) and §331
- <sup>11</sup> 11 U.S.C. §330(c) on payment of no less than \$5/month from any distribution, which creates a perverse incentive to rubberstamp any bankruptcy relief petition and as many as possible.
- <sup>12</sup> “If the review of your complaint indicates that unethical conduct may be involved, the usual procedure is for our office to send a copy of your complaint to the lawyer for his or her response. **You will receive a copy** of the lawyer’s response to your complaint. If the lawyer’s response does not resolve the matter, further investigation **will be undertaken**.” (emphasis added); <http://www.courts.state.ny.us/AD4/> >Attorney Grievance >How to File a Complaint-What to Expect. No copy was received; hence, no response was requested(cf. [ri:140¶60](#)).
- <sup>13</sup> “The prohibition on conduct prejudicial to the administration of justice is generally invoked to punish conduct...that results in substantial harm to the justice system comparable to those [sic] caused by obstruction of justice....” NYSBA Comments on [Rule 8.4: Misconduct](#) [3]  
[http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional\\_Standar.htm](http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/Professional_Standar.htm) >Final NY Rules of Conduct with Comments
- <sup>14</sup> Non-lawyers too are emboldened; see the incongruous, implausible, and suspicious declarations of 39-year veteran Bankruptcy Officer DeLano in his own bankruptcy petition([GC:42§1](#)).
- <sup>15</sup> [http://Judicial-Discipline-Reform.org/Follow\\_money/DrCordero-journalists.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DrCordero-journalists.pdf)

July 15, 2010

**Request For Intervention To Review And Refer  
to the Members of the Attorney Grievance Committee  
of the NYS Supreme Court, Appellate Division, 4<sup>th</sup> Judicial Department**

**I. Nature and history of the attorney misconduct complaint**

1. A misconduct complaint, dated February 19, 2010, against certain attorneys(GC:1 infra<sup>1</sup>) was filed with the Attorney Grievance Committee(GC:i) for the Seventh Judicial District by sending an original to the chair and each of its staffers<sup>2</sup> (hereinafter the chair and staffers) by Complainant Dr. Richard Cordero, Esq.
2. The complaint sets forth specific instances of misconduct by the complained-against attorneys concisely and in a clearly identifiable paragraph for each of them respectively in the Complaint Overview(GC:3§II). Therein and in the Statement of Facts(GC:14§III), the complaint shows, among other things, that:
  - a. attorneys engaged in the disappearance of the assets of a business in liquidation and failed their duty and then refused to provide a statement of their whereabouts;
  - b. attorneys engaged in ex-parte communications with a judge to obtain benefits for themselves, including the favorable modification of his orders, to the detriment of the opposing party;

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<sup>1</sup> All references with the format letter(s):#§#, ...#¶#, or ...#fn# are to the complaint or the record. (cf. [Table of Contents](#), infra) The letter(s) indicate the stage of the document in a complaint or one of the cases at its origin, followed by the page number of consecutively numbered pages within the complaint or a case and the pertinent section § identified by number or letter; paragraph ¶ or footnote fn number. Pages bearing Roman numbers precede those with Latin numbers in the respective complaint or case.

**GC**=complaint to the Grievance Committee → **ri**=this request for intervention → **Rd**=Referees' demand for information and evidence (to download them go to link at footer)

**A**=*Pfuntner* from Bankruptcy Court, WBNY, to the Supreme Court of the United States.

**D**=*DeLano* in District Court, WDNY → **Add**=addendum → **Pst**=post addendum → **CA**=in the Court of Appeals for the 2<sup>nd</sup> Circuit → **US**=in the U.S. Supreme Court

<sup>2</sup> Under individualized cover letter of February 25, 2010, the complaint was sent separately to the following five member and staffers of the Grievance Committee for the 7<sup>th</sup> District:

<ol style="list-style-type: none"> <li>a. Thomas N. Trevett, Esq., Chair</li> <li>b. Gregory J. Huether, Esq., Chief Counsel</li> <li>c. Daniel A. Drake, Esq., Principal Counsel</li> </ol>	<ol style="list-style-type: none"> <li>d. Andrea E. Tomaino, Esq., Principal Counsel</li> <li>e. Janet A. Montante, Investigator</li> </ol>
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- c. attorneys approved and covered-up a 39-year veteran bankruptcy officer’s own bankruptcy petition whose inherent suspiciousness and intrinsic incongruity and implausibility gave them notice that the officer was committing bankruptcy fraud through concealment of assets;
  - d. attorneys violated the law and the rules concerning the meeting of creditors in an attempt to deprive a creditor or party in interest of his right to examine the debtor and thereby protect the latter and themselves from incrimination in a bankruptcy fraud scheme;<sup>3</sup>
  - e. attorneys manipulated an official audio recording of the questioning of the debtors at the meeting of their creditors that would have incriminated them and the debtors in a cover-up of bankruptcy fraud through, among others, concealment of assets;
  - f. attorneys refused to produce the transcript of a meeting of creditors, which contained incriminating statements, among others, revealing the practice of willful destruction of bankruptcy documents that could prove their participation in a bankruptcy fraud scheme;
  - g. attorneys abused process by raising belatedly a barred by laches motion for claim disallowance as an artifice to eliminate from the case a creditor or party in interest that kept requesting documents that would incriminate them in a bankruptcy fraud cover-up;
  - h. attorneys withheld *every single document* requested during discovery precisely for the evidentiary hearing on their motion to disallow the requester’s claim against their client;
  - i. attorneys signaled answers to a client while the latter was under oath and examination by the opposing party at an evidentiary hearing, which was reported in the official transcript<sup>4</sup>;
  - j. attorneys disregarded the Federal Rules of Bankruptcy Procedure 8006-8007 by transferring to the District Court an incomplete record in an attempt to deprive a party of a transcript incriminating them in setting up and conducting a sham evidentiary hearing; etc.
3. Each of these instances of provable facts constitutes “conduct that is prejudicial to the administration of justice” under [Rule 8.4\(d\)](#) of the New York State Unified Court System, Part 1200 -Rules of Professional Conduct<sup>5</sup>. Each of them “raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer” under [Rule 8.3\(a\)](#). Moreover, “the totality

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<sup>3</sup> How a Fraud Scheme Works, Its basis in the corruptive power of the lots of money available through the provisions of the Bankruptcy Code and unaccountable judicial power; [http://Judicial-Discipline-Reform.org/Follow\\_money/How\\_fraud\\_scheme\\_works.pdf](http://Judicial-Discipline-Reform.org/Follow_money/How_fraud_scheme_works.pdf)

<sup>4</sup> The transcript was printed and sent to the chair and each of the staffers. It is in the file at [http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/14GC/DrRCordero-GC\\_members.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/14GC/DrRCordero-GC_members.pdf).

<sup>5</sup> 22 NYCRR Part 1200; <http://www.courts.state.ny.us/rules/jointappellate/index.shtml>; with enhanced bookmarks to facilitate navigation also at [http://Judicial-Discipline-Reform.org/docs/NYS\\_Rules\\_Prof\\_Conduct.pdf](http://Judicial-Discipline-Reform.org/docs/NYS_Rules_Prof_Conduct.pdf). Hereinafter referred to as the Rules or Rule #.

of circumstances” that they form excludes the possibility of a mere series of isolated, coincidental acts, and instead supports the inference of intentional and coordinated misconduct. Probable cause to believe that such misconduct occurred is by those instances established in the mind of fair and impartial persons, especially lawyers deemed capable of spotting signs of misconduct and duty-bound to exercise such capacity by investigating the circumstances of such misconduct. Consequently, those instances of misconduct were sufficient to warrant an investigation of the complaint and the therein complained-against attorneys.

4. By letter of March 19, Dr. Cordero addressed each of the chair and staffers to make them aware that he had received no acknowledgment of their receipt of his complaint and to request that each let him know of the status of its processing.(GC:87) None of them acknowledged receipt of that letter either.
5. Instead, Chief Counsel Gregory J. Huether, Esq., wrote in his letter of March 19 to Dr. Cordero: “You have asked the Grievance Committee to take action...we have determined that there is no basis for involvement by this office”. (emphasis added; GC:88) With that conclusory statement the Committee disregarded the evidence in order to dismiss the complaint without discussing a single instance of misconduct and without having asked the complained-against attorneys for a response to the complaint.
6. By letter and supporting brief of April 16, Dr. Cordero appealed to each of the chair and staffers for reconsideration of the dismissal(GC:91). In addition, he asked that each explain the evidence found in court records(ri:132§IV) showing that they had engaged in conduct equal or related to that of the complained-against attorneys, thus establishing the fact or appearance of conflict of interests: Their investigation of the instant complaint, let alone a competent and diligent one, could have led to their own incrimination. This called for their recusal from handling the complaint.
7. Far from it, after the reconsideration cover letter and brief sent individually to each of the chair and staffers were confirmed delivered in Rochester on April 21, Chief Counsel Huether dashed back a letter on April 23 stating “I have determined there is insufficient proof to support the institution of a formal disciplinary proceeding”(GC:109). None of the chair and staffers explained the evidence of their conflict of interests, whereby all benefitted from Mr. Huether’s statement: “that decision is final”.(id) Since the brief contained as an exhibit his March 19 letter and neither the chair nor the other staffers took exception to it, each of them by his or her acts and omissions assented to its statements and wording, that is, if they had not already participated in its drafting and its review before Mr. Huether sent it to Dr. Cordero. The chair and the staffers proceeded in self-interest to

dismiss the complaint and disregard both the appeal for reconsideration and the request to explain their conflict of interests. Thereby they failed their duty to enforce the Rules of Professional Conduct as well as the Rules Concerning the Attorney Grievance Committee of the Appellate Division for the 4<sup>th</sup> Department<sup>6</sup>, and to uphold the integrity of the attorney grievance process.

8. The chair and staffers of the Grievance Committee to whom Dr. Cordero sent individually his complaint, the request for acknowledgment of receipt and inquiry of processing status, and the appeal for reconsideration(ri:113fn2), are reasonably presumed to be the people whom Mr. Huether referred to as “we” in his March 19 letter.(¶5 supra) Each of them as a matter of fact or appearance had a conflict of interests that provided each with a motive to dismiss the complaint rather than either investigate it and thereby run the risk of self-incrimination or disassociate him- or herself from that letter and its complaint dismissal and by thus exposing his or her colleagues to being incriminated, run the risk of losing their consideration or being retaliated against. Hence, Chief Counsel Huether’s March 19 and April 23 letters and the dismissal of both the complaint and the request for reconsideration that they accomplished are reasonably attributable to all of them.
9. There follows this request to the members of the Grievance Committee(ri:149) for them to call for a Committee meeting to review the complaint and its dismissal by the Committee chair and its staffers(ri:113fn2). It analyzes the main statements in Chief Counsel Huether’s March 19 letter(ri:120§II and 126§III) and the evidence in court records showing that the chair and staffers dismissed the complaint to solve self-servingly a disqualifying conflict of interests(ri:132§IV). By so doing, they disregarded their duties as office holders and/or lawyers and engaged in misconduct of their own. Consequently, this is a written and signed complaint against the chair and the staffers.
10. This request provides grounds why the remaining qualified members should intervene by referring both the complaint and its dismissal by the chair and staffers(ri:140¶¶a-b) to the Appellate Division for appointment of fair and impartial referees to investigate them competently and thoroughly(ri:142¶c). It now falls to each of the members to uphold their own integrity, which they knowingly made dependent on abiding by the oath of office that they took and, as to those who are attorneys, also by the laws that they swore to defend as attorneys, and to that end, handle this matter in such an ethical and courageous way that they may emerge as Champions of Justice.(ri:144¶d).

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<sup>6</sup> 22 NYCRR 1022.19-1022.28; <http://www.courts.state.ny.us/AD4/Court/Rules/Rules.htm>

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	ii. To download Adobe Reader 9.3 for free, go to <a href="http://get.adobe.com/reader/">http://get.adobe.com/reader/</a>	

- a. Dr. Cordero's cover letter of February 25, and complaint of February 19, 2010 (including the petition for reconsideration of April 16, 2010)

[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/1DrRCordero-Att\\_Grievance\\_Com.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/1DrRCordero-Att_Grievance_Com.pdf)

- b. Proposed Demand for Information and Evidence

[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/14GC/DrRCordero-Referee\\_infoDem.doc](http://Judicial-Discipline-Reform.org/NYS_att_complaints/14GC/DrRCordero-Referee_infoDem.doc)

[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/14GC/DrRCordero-Referee\\_infoDemand.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/14GC/DrRCordero-Referee_infoDemand.pdf)

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[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/5CD\\_DisCom/3transcript\\_DeLano\\_1mar5.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/3transcript_DeLano_1mar5.pdf)

- d. Table of Exhibits in *James Pfuntner v. Trustee Kenneth Gordon et al.*

[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/5CD\\_DisCom/4Pfuntner\\_Table\\_Exhibits.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/4Pfuntner_Table_Exhibits.pdf)

- e. Exhibits in *Pfuntner*

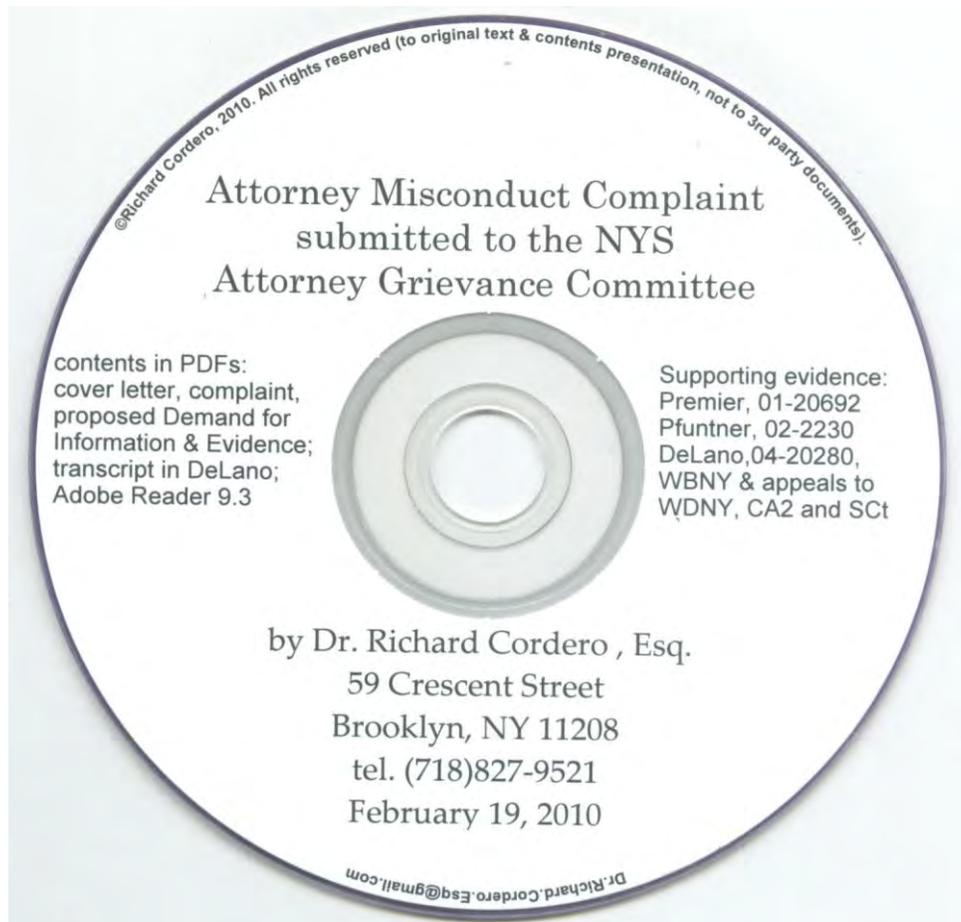
[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/5CD\\_DisCom/5Pfuntner\\_record\\_A1-2229.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/5Pfuntner_record_A1-2229.pdf)

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- g. Exhibits in *DeLano* volume 2 = CA:2091-US:2547

[http://Judicial-Discipline-Reform.org/NYS\\_att\\_complaints/5CD\\_DisCom/7DeLano\\_CA2091-US2547.pdf](http://Judicial-Discipline-Reform.org/NYS_att_complaints/5CD_DisCom/7DeLano_CA2091-US2547.pdf)



**II. Disregarding the evidence submitted, the Committee chair and staffers assumed that the judges and courts mentioned in the complaint had reviewed and considered its substance and even so properly and exhaustively disposed of its issues as to preclude them from passing judgment upon them through their own investigation**

11. Running through Chief Counsel Huether’s March 19 letter of dismissal(GC:88) is the notion that the complaint is unfounded, extremist, and not worth investigating because it “contains allegations against 14 different attorneys and judges, including United States Supreme Court Justice Sonia Sotomayor...[the] Federal Judiciary...in a vast conspiracy of “insiders””.
12. Showing Dr. Cordero’s awareness of the jurisdictional limitations on the Committee’s authority to investigate, the complaint makes a distinction from as early as the first heading of its Table of Contents on its first page, and highlights it even typographically, between §“**I....Attorneys Complained-Against** and Judges Who Are The Subject of A Demand For Information<sup>8</sup>”.(GC:iii) To catch the attention of anybody who might read the complaint too quickly, that footnote reference number appears four times on different parts of the complaint; its text reads thus:

<sup>8</sup> Under Rule 8.3(b) [of the New York State Unified Court System, Part 1200 - Rules of Professional Conduct], the Committee is authorized to demand information from “A lawyer who possesses knowledge or evidence concerning...a judge [and] the lawyer...shall not fail to respond”, regardless of whatever authority that the Committee may have to impose disciplinary measures on, or take any other action regarding, such judge.(GC:3)
13. According to Chief Counsel Huether’s letter, he and the staffers decided not to investigate because:

Your complaint references conduct, filings, rulings, and exhibits, all of which have been reviewed during the many underlying proceedings before numerous courts...[whose] adverse rulings at every level merely reinforce and support your theory of a “bankruptcy fraud scheme”..., matters that were preserved and considered on your appeals.(GC:88)
14. That statement supports the inference that the chair and staffers presumed these “matters” to have been so well and unexceptionably disposed of by “numerous courts” that the chair and staffers could conveniently prejudge that their own investigation of the “matters” would not find anything objectionable. Such presumption is not only lacking in evidentiary support, but also is contrary to the evidence submitted to them and takes no account of the applicable law. So let’s do what the chair and the staffers failed to do: analyze the complaint’s evidence.

**A. The judges and courts so much failed to review *DeLano* that they denied every single document requested, thus showing reckless disregard for the truth by intentionally avoiding the means to ascertain the facts**

15. The judges that dealt with *In re David Gene and MaryAnn DeLano*, 04-20280, WBNY, (GC:41§D) could not possibly have reviewed the underlying facts because they denied themselves as well as Dr. Cordero every single document that he requested:
  - a. from Bankruptcy Judge John C. Ninfo, II, WBNY (GC:10¶8; Transcript=Tr:188/7-189/21 attached to the complaint and contained in the CD-ROM sent to the chair and staffers (ri:119¶c) and now in the file downloadable through the link at the footer of this page;
  - b. to District Judge David Larimer, WBNY (Table at Pst:1261; CA:1735§B; on how to access the files containing supporting documents see ri:118§X);
  - c. to the panel presided over by then Judge Sonia Sotomayor (GC:62¶135; CA:2180) of the Court of Appeals, Cir. 2, and the other CA2 judges that determined motions (CA:1723 ¶9; Table at CA:2364 showing 12 requests for documents denied entirely by CA2); and
  - d. on to the Supreme Court (US:2241, denied at 2309; 2313, denied at 2485; 2429, denied at 2504; 2505, denied at 2547)
16. These first instance and appellate judges needed those documents so as to determine whether the DeLanos had engaged in bankruptcy fraud through concealment of assets with the assistance of:
  - a. their attorney, Christopher Werner, Esq., who verified their bankruptcy petition(D:28);
  - b. Chapter 13 Trustee, George Reiber, Esq., who recommended to Judge Ninfo the approval of their plan of debt repayment under 11 U.S.C. §§1321-1322; and
  - c. his supervisor, Attorney Assistant U.S. Trustee Kathleen Dunivin Schmitt, who:
    - 1) was duty-bound to act “in the public interest” (28 U.S.C. §582(a)), but instead protected the attorneys and the alleged bankrupts by failing to demand that they produce even their bank account statements and other documents necessary for discharging her duty of “monitoring plans filed under chapter[] 13 of title 11 and filing with the court, in connection with hearings under section...1324 of such title, comments with respect to such plans” (28 U.S.C. §586(a)(3)(C, F, I); cf. D:74, 84§IV, 470, 471, 474, 476, 496; Add:1038); and
    - 2) refused to remove Trustee Reiber despite:
      - (a) his unlawful delegation of the 11 U.S.C. §341 meeting of creditors to his attorney, James Weidman, Esq., which constitutes dereliction of duty so serious

as to be grounds for removal under 28 C.F.R. §58.6(a)(1) and (11)<sup>7</sup>; and

- (b) his recommendation of approval of the DeLanos’ petition without having requested, let alone reviewed, the kind of document indispensable to determine a petition’s good faith, not to mention one alleged to be fraudulent: the DeLanos’ bank account statements, thus violating his duties under 11 U.S.C. §704(a)(4, 7)

17. The judges also needed those and other financial statements and other documents to determine:
- a. whether for the purpose of preventing Dr. Cordero from obtaining them Att. Werner had resorted to the process-abusive artifice of a motion to disallow his claim against the DeLanos and, if so, whether Judge Ninfo knew or would have known about it had he not failed to perform his duty under 11 U.S.C. §1325(a)(3) to ascertain whether “the plan [of debt repayment] had been proposed in good faith and not by any means forbidden by law”;
  - b. whether Judge Ninfo had coordinated with the DeLanos’ attorney, Mr. Werner, to call for an evidentiary hearing of the motion only for both to violate discovery rules by denying Dr. Cordero *every single document* that he requested and needed to prove the DeLanos’ fraud and his claim against them; and
  - c. whether for the purpose of covering up their involvement in a bankruptcy fraud scheme, Att. Werner and Mr. DeLano’s other attorney, Michael Beyma, Esq., participated with Judge Ninfo in conducting a sham evidentiary hearing where the Judge:
    - 1) biasedly acted as the DeLanos’ Chief Advocate while the DeLanos’ attorneys acted as his second chairs, thus denying Dr. Cordero a fair and impartial hearing;
    - 2) allowed those attorneys to signal answers to Mr. DeLano during his examination under oath by Dr. Cordero; and
    - 3) arbitrarily and explicitly disregarded Mr. DeLano’s testimony confirming the facts supporting Dr. Cordero’s claim as creditor of the DeLanos so as to disallow the claim and thereby strip Dr. Cordero of standing in the DeLanos’ bankruptcy case and deprive him of his right to keep requesting those incriminating documents.

18. Moreover, the judges needed to order production of those documents so as to show that they upheld Dr. Cordero’s right to discovery under the Federal Rules of Civil Procedure, Rules 26-37, as a fundamental element of the paramount right to a fair and impartial trial under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. But far from reviewing those documents,

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<sup>7</sup> [http://Judicial-Discipline-Reform.org/docs/28\\_cfr\\_58.pdf](http://Judicial-Discipline-Reform.org/docs/28_cfr_58.pdf)

the CA2 panel that decided *DeLano* did not review even the law to find the one applicable to the facts of the case. Instead, it limited itself to slapping on a summary order form without any discussion the citation to two cases that had absolutely nothing to do with either a Chapter 13 case, or a non-commercial bankruptcy, or a stage well before discharge, or even the central issue running through the “Statement of Issues Presented for Review”, namely, fraud(CA:1719). (See Dr. Cordero’s analysis of that order in his petition for panel rehearing and hearing en banc(CA:2191) and in his petition for certiorari to the Supreme Court(US:2456§X)). So the order was just as Judge Sotomayor’s colleague, CA2 Judge Jose Cabranes, qualified her and her other two panel members’ summary order that affirmed *Ricci v. DeStefano*, the case so much discussed during her confirmation process and reversed by the Supreme Court: “perfunctory”<sup>8</sup>.

19. Likewise, the Supreme Court denied the petition for certiorari in *DeLano*, just as it did in 98 out of every 99 filings on average in the 2007 and 2008 terms.<sup>9</sup> These numbers reveal a policy bent on denying petitions out of hand without any review on the merits. In fact, according to U.S. Senator Arlen Specter, a member of the Senate Judiciary Committee, it is not even the Justices who decide what cases to take up for review, but rather their clerks do so meeting in a “pool of clerks”.<sup>10</sup>
20. The tort principle „a person intends the reasonable consequences of her acts“ applies here: Judges that systematically denied *every single document* showed a shared intention to suppress the facts. Lower court judges engaged in a series of denials to one party of discovery of any evidence held by the opposing party. These were acts which they must have known blatantly denied due process of law but which they had reason to assume would not be reversed by higher court judges, who indeed ratified their peers’ acts by engaging in their own series of such acts. Their conduct shows assumptive-ratifying coordination in furtherance of a common goal: To ensure a predetermined outcome with reckless disregard for the truth. These were not „judges reviewing filings, rulings, and exhibits“(¶13 supra); these were co-schemers flaunting contempt for the rule of law.

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<sup>8</sup> *Ricci v. DeStefano*, docket no. 06-4990-cv, 530 F.3d 87 (Second Circuit; June 9, 2008; per curiam); [http://Judicial-Discipline-Reform.org/docs/Ricci\\_v\\_DeStefano\\_CA2.pdf](http://Judicial-Discipline-Reform.org/docs/Ricci_v_DeStefano_CA2.pdf) >R6

<sup>9</sup> The Supreme Court only heard arguments in 162 out of the 15,979 filings in the 2007 and 2008 terms; and disposed of only 155 cases in 141 signed opinions for those two years. *Chief Justice's Year-End Reports on the Federal Judiciary*, <http://www.supremecourt.gov/publicinfo/year-end/year-endreports.aspx> >2009 Year-End Report on the Federal Judiciary, p.2.

<sup>10</sup> U.S. Senator Arlen Specter on S. 344, providing for the televising of Supreme Court proceedings, *Congressional Record* (Monday, January 29, 2007); [http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.ArlenSpecterSpeaks&ContentRecord\\_id=fd2dc259-6655-4614-8424-29f5aa036133&Region\\_id=&Issue\\_id=&IsPrint=true](http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.ArlenSpecterSpeaks&ContentRecord_id=fd2dc259-6655-4614-8424-29f5aa036133&Region_id=&Issue_id=&IsPrint=true); also at [http://Judicial-Discipline-Reform.org/docs/Sen\\_Specter\\_on\\_SCt.pdf](http://Judicial-Discipline-Reform.org/docs/Sen_Specter_on_SCt.pdf)

**B. The judges and courts avoided reviewing *Pfuntner* by disposing of it summarily and through the expedient of an inapplicable technicality**

21. As to *James Pfuntner v. Trustee W. Kenneth Gordon et al.*, 02-2230, WBNY, Bankruptcy Judge Ninfo dismissed Dr. Cordero's cross-claims against Chapter 7 Trustee Gordon for his negligent and reckless liquidation in *Premier Van Lines, Inc.*, 01-20692, WBNY, (GC:17§B) by blatantly refusing to review the Trustee's motion for summary judgment in light of the applicable outcome-determinative standard of genuine issues of material facts.(A:1326§2, 1637§A) The Judge likewise refused to review Dr. Cordero's motion to extend time to appeal by examining the Trustee's own written statement against self-interest that the motion had been filed timely.(GC:21§C) No judge or court ordered production of the docket, much less reviewed it to determine whether it had been manipulated by Att. Paul Warren, the clerk of court, or his deputies.
22. On the contrary, District Judge Larimer summarily issued an affirmance without discussing even a single issue that Dr. Cordero had presented to impugn Judge Ninfo's decisions.(CA:1725¶13) Showing the same contempt for legality, he subjected Dr. Cordero to an "inquest" for which he did not cite any authority and for which there is no basis either in the Bankruptcy Code or elsewhere.
23. As for CA2, it avoided reviewing on the merits Dr. Cordero's appeal in *Pfuntner* by the expedient of dismissing it on the technicality of alleged lack of finality, which was inapplicable on factual and legal grounds.(A:851§II) The Supreme Court denied certiorari without a word of explanation, of course.(GC:17§§B and C).

**C. The chair and staffers had no evidence that any judge or court in any ruling reviewed the underlying cases or any exhibits at all, let alone the complaint under New York law**

24. Had the chair and the staffers bothered to review the evidence submitted to each of them individually, they would have realized that none of these judges and courts as much as used even once the word that Dr. Cordero, as litigant and appellant, had expressly made the central notion of the issues that he raised: fraud.(Add:953§I, 1051§II, 1098§I; Pst:1257§C2b; CA:1719§V, 2192§§I-II; US:2431§I) There is not a hint that any of those judges or courts was aware that he had charged anybody with participation in, or toleration of, a bankruptcy fraud scheme, never mind that which Chief Counsel Huether with the staffers" prior knowledge or subsequent assent called "a vast conspiracy of "insiders""(GC:88). They do not even mention that Dr. Cordero complained against any of the attorneys listed in the complaint, which was written and submitted after *Pfuntner* and

*DeLano* had gone all the way to the Supreme Court and certiorari had been denied. Moreover, just as they did not acknowledge even the presence in Dr. Cordero's briefs of his Issues for Review or Issues Presented, the judges never once made a reference to any of his exhibits supporting them.

25. So the chair's and staffers' quick reading and self-interested disposition of the complaint open the door for these questions to the members of the Committee and eventually appointed referees:
- a. What evidence did the chair and the staffers have to support their claim that those judges and courts "reviewed...and considered" the substance of the complaint and explicitly, or even implicitly, found that there was no "bankruptcy fraud scheme" or "vast conspiracy of "insiders"" and in what "rulings" did the chair and staffers imagine that those judges and courts made such findings?
  - b. What support do the chair and staffers have for stating that courts "reviewed" any "exhibits" at all, even if only those in the record, let alone those incriminating them or the attorneys in aiding or abetting bankruptcy fraud and included among *every single document* that they denied themselves and Dr. Cordero by refusing to order their production?
  - c. How did the chair and staffers come to assume, on top of their assumption that the federal judges and the federal courts "reviewed" anything that Dr. Cordero had submitted to them, that they also concerned themselves with a complaint that he had not even written at the time "against attorneys engaged in misconduct contrary to law and/or the New York State Unified Court System, Part 1200 - Rules of Professional Conduct, and so definitely dealt with its facts and contentions as to exempt the chair and staffers from their duty to investigate the complaint and apply New York law to it?
26. These are not "rhetorical questions" to be dismissed just as the chair and staffers dismissed the ones that they alleged Dr. Cordero had asked, which they dismissed without citing them, without analyzing the evidence that he had presented, and without even making sense of such evidence by applying to it the recognized legal principle of *res ipsa loquitur*. These are substantive questions that they must answer to show that their determination "that there is no basis for involvement by this office"(GC:88) rests on sound legal analysis and responsible discharge of their duty. If they leave them unanswered, they will rightfully be deemed to have admitted to having given the complaint merely an irresponsible quick reading or avoided it due to their conflict of interests(ri:132§IV) arising from the risk that its investigation could end up incriminating the chair and staffers themselves(cf. ¶60 infra).

**III. The chair and staffers disregarded the evidence showing that the judges mentioned in the complaint had a common, self-preservation interest in not reviewing it so as to avoid being implicated as participants in, or condoners of, the charged misconduct and that the chair and staffers cannot protect that interest by turning confidentiality into a gag on complainants**

27. The chair and staffers allege that “complaints must be individualized and may not be submitted collectively against groups or individuals”. It cites in support of such statement nothing more precise than “Section 90 of the New York State Judiciary Law, which states that all papers and proceedings in this office are sealed and deemed private and confidential”.
28. It is facially obvious that that provision, as cited by the chair and staffers themselves, only concerns how their “office” must treat the papers that it receives from complainants. It is not even addressed to complainants. It does not limit the scope of the statement of facts that complainants can write to make out their complaints. It does not prevent complainants from filing complaints that charge two or more attorneys with engaging in misconduct among themselves or in coordination with one or more judges. It does not require complainants so to distort their statement of facts as to make it appear as if only one attorney had engaged in misconduct in isolation, even if the alleged misconduct can neither logically nor materially be engaged in by only one person; cf. conspiracy, aiding and abetting, and participation in a criminal organization or syndicate. It does not force complainants to submit to the Grievance Committee as many copies of the same complaint as there are attorneys complained-against and title each one in the name of one single corresponding attorney. And it certainly does not provide attorneys with a simple expedient to escape a Committee investigation: Aggravate your misconduct by joining with other attorneys or judges... *“to be safe, never go it alone, enter a conspiracy!”*<sup>11</sup> Is this the type of legal „reasoning“ that the chair and staffers apply to review complaints, let alone conduct investigations, or is it a thinly veiled attempt to justify the wrongful dismissal of a complaint by pretending that it was written contrary to law?!

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<sup>11</sup> The Appellate Division issued a single order in which it ‘immediately suspended 136 lawyers for failure to comply with attorney registration requirements...which constitutes professional misconduct warranting the imposition of discipline’. *Matter of attorneys in violation of Judiciary Law §468-a and 22 NYCRR 118.1, respondents. Attorney Grievance Committees for the Fourth Judicial Department, Petitioner*, docket no. M-08-034; July 11, 2008; <http://www.courts.state.ny.us/AD4/AG/AGdefault.htm> Can any layperson, let alone a lawyer, reasonably argue that no non-Committee complainant, much less the Committee itself, could have complained against those 136 lawyers in the same complaint if the lawyers had coordinated among themselves neither to register nor pay the registration fee nor contribute to the Lawyers’ Fund for Client Protection? Of course not!

29. Neither lawyers nor judges have a constitutional right not to be complained-against, criticized in public, or charged with coordinating their misconduct with others. In fact, under Article III, Section 1 of the U.S. Constitution, federal judges can only “hold their Office during good Behaviour”. By contrast, “We, the People”, have a Constitutional right under the First Amendment “peaceably to assemble, and to petition the Government for a redress of [our] grievances”. The publication of a complaint is a means of calling on other people to assemble in support of a petition to redress a grievance that they all suffer in common or that concerns all of them morally or materially.
30. Section 90 of the NYS Judiciary Law does not prohibit complainants from making public their complaints against lawyers and/or judges. But if it were assumed *arguendo* that it did, it would be unconstitutional and unenforceable. On a practical level, complaint publication is a means useful to establish a pattern of misconduct by one attorney and even more so by a group of attorneys, for it allows finding out that one or more other persons have experienced or witnessed the same or similar misconduct or an element of it.

**A. The publication of complaints is particularly necessary and deserving of stronger protection when misconduct is engaged in by one or more attorneys acting in coordination with judges and justices that benefit from *de facto* unimpeachability, which generates an insidious drive to disregard the rule of law and trample upon other people’s rights: risklessness**

31. Since the adoption of the Federal Constitution and the creation of the Federal Judiciary thousands of federal judges have served; 2,123 were serving as of September 30, 2009-<sup>12</sup>. Yet only 7 were impeached and removed in those 210 years!<sup>13</sup> They were nominated for a federal judgeship by the President in an eminently political process, similar to the one that allowed President Obama to nominate tax cheats Tim Geithner, Tom Dashle, and Nancy Killefer for top government positions. They were confirmed by Congress, the one that House Speaker Nancy Pelosi referred to when she said “Congress is dominated by the culture of corruption” and the one whose members may grab money for themselves in the type of bribe-taking lobbying scheme that sent HR William Jefferson and Duke Cunningham to prison or may give taxpayers” money away through the use of unnamed earmarks to send pork barrels to their constituents in exchange for their votes, as the Late Senator

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<sup>12</sup> <http://www.uscourts.gov/judbus2009/JudicialBusinesspdfversion.pdf> >35-37.

<sup>13</sup> <http://www.fjc.gov/history/home.nsf> >Judges of the U.S. Courts>Impeachments of Federal Judges

Bird did in unashamedly open and self-aggrandizing fashion. This is the same President and Congress who in the interest of currying favor with the Latino voters nominated and confirmed CA2 Judge Sonia Sotomayor for a justiceship without properly vetting her and with disregard for the results of whatever vetting that was conducted. Indeed, news entities as respected as *The Washington Post*<sup>14</sup> and *Politico*<sup>15</sup> published facts that raised serious questions about her compliance with her statutory duty<sup>16</sup> as a judge to file true and complete financial disclosure reports.<sup>17</sup>

32. There is evidence showing that it was in the character of then Judge Sotomayor to cover up her own disregard for such duty: During the time that she was a member of the Second Circuit Judicial Council, she supported its policy that has led it during the reported 1oct96-30sep08 12-year period to deny 100% of petitions to review the successive CA2 chief judges" systematic dismissal without

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<sup>14</sup> "Sotomayor, an avid Yankees fan, lives modestly, reporting virtually no assets despite her \$179,500 yearly salary. 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." (emphasis added) *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>; also at [http://Judicial-Discipline-Reform.org/SCT\\_nominee/JSotomayor\\_integrity/13onJSotomayor.pdf](http://Judicial-Discipline-Reform.org/SCT_nominee/JSotomayor_integrity/13onJSotomayor.pdf).

Since January 1, 2009, her annual salary was that of a circuit judge, that is, \$184,500, which put her at the very top of government employees and in the top 5% of the population. [http://www.uscourts.gov/tb/2009-03/article03.cfm?WT.cg\\_n=TTB&WT.cg\\_s=Mar09\\_article03\\_tableOfContents](http://www.uscourts.gov/tb/2009-03/article03.cfm?WT.cg_n=TTB&WT.cg_s=Mar09_article03_tableOfContents) *Sotomayor Rose High, with Few Assets*, Joe Stephens, *The Washington Post*, May 7, 2009; (emphasis added); [http://voices.washingtonpost.com/44/2009/05/07/sotomayor\\_rose\\_high\\_with\\_few\\_a.html?sid=ST2009050702123](http://voices.washingtonpost.com/44/2009/05/07/sotomayor_rose_high_with_few_a.html?sid=ST2009050702123)

<sup>15</sup> "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>.

The implicit question raised by Reporter Gerstein was 'so, where did the money go?', a particularly pertinent one in light of the report that she "lives modesty", see *The Washington Post* article above.

<sup>16</sup> Ethics in Government Act of 1978 (5 U.S.C. Appendix (Appendix IV in Thomson West's U.S.C. Annotated); [http://Judicial-Discipline-Reform.org/docs/5usc\\_Ethics\\_Gov\\_14apr9.pdf](http://Judicial-Discipline-Reform.org/docs/5usc_Ethics_Gov_14apr9.pdf)

<sup>17</sup> See also the article "Judge Sotomayor earned \$3,773,824 since 1988 + received \$381,775 in loans = \$4,155,599 + her 1976-1987 earnings, yet disclosed assets worth only \$543,903, thus leaving unaccounted for in her answers to the Senate Judiciary Committee \$3,611,696 - taxes and the cost of her reportedly modest living; 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](http://Judicial-Discipline-Reform.org/SCT_nominee/JSotomayor_integrity/12table_JSotomayor-financials.pdf).

any investigation of misconduct and disability complaints filed against Second Circuit judges and magistrates under the Judicial Conduct and Disability Act, 28 U.S.C. §§351-364<sup>18</sup>. These are official statistics of the Second Circuit Judicial Council reported under 28 U.S.C. §332(g) to the Administrative Office of the U.S. Courts and by the latter in its Director's Annual Report to Congress under 28 U.S.C. §604(h)(2).<sup>19</sup> Thereby then Judge Sotomayor and her colleagues on the Judicial Council, including the chief judge of the District Court for the Western District, intentionally covered up every wrongdoing, regardless of its nature and gravity, that their colleagues were charged with by complainants.

33. No reasonable person, let alone lawyers experienced in the exercise of common sense, can honestly affirm that during that reported FY96-08 12-year period not a single person, whether attorney or layman, was competent enough to draw up a petition for review of the dismissal of a judicial misconduct complaint that deserved to be granted; or that none of the successive chief judges made a dismissal in error of so apparent as to require it to be reviewed by the Council. Nor is it statistically possible that not a single judge or magistrate engaged in misconduct or manifested a physical or mental disability that warranted investigation leading up to discipline, limitation of duties, or forced retirement.<sup>20</sup> The political process that got those persons nominated and confirmed for a judgeship did not endow them with incorruptibility, infallibility, and permanent

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<sup>18</sup> [http://Judicial-Discipline-Reform.org/docs/28usc351\\_Conduct\\_complaints.pdf](http://Judicial-Discipline-Reform.org/docs/28usc351_Conduct_complaints.pdf)

<sup>19</sup> Table S-22 [previously S-23 & S-24] Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. §§351-364; <http://www.uscourts.gov/judbususc/judbus.html>; collected at [http://Judicial-Discipline-Reform.org/statistics&tables/judicial\\_complaints.pdf](http://Judicial-Discipline-Reform.org/statistics&tables/judicial_complaints.pdf).

<sup>20</sup> “About 3.2% of the U.S. adult population, or 1 in every 31 adults, were incarcerated or on probation or parole at yearend 2006.” *Probation and Parole in the United States, 2006*; Bureau of Justice Statistics Bulletin, U.S. Department of Justice, Office of Justice Programs, December 2007, NCJ 220218; <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus06.pdf>; [http://Judicial-Discipline-Reform.org/statistics&tables/correctioneers/1\\_of\\_31\\_inmate\\_06.pdf](http://Judicial-Discipline-Reform.org/statistics&tables/correctioneers/1_of_31_inmate_06.pdf). These statistics do not even include the number of adults in the population suffering from a mental disability that incapacitates them from working.

If the “1 in every 31” statistic is applied arguendo to the 2,123 judges and magistrates in office at the end of FY09, then 68 of them should have been, not on the bench, but rather “incarcerated or on probation or parole”. Even after subjecting this application to all reasonable statistical refinements, the result would certainly not support the pretense of the judges on the Judicial Council of the Second Circuit, including then Judge Sotomayor during her stint there, that in the FY96-08 12-year period not a single one of their 2<sup>nd</sup> Cir. judge or magistrate peers complained-against engaged in conduct that deserved to be reviewed by the Council, let alone by an investigation committee appointed by it under 28 U.S.C. §354(a)(1)(C). This is particularly so in light of the indisputable fact that the number of persons investigated for administrative, civil, or criminal misconduct is substantially higher than the number of those that end up being criminally charged, tried, convicted, and incarcerated or placed on probation.

perfect ability despite advancing age. Instead, reasonable and fair-minded persons informed of the facts and cognizant of their duty to perform the functions of their office impartially can infer from the official statistics that the CA2 judges, including then Judge Sotomayor, covered up all wrongdoing and disability of any of their complained-against colleagues.<sup>21</sup> They were instrumental in turning their peers and themselves into Unaccountable Judges Above the Law.<sup>22</sup>

34. It follows that judges would have an even greater motive to cover up the wrongdoing of those judges that not the President, but rather they themselves had appointed to their judgeship. This is the case of CA2 acting under 28 U.S.C. §152 to fill authorized bankruptcy judgeships. Thereunder the CA2 judges not only appointed in 1992, but also reappointed in 2006 Bankruptcy Judge Ninfo. They are bound to support him, even if it requires them to cover up his involvement in a bankruptcy fraud scheme, lest they indict their own capacity to discern the integrity and competency of their candidates for bankruptcy judgeships and their appropriate supervision of his performance during his first 14-year term. A similar interest is shared by the judges of the district court, who would not want to indict their competency as direct supervisors of the judges of the Bankruptcy Court, which is an appendage of the District Court.
35. Therefore, the facts support the assertion that in “the many underlying proceedings before numerous courts” referred to by the chair and staffers(GC:88), the judges had a common interest in not reviewing Dr. Cordero’s complaint so as not to incriminate themselves, whether as judicial appointers or supervisors, or as participants in, or condoners of, the described bankruptcy fraud scheme and/or other types of wrongdoing that they knew about or were involved in.(CA:1963§III) Indeed, they shared a common incentive to do wrong: assured risklessness. It is in human nature that he who has the power to get what he wants even at the risk of serious adverse consequences, will abuse such power whenever he likes. The abuse will be all the more gross by those who have power over people’s property, liberty, and even life, and wield it however they like with immunity assured by their colleagues on the Supreme Court thus: “A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority”. (*Stump v. Sparkman*, 435 U.S. 349 (1978))<sup>23</sup>. The Justices have also granted themselves and the members of their privileged class absolute immunity from liability for deprivation of civil rights.

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<sup>21</sup> The Dynamics of Institutionalized Corruption in the Courts, [http://Judicial-Discipline-Reform.org/docs/Dynamics\\_of\\_corruption.pdf](http://Judicial-Discipline-Reform.org/docs/Dynamics_of_corruption.pdf)

<sup>22</sup> [http://Judicial-Discipline-Reform.org/docs/Follow\\_money/Unaccountable\\_judges.pdf](http://Judicial-Discipline-Reform.org/docs/Follow_money/Unaccountable_judges.pdf)

<sup>23</sup> [http://Judicial-Discipline-Reform.org/docs/Stump\\_v\\_Sparkman\\_absolute\\_immunity.pdf](http://Judicial-Discipline-Reform.org/docs/Stump_v_Sparkman_absolute_immunity.pdf)

(*Pierson v. Ray*, 386 U.S. 547 (1967)), but see J. Douglas“ dissent)<sup>24</sup>

36. Nevertheless, the Committee stands in owe of “United States Supreme Court Justice Sonia Sotomayor”. It seems to deem any suggestion that she may have been involved in tolerating, let alone covering up, a bankruptcy fraud scheme while at CA2 as patently inconceivable and not worth entertaining even as an investigative hypothesis. So much so that in its rush to suspend its judgment and engage in the transfixed contemplation of her it was blind to the fact that Dr. Cordero never included her in his complaint among the complained-against attorneys , but rather referred to her as “Former Circuit Judge Sonia Sotomayor, who was the presiding judge in *DeLano*(CA:2180) and is now Justice Sotomayor”(GC:32¶63; 61¶134) and “Sonia Sotomayor was an associate from 1984 to 1987...”(GC:62fn87)
37. More importantly, to the extent that the reference to a Justice and the Supreme Court and the possibility that the investigation of the complaint may lead to them scare the chair and staffers and motivates them to craft an excuse not to investigate the complaint, they have abdicated their duty to investigate under the Rules of the Appellate Division, Fourth Department:

#### **22 NYCRR §1022.19(b) Duties of Attorney Grievance Committee**

The attorney grievance committee **shall**:

- (1) consider and **investigate all matters involving allegations of misconduct** by an attorney engaged in the practicing of law in the respective judicial district. An investigation may be commenced by the committee upon receipt of a complaint, a referral by this Court or by the committee on its own initiative; (emphasis added)

<http://www.courts.state.ny.us/AD4/> >Attorney Grievance >Appellate Division Rules Concerning Attorneys

38. Neither the fact that such attorneys engage in misconduct as a group nor that they coordinate their misconduct with powerful federal judges exempts them from being held accountable under the Appellate Division Rules, the Rules of Professional Conduct, and other state and federal law. On the contrary, the fact that the complained-against attorneys can coordinate their misconduct with judges that can extend to them their de facto immunity from complaints, not to mention prosecution, renders it only more likely that they have been emboldened to engage in misconduct. If the chair and staffers are running scare from those attorneys and their protectors, they must disqualify themselves and let others more courageous assume and discharge their explicit duty “to protect the public against the small minority of lawyers who do not act in an ethical manner”<sup>25</sup>,

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<sup>24</sup> [http://Judicial-Discipline-Reform.org/docs/Pierson\\_v\\_Ray\\_jud\\_immunity.pdf](http://Judicial-Discipline-Reform.org/docs/Pierson_v_Ray_jud_immunity.pdf)

<sup>25</sup> <http://www.courts.state.ny.us/ad4/AG/AGdefault.htm>

regardless of whether they act individually or in coordination with others. Similarly, they must disqualify themselves if they are avoiding the investigation of the instant complaint because it can lead them to their colleagues and friends or even embarrass or incriminate themselves.

**IV. The chair's and staffers' complaint dismissal in disregard of the procedure to ascertain its validity prompted their being queried in PACER, whose returns showed their undisclosed involvement in bankruptcies and with the complained-against attorneys, which gave them a motive to avoid a self-incriminating investigation and established their conflict of interests**

39. In his March 19 letter(GC:88) Chief Counsel Gregory J. Huether and the staffers(ri:113fn2) dismissed the complaint without discussing a single allegation of misconduct. Nor did they exercise their authority under 22 NYCRR §1022.19(d)(1)(i) and (iii) to request the complained-against attorneys to file a response and appear to be interviewed and examined, even if only prudently „to determine the validity of the complaint by examining any person necessary for properly doing so or requesting the production of relevant books and papers necessary therefor“ under 22 NYCRR §1022.19(d)(1)(ii) and (iv).
40. Yet, the complaint was accompanied by a proposed Demand for Information and Evidence(Rd:151 infra) under the Rules of Professional Conduct, particularly 8.3(b), that identified specific documents that can expedite and pinpoint the investigation. Such documents could have allowed the chair and staffers to ascertain, among other things:
  - a. where the DeLanos concealed their assets from creditors and what and when their attorneys and the attorney-trustees knew about it;
  - b. how and where Attorney Trustee Kenneth Gordon disposed of Premier Van Line's assets without accounting for them, but with the knowledge and complicity of other attorneys;
  - c. that Attorney Assistant U.S. Trustee Kathleen Dunivin Schmitt manipulated official audio recordings to protect herself and other attorneys participating in the bankruptcy fraud scheme.
41. The complaint dismissal by Chief Counsel Huether and the staffers was unwarranted, out of hand, and shocking. The complaint was meticulously supported by evidence found in documents publicly filed in the record of cases, including the official transcript of the sham evidentiary hearing concocted by the DeLanos' attorneys and Judge Ninfo(GC:14§A, 49§§4-6), which transcript accompanied the complaint both as hardcopy and on the attached CD-ROM containing

the record. A reasonable lawyer who with due diligence read the complaint and even only a few of its scores of references to those documents would have realized that the complaint met the standard not only for the chief attorney to request those attorneys to respond, but also to submit it to the Committee itself for authorization to commence formal disciplinary proceedings:

22 NYCRR §1022.20. Formal disciplinary proceedings.

(a) Authorization for commencement of proceedings.

The chief attorney may recommend to the committee that disciplinary proceedings be commenced **when there is probable cause to believe that an attorney has committed professional misconduct** or when an attorney has been *convicted of a crime involving conduct that adversely reflects upon the attorney's honesty, trustworthiness or fitness as a lawyer*. The chief attorney **shall** present the matter to the committee along with a written recommendation...When a majority of the **committee** members present vote to **approve** the filing of charges **upon a determination that there is probable cause to believe that an attorney has committed professional misconduct** or has been *convicted of a crime involving conduct that adversely reflects upon the attorney's honesty, trustworthiness or fitness as a lawyer*, the chief attorney **shall** institute formal proceedings against the attorney.(emphasis added)

42. The requirement is the low one of „probable cause only to **believe**“, not indisputable proof to disbar or throw in jail. Probable cause is defined as “a reasonable belief in the existence of facts on which a claim is based and in the legal validity of the claim itself”. Black’s Law Dictionary, 8<sup>th</sup> edition; Thomson-West (2004).

43. In turn, the Rules of Professional Conduct define “reasonable” and a “reasonable lawyer” thus:

22 NYCRR Part 1200, Rule 1.0: Terminology

(q) “Reasonable” or “reasonably,” when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer. When used **in the context of conflict of interest** determinations, “reasonable lawyer” denotes a lawyer acting from the perspective of a reasonably prudent and competent lawyer who is **personally disinterested in commencing or continuing the representation** [or in discharging his duty to investigate allegations of misconduct]. (emphasis added)

44. In light of the abundant evidence of misconduct, uncontested and contained even in official court documents, it was not reasonable for „a prudent, competent, and disinterested lawyer“ to allege, as Chief Counsel Huether did, that “there is no basis for involvement by this office”(GC:88). Far from a “basis”, what Rule of Professional Conduct 8.3(a) requires to trigger both the duty of a lawyer to report a Rule violation and the concomitant duty of an authority to investigate for an answer is just “a substantial question” concerning character traits that as moral factors of behavior precede by a great factual and legal margin the proven acts of a lawyer who “*has been convicted of a crime*”(¶41 quotation (a) supra):

Rule 8.3: Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer **shall** report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation. (emphasis added)

**A. PACER returns show the chair's and staffers' involvement with complaint-against attorneys and bankruptcies**

45. Therefore, Dr. Cordero queried in PACER<sup>26</sup> Chief Counsel Huether, the other staffers, and the Committee chair. The returns proved to be even more shocking, for as random occurrences they were statistically most improbable: They show the fact and appearance of conflict of interests of those five recipients due to their undisclosed involvement in bankruptcies, including Chief Counsel Huether himself, who worked with and for the very trustees and judge complained-against. What are the odds of the five of them being purely by chance so involved?; and of only them being so involved?
46. Since the chair and staffers are presumed to be ethical persons intent on avoiding even the appearance of impropriety and aware of the need not only to do the right thing, but also to be seen doing the right thing<sup>27</sup>, Dr. Cordero addressed his April 16 request for reconsideration to each of them once more individually to ask as follows that each comment on the PACER returns and the thereby revealed fact and appearance of their conflict of interests:
- a. In general, state your past or current relation to any of:
    - 1) the attorneys complained-against, including any past or current work done with or for them;
    - 2) the judges mentioned in the complaint, including, but not limited to, any cases in which you have appeared in any capacity before them;
    - 3) the parties to cases that have come before judges of the U.S. Bankruptcy and District Courts for the Western District, wherever they hold court, including their attorneys

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<sup>26</sup> <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>

<sup>27</sup> *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). "[I]mportant as it was that people should get justice, it was even more important that they should be made to feel and see that they were getting it," *Kramer v. Scientific Control Corp.*, 534 F. 2d 1085, 1088 (3rd Cir. 1976).

and law firms, trustees, and 11 U.S.C. §327 professional persons;

- 4) your roles in each of such cases; and
- 5) any other relation that an ethical person would disclose to a private person or public authority seeking to determine any conflict of interests, bias, or objectionable circumstance that could impair the proper handling of a complaint such as the instant one or raise the appearance of impropriety.

b. In particular, whether any of the Committee members have any relation to the following parties or played any role in the following cases and, if so, which and to what extent:<sup>28</sup>

47. Gregory J. Huether, attorney in *In re Beverly Jackson*, WBNY bankruptcy case 2-04-22380-JCN (JCN stands for Judge John C. Ninfo, II), whose docket contains the following entries:

Filing date	entry #	
06/03/2004	1	Chapter 13 Judge John C. Ninfo/Trustee George Reiber <b>AutoAssign</b> . (emphasis added)
01/03/2005	[below 24]	Appearances: James Weidman of counsel to George Reiber, Trustee;
01/04/2005	[below 25]	Notice to the Court of 341 assignment. Trustee: Kenneth Gordon, 02/08/05 at 3:00 at Rochester.
09/23/2005	45	10/06/2005 50 Order Granting Application to Employ Gregory J. Huether, Esq., as Attorney for Trustee Kenneth Gordon
01/24/2006	54	Notice to Creditors of Assets. Kathleen Schmitt, A.U.S.T. added as a party to this case. Proofs of Claims due by 4/27/2006.
04/06/2006	60	Application for Compensation for Gregory J. Huether , Trustee's Attorney, Period: 10/6/2005 to 11/17/2005, Fee: \$6808.44, Expenses: \$574.68.
04/14/2006	63	Letter filed by Gregory Huehter, Esq. advising that he does not have any objection to Application for Compemsation(RE: related document(s) 60 Application for Compensation, ) [sic]
05/22/2006	65	Order Granting Application For Compensation (Related Doc # 60 ) for Gregory J. Huether, fees awarded: \$6808.44, expenses awarded: \$574.68 Signed on 5/22/2006.
12/08/2006	70	Order of Distribution for Kenneth W. Gordon, Trustee Chapter 7, Fees awarded: \$2157.59, Expenses awarded: \$32.07; Awarded on 12/8/2006 Signed on 12/8/2006 .
05/15/2007	[last entry]	Trustee Fee Paid. P1# 07465500172

48. Robert F. Huether and Myrtle L. Huether, WBNY bankruptcy case, 2-88-21994-JCN

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<sup>28</sup> The cases in this section can be downloaded through <https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl>.

49. Daniel Martin Drake, WBNY bankruptcy case 2-04-21081-JCN
50. Daniel R. Drake and Eileen C. Drake, WBNY 2-96-21061-JCN
51. Daniel R. Drake, WBNY 2-05-26779-JCN
52. Daniel Roy Drake and Michele Josephine Drake, WBNY 2-05-21890-JCN
53. Any of the following cases, which were returned upon querying “Drake” and appeared under the designator [https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl?953743629355141-L\\_517\\_0-1](https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl?953743629355141-L_517_0-1)

Drake, Aaron J	(pty)	Drake, Daniel R.	(pty)	Drake, Gary A.	(pty)
Drake, Aaron J.	(pty)	Drake, Daniel Roy	(pty)	Drake, Gary D.	(pty)
Drake, Barbara A.	(pty)	Drake, Danita M.	(pty)	Drake, Gary D.	(pty)
Drake, Barbara A.	(pty)	Drake, Daryl R.	(pty)	Drake, Gary Dale	(pty)
Drake, Bernice	(pty)	Drake, David S.	(pty)	Drake, George J.	(pty)
Drake, Bert J.	(pty)	Drake, Debbie L.	(pty)	Drake, George J.	(pty)
Drake, Bill	(pty)	Drake, Debra J.	(pty)	Drake, Gerald L.	(pty)
Drake, Brian J.	(pty)	Drake, Deena L.	(pty)	Drake, Glenda	(pty)
Drake, Candace M.	(pty)	Drake, Deena L.	(pty)	Drake, Henry Rozell(Jr.)	(pty)
Drake, Carol A.	(pty)	Drake, Donald E.	(pty)	Drake, Holly	(pty)
Drake, Catherine E.	(pty)	Drake, Donna J.	(pty)	Drake, James F.	(pty)
Drake, Chad W.	(pty)	Drake, Donna J.	(pty)	Drake, James J.	(pty)
Drake, Charles Robert	(pty)	Drake, Donna K.	(pty)	Drake, James R.	(pty)
Drake, Charlotte A.	(pty)	Drake, Douglas E.	(pty)	Drake, Jason Anthony	(pty)
Drake, Cheri M.	(pty)	Drake, Duane	(pty)	Drake, Jean	(pty)
Drake, Cheryl M.	(pty)	Drake, Duane A	(pty)	Drake, Jeffrey A.	(pty)
Drake, Christian O.	(pty)	Drake, Duane D.	(pty)	Drake, Jennifer J	(pty)
Drake, Colette L.	(pty)	Drake, Eileen C.	(pty)	Drake, Jennifer K.	(pty)
Drake, Constance M.	(pty)	Drake, Elicia Jo	(pty)	Drake, Jennifer L.	(pty)
Drake, Daniel Martin	(pty)	Drake, Eugene J.	(pty)	Drake, Jill Marie	(pty)
Drake, Daniel R.	(pty)	Drake, Florence C.	(pty)	Drake, Joanna L.	(pty)
		Drake, Francis S.	(pty)	Drake, John L.(Sr.)	(pty)
		Drake, Gary	(pty)		

Drake, John S.	(pty)	Drake, Marilyn A.	(pty)	Drake, Robert E.	(pty)
Drake, Joseph D	(pty)	Drake, Mark A.	(pty)	Drake, Robert R.	(pty)
Drake, Joseph D.	(pty)	Drake, Marsha E.	(pty)	Drake, Robert R.	(pty)
Drake, Judy A.	(pty)	Drake, Mary Anne	(pty)	Drake, Robert W.	(pty)
Drake, Julianne S.	(pty)	Drake, Mary L.	(pty)	Drake, Robert William(Jr.)	(pty)
Drake, Julie E.	(pty)	Drake, Michael C.	(pty)	Drake, Rochelle A.	(pty)
Drake, Katharine E.	(pty)	Drake, Michael L	(pty)	Drake, Ronald D.(Jr.)	(pty)
Drake, Kathleen P.	(pty)	Drake, Michael W.	(pty)	Drake, Ronald James	(pty)
Drake, Kenneth W.	(pty)	Drake, Michele Josephine	(pty)	Drake, Ronald James	(pty)
Drake, Kevin J.	(pty)	Drake, Michelle	(pty)	Drake, Ronald James	(pty)
Drake, Kim Ann	(pty)	Drake, Michelle A.	(pty)	Drake, Ronald M	(pty)
Drake, Kim M.	(pty)	Drake, Michelle R.	(pty)	Drake, Roxanne E.	(pty)
Drake, Kimberlee M	(pty)	Drake, Michelle S.	(pty)	Drake, Russell A.	(pty)
Drake, Kimberlee Marie	(pty)	Drake, Nancy D.	(pty)	Drake, Sharla B.	(pty)
Drake, Kimberlee Marie	(pty)	Drake, Nancy J.	(pty)	Drake, Shawn A.	(pty)
Drake, Kimberly A	(pty)	Drake, Norm D.	(pty)	Drake, Sherry E	(pty)
Drake, Kristin A.	(pty)	Drake, Norman	(pty)	Drake, Steven R.	(pty)
Drake, Leroy (Jr.)	(pty)	Drake, Norman D.	(pty)	Drake, Susan	(pty)
Drake, Lewis H.	(pty)	Drake, Norman D.	(pty)	Drake, Susan	(pty)
Drake, Linda L.	(pty)	Drake, Pamela M.	(pty)	Drake, Susan B.	(pty)
Drake, Linda M	(pty)	Drake, Pamela M.	(pty)	Drake, Susan G.	(pty)
Drake, Lisa A.	(pty)	Drake, Paul R.	(pty)	Drake, Timothy A.	(pty)
Drake, Lisa A.	(pty)	Drake, Randy	(pty)	Drake, Timothy E.	(pty)
Drake, Lois E.	(pty)	Drake, Richard J.	(pty)	Drake, Wendy	(pty)
Drake, Margaret	(pty)	Drake, Richard J.	(pty)	Drake, Wendy Ann	(pty)
Drake, Margaret M.	(pty)	Drake, Robert	(pty)	Drake, Wendy Kathleen	(pty)
Drake, Marilyn A.	(pty)	Drake, Robert A.	(pty)	Drake, Wilda G.	(pty)
		Drake, Robert D.	(pty)		

Drake, William J	(pty)	Drake, William S.	(pty)	Inc.
Drake, William L.	(pty)	Drake, William S.	(pty)	Drake's Tire Service (pty)
Drake, William L. (III)	(pty)	Drake Design	(pty)	
Drake, William P.	(pty)	Drake Manufacturing Co.,	(pty)	

54. Thomas A. Trevett, WBNY bankruptcy case 1-10-10102-CLB
55. Janet L. Montante and Joseph P. Montante, WBNY bankruptcy case 1-00-10334-CLB
56. Elizabeth A. Tomaino and Thomas P. Tomaino, WBNY bankruptcy case 1-99-11376-MJK,  
**36 Dayton Street, Lockport, NY 14094**
57. Any of the following cases returned, which were returned upon querying “Tomaino” and appeared under the designator [https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl?200334768014293-L\\_517\\_0-1](https://ecf.nywb.uscourts.gov/cgi-bin/iquery.pl?200334768014293-L_517_0-1):

1. <a href="#">Tomaino, Lynn Marie</a> , 1-93-13747- MJK, <b>38 Dayton St., Lockport,</b> NY 14094	(pty)	13461-MJK, 14 Ransom Court, <b>Lockport, NY 14094</b>	
2. <a href="#">Tomaino, Antoinette</a> , 1-03-01106- MJK, 23 Waterman Street, <b>Lockport, NY 14094</b>	(pty)	9. <a href="#">Tomaino, Claire I.</a> , and Paul J. Tomaino, 1-01-15500-MJK, 558 East Avenue Medina, NY 14103	(pty)
3. <a href="#">Tomaino, Elizabeth A.</a> , 1-99- 11376-MJK, <b>36 Dayton Street</b> <b>Lockport, NY 14094</b>	(pty)	10. <a href="#">Tomaino, Donna L</a> , 1-09-10562- MJK, PO Box 287, North Tonawanda, NY 14120-0287	(pty)
4. <a href="#">Tomaino, Linda Anne</a> , 1-99-14097- MJK, 6342 Robinson Road, Lot #63, <b>Lockport, NY 14094</b>	(pty)	11. <a href="#">Tomaino, Janet E.</a> , 1-05-14739- MJK, 3030 Gary Drive, North Tonawanda, NY 14120	(pty)
5. <a href="#">Tomaino, Anthony Peter</a> , 1-01- 15181-MJK, 263 South Street, <b>Lockport, NY 14094</b>	(pty)	12. <a href="#">Tomaino, John M.</a> , 6142 Townline Road, Lockport, NY 14094	(pty)
6. <a href="#">Tomaino, Michael J.</a> , 1-94-13622- MJK, 63 Rochester Street, <b>Lockport, NY 14094</b>	(pty)	13. <a href="#">Tomaino, Lorinda</a> and Anthony Peter Tomaino, 1-01-15181- MJK,	(pty)
7. <a href="#">Tomaino, Michelle E.</a> , and Richard M. Tomaino, 1-97-12796-MJK, 115 Willow Street, #3, <b>Lockport,</b> NY 14094	(pty)	14. <a href="#">Tomaino, Paul J.</a> and Claire I. Tomaino, 1-01-15500-MJK	(pty)
8. <a href="#">Tomaino, Susan C.</a> and Earl R. Boyer and Susan C. Boyer, 1-93-	(pty)	15. <a href="#">Tomaino, Penelope</a>	(pty)
		16. <a href="#">Tomaino, Richard M.(Jr.)</a> , <a href="#">Tomaino, Michelle E.</a> , and <a href="#">Tomaino, Michelle E.</a> , 1-97- 12796-MJK	(pty)

17. [Tomaino, Thomas P.](#), and  
Elizabeth A. Tomaino, 1-99-  
11376-MJK (pty)

**B. The chair and staffers left the facts and appearance of their conflict of interests uncontroverted, which constitutes an admission and manifests their unwillingness and inability to go where complaint evidence will take them, thereby forfeiting public trust so that they must disqualify themselves or be disqualified**

58. None of the chair and staffers commented on the PACER results or provided the requested information. They allowed the fact and appearance of their conflict of interests to remain uncontroverted. By so doing, they disregarded the duty that the former Code of Professional Responsibility imposed on lawyers, namely, to avoid even the appearance of impropriety, a concept still found in Rules of Professional Conduct 1.11(b)(2) and 1.12(d)(2), precisely in the context of conflict of interests:

New York Lawyer's Code of Professional Responsibility (Updated Through  
December 28, 2007)

CANON 9

A Lawyer Should Avoid Even the Appearance of Professional Impropriety

ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. **A lawyer should promote public confidence in our system and in the legal profession.**

EC 9-6 Every lawyer owes a solemn duty **to uphold the integrity and honor of the profession**;...to act so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of clients and of the public; and to strive **to avoid** not only professional impropriety but **also the appearance of impropriety**. (emphasis added)

[http://www.nysba.org/AM/Template.cfm?Section=For\\_Attorneys&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=38366](http://www.nysba.org/AM/Template.cfm?Section=For_Attorneys&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=38366) >Lawyers Code of Professional Responsibility; also at: [http://Judicial-Discipline-Reform.org/docs/NYSBA\\_Code\\_Prof\\_Res.pdf](http://Judicial-Discipline-Reform.org/docs/NYSBA_Code_Prof_Res.pdf)

59. The command to avoid even the appearance of impropriety is still part of the law applicable in the NYS Unified Court System:

22 NYCRR 50.1 Code of ethics for nonjudicial employees of the Unified Court System

Preamble: A fair and independent court system is essential to the administration of justice. Court employees must observe and maintain high

standards of ethical conduct in the performance of their duties in order **to inspire public confidence and trust in the fairness and independence of the courts**. This code of ethics sets forth basic principles of ethical conduct that court employees must observe, in addition to laws, rules and directives governing specific conducts, so that the court system can fulfill its role as a **provider of effective and impartial justice**. (emphasis added)

(l.) Court employees shall avoid impropriety and the appearance of impropriety **in all their activities**. (emphasis added)

(A.) Court employees shall respect and comply with the law.

<http://nycourts.gov/rules/chiefjudge/index.shtml>

60. The chair and staffers failed to deny or explain evidence contained in court records of the fact or appearance of conflict of interests as their motive for having dismissed or condoned the dismissal of the instant complaint. Their failure casts doubt on their own integrity and that of the Grievance Committee, especially since among those five are its Chief Counsel, Mr. Huether, and the Chair of the Committee for the Seventh District, Thomas N. Trevett, Esq. That is a doubt that no lawyer would have allowed to arise by leaving uncontroverted incriminating evidence relating to his or her own action or omission in a matter directly relevant to their professional and institutional responsibilities. Consequently, their default must be deemed an admission against self-interest of their conflict of interests. That is how the Appellate Division treats the failure of a lawyer to respond to a Grievance Committee's petition for information.<sup>29</sup> In fact, the Appellate Division has provided in its Rules that an "attorney's default in responding to a petition [constitutes] a finding...that the attorney has committed **misconduct immediately threatening the public interest** [upon which] the attorney...may be suspended during the pendency of the investigation or proceeding". 22 NYCRR §1022.20(d)(3)(d) (emphasis added) That Rule also provides that another basis for suspension pending disposition is "other uncontroverted evidence of misconduct".

## **V. Action requested from the chair, staffers and the similarly situated, and the remaining qualified Grievance Committee members**

61. Therefore, Dr. Cordero respectfully requests that:

- a. **the chair and staffers** of the Committee to whom the instant complaint, the acknowledgment of receipt request and status inquiry, and the request for reconsideration

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<sup>29</sup> *Matter of Allan J. Green*, a suspended attorney, Respondent. Grievance Committee of The Fifth Judicial District, Petitioner; order of disbarment entered by the Supreme Court of the State of NY, Appellate Division, Fourth Judicial Department; February 11, 2010; docket no. P-09-059; <http://www.courts.state.ny.us/AD4/AG/AGdefault.htm> >Appellate Division Disciplinary Decisions

were individually addressed(ri:113fn2) **and all similarly situated** Grievance Committee members and staffers who either dismissed them or condoned their dismissal although they knew or by exercising due diligence should have known of the above-described conflict of interests(ri:132§IV) or any other such conflict, be disqualified from handling them or this request for intervention in any way other than to make it possible for the remaining qualified members to proceed as set forth below;

- b. since **the remaining qualified Grievance Committee members** would confront their own conflict of interests if they were to investigate this complaint given that its investigation can end up incriminating the disqualifiable persons referred to in subparagraph a. above, so that the remaining members would be torn apart by, on the one hand, their duty to investigate and, on the other hand, their loyalty to, and pressure to protect, colleagues and friends or self-protect from their retaliatory use of incriminating knowledge, the remaining members do and be seeing doing the right thing for the sake of their integrity and that of the Grievance Committee and its process, and to that attain that objective:
- 1) call a meeting of the Committee to discuss the instant complaint and its dismissal;
  - 2) cause the complaint and its dismissal to be placed on the next meeting's agenda;
  - 3) consider this request as a complaint against the chair and staffers and treat them accordingly, including disqualifying them or holding them disqualified from handling the complaint and this request for intervention in any way whatsoever because „nobody can be an impartial judge of his own cause“<sup>30</sup>;
  - 4) invoke §1022.19(b)(4) of the Rules of the Appellate Division Concerning Attorney Grievance Committees<sup>31</sup> to refer „this case directly to the Appellate Division given that there is probable cause to believe that the complained-against attorneys have committed and continue to commit professional misconduct“, whether by succumbing to a conflict of interests or engaging in the complained-about ongoing bankruptcy fraud scheme and other forms of coordinated misconduct „that immediately threatens the public interest because they prejudice and damage“ countless debtors, creditors, and all those other people and entities who directly or

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<sup>30</sup> Cf. 28 U.S.C. §47. Disqualification of trial judge to hear appeal No judge shall hear or determine an appeal from the decision of a case or issue tried by him. <http://uscode.house.gov/pdf/2008/2008usc28.pdf>

<sup>31</sup> 22 NYCRR 1022.19(b)(4); <http://www.courts.state.ny.us/AD4/Court/Rules/Rules.htm>

indirectly bear the cost of fraudulent bankruptcies and of corruption in our bankruptcy and legal systems;

c. the remaining qualified members request that **the Appellate Division**:

- 1) recognizing that precisely the chair and staffers that would conduct the investigation are tainted by the fact or appearance of conflict of interests and the other remaining Committee members would as investigators in their stead be impaired in their impartiality and thoroughness by their collegial loyalty to, and unduly influenced by, them, and pursuant to the following statutory provisions:

NY Code, Judiciary Law §90.7

...the justices of the appellate division...or a majority of them may appoint **any** attorney and counsellor-at-law to conduct a preliminary investigation and to prosecute any disciplinary proceedings...<sup>32</sup> (emphasis added)

CPLR 4312 Number of referees; qualifications

1. A court may designate either one or three referees...<sup>33</sup>

appoint three qualified fair and impartial referees to investigate, review and report the complaint allegations and prosecute the complained-against attorneys, and ensure that the referees:

- (a) are from outside the Fourth Department;
  - (b) neither have practiced nor are practicing in any bankruptcy court; and
  - (c) are unrelated to any of the complained-against attorneys, Committee members and staffers, and the judges about whom lawyers subject to the Rules of Professional Conduct and others reasonably expected to be subpoenaed may possess knowledge or evidence whose production the referees would need to demand in order to investigate this complaint impartially, competently, and thoroughly and without the impairment or appearance of any conflict of interests or divided loyalty;
- 2) in application of the rationale for, and practice of, multidistrict litigation, charge the referees with investigating, reporting on, prosecuting and/or referring for discipline all the complained-against attorneys regardless of the department in which they are

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<sup>32</sup>[http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=\\$\\$JUD90\\$\\$@TXJUD090+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=57751692+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$JUD90$$@TXJUD090+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=57751692+&TARGET=VIEW)

<sup>33</sup><http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@LLCVP+&LIST=LAW+&BROWSER=EXPLORER+&TOKEN=10190890+&TARGET=VIEW>

registered since they are linked to the same nucleus of operative facts of coordinated misconduct and should be encompassed by a broad jurisdictional mandate to permit understanding the full scope of the misconduct and contribute to the efficiency and completeness of the referees' work;

- 3) direct the referees to request under 22 NYCRR §1022.19(d)(1)(i) that the complained-against attorneys file with the referees a written response to both the complaint and this request for intervention and that a copy of such response be provided to Dr. Cordero;
- 4) in order „to obtain necessary records and reports as well as relevant books and papers from any person“ under §1022.19(d)(1)(ii) and (iv), and to obtain all other useful information under [Rule 8.3\(b\)](#) from those attorneys who possess knowledge or evidence concerning the subject matter of the complaint, provide the referees with subpoenas, among other things, to execute the proposed Demand for Information and Evidence ([Rd:151](#) infra), which identifies the holders of information as well as the evidentiary documents most likely both to validate the complaint and to pinpoint and expedite the investigation, and whose supporting facts in the complaint, this request, and the court records on which the complaint, the request, and the Demand are based meet the requirements of „sufficiency of facts to demonstrate relevancy and specificity“ for issuing such subpoenas;
- 5) enable the referees to provide Dr. Cordero with copies of any other information and evidence obtained or produced by them and notify him of, and allow him to attend, any interview and examination of any witness, complained-against attorney, and any other persons which may be held under §1022.19(d)(1)(ii-iv), [Rule 8.3\(b\)](#), and other applicable laws and rules, because his command of the record will allow him to suggest pertinent questions and provide helpful comments in assessing the truthfulness, accuracy, and relevance of such information, evidence, and testimony;
- 6) direct the referees to post on the apposite website or otherwise make publicly available the publicly filed documents in the records of the investigated cases, and call on the public to submit similar documents, which can help the referees to establish how widely coordinated misconduct has spread, how high it has reached in our bankruptcy and legal systems, and how much prejudice and damage it has

inflicted and continues to inflict on the public;

7) direct the referees to interview Dr. Cordero so that he may provide further information or clarify the information furnished in the complaint, this request, or contained in the record of *Premier*, *Pfuntner*, and *DeLano*;

- d. **the remaining qualified members** consider this complaint an opportunity for them to emerge even unwillingly, reasonably scared, but morally compelled **as reluctant heroes**, like Frank Serpico, who emerged from anonymity as just another NY City police officer to become the one with the strength of character to refuse to share in illegal payoffs that his colleagues were shaking down from gambling and drug dealing organizations, and with the courage to go undercover to expose them, and who for his decisive contribution to cleaning the NYPD of rampant corruption in the 1960s was rewarded by being the subject of the 1973 biographical bestseller, and being portrayed by Al Pacino, who won the 1974 Golden Globe award for Best Actor, in the film, *Serpico*; a precursor of another reluctant hero, Deep Throat, the deputy director of the FBI, who by covertly passing on inside information to *Washington Post* reporters Carl Bernstein and Bob Woodward contributed to exposing corruption as the modus operandi of President Nixon's administration, whereby he took a considerable professional and personal risk in unraveling the Watergate Scandal that forced the President to resign in August 1974, a role for which he was recognized in the best-seller *All the President's Men*, the enlightening account of wrongdoing by the top government office-holders that won Bernstein and Woodward a Pulitzer Prize, and in the homonymous Oscar-winning blockbuster, starring Robert Redford and Dustin Hoffman; similarly, the remaining members can become nationally recognized as Champions of Justice, conscientious lay men and women with moral backbone and principled attorneys with the unwavering determination to leave in NYS and across our country a footprint greater than their shingle, who now as appointees and later on also as public officials elected on their own merits of civil courage and integrity, contribute to the realization of a condition whose lack or presence profoundly impacts everybody's everyday life and which constitutes the aspirational goal of all honest people: Equal Justice Under Law([GC:66§4](#))

Dated: July 15, 2010  
59 Crescent Street

Dr. Richard Cordero, Esq.  
Dr. Richard Cordero, Esq.

**VI. Table of Authorities**

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## 18. TRANSCRIPT OF THE EVIDENTIARY HEARING IN DELANO

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**VII. Service list and contact information to call for a meeting of the Committee to discuss the complaint and its dismissal**

The request of July 14, 2010, for intervention to review and refer the complaint of February 19, 2010, filed by Dr. Richard Cordero, Esq., with the Attorney Grievance Committee of the NYS Supreme Court Appellate Division, Fourth Judicial Department, was sent to the following Committee members and chairs<sup>34</sup>:

<p>Richard E. Alexander, Esq. Harter, Secrest &amp; Emery LLP 1600 Bausch and Lomb Place Rochester, NY 14604-2711 tel. (585)231-1190; fax (585)232-2152 <a href="mailto:ralexander@hselaw.com">ralexander@hselaw.com</a></p>	<p><a href="mailto:castellanolaw@frontiernet.net">castellanolaw@frontiernet.net</a> <a href="http://junecastellano.com/default.aspx">http://junecastellano.com/default.aspx</a></p>	<p><a href="mailto:mth@cdlawyers.com">mth@cdlawyers.com</a></p>
<p>Robert E. Barry, Esq. Boyle &amp; Anderson P.C. 110 Genesee Street, Suite 300 Auburn, NY 13021 tel. (315)253-0326; fax (315)253-4968 <a href="mailto:rebarry@boylefirm.com">rebarry@boylefirm.com</a> <a href="http://www.boylefirm.com/barry/">http://www.boylefirm.com/barry/</a></p>	<p>Dr. Timothy Dennis 3550 Old County Road Penn Yan, NY 14527 tel. (315)536-2769</p>	<p>LaMarr J. Jackson, Esq. Harris, Chesworth, O'Brien, Johnstone, Welch &amp; Leone, LLP 300 Linden Oaks, Suite 100 Rochester, NY 14625 tel. (585)899-1414; fax (585)899-1424 <a href="http://www.harrishesworth.com/jackson.html">http://www.harrishesworth.com/jackson.html</a></p>
<p>Alan S. Biernbaum, Esq. Biernbaum Inclima &amp; Meyer LLP 19 West Main Street, Suite 900 Rochester, NY 14614 tel. (585)546-2350; fax (585)546-7365</p>	<p>James A. Gabriel, Esq. Franklin &amp; Gabriel Law Office 7185 South Main Street P. O. Box 449 Ovid, NY 14521 tel. (607)869-9646</p>	<p>Mary Jo S. Korona, Esq. Leclair Korona Giordano Cole LLP 150 State Street, Suite 300 Rochester, NY 14614 tel. (585)327-4112; fax (585)327-4200 <a href="mailto:mkorona@leclairkorona.com">mkorona@leclairkorona.com</a></p>
<p>Mr. Garry Brower Controller and CFO Betlem Service Corporation 704 Clinton Avenue South Rochester, NY 14620-1402 tel. (585)271-5505; fax (585)271-0856</p>	<p>Richard T. Galbato, Esq. Karpinski, Stapleton, Galbato &amp; Tehan, P.C. 110 Genesee Street, # 200 Auburn, NY tel. (315)253-6219; fax (315)253-6368 <a href="http://www.ksgtlaw.com/galbato.asp">http://www.ksgtlaw.com/galbato.asp</a></p>	<p>John M. Lockhart III, Esq. Presutti &amp; Coniglio, P.C. 32 Main Street, P.O. Box 157 Geneseo, NY 14454 tel. (585)243-2190 tel. (585)243-4320; fax (585)243-0420 <a href="mailto:info@presutilawoffice.com">info@presutilawoffice.com</a></p>
<p>June Castellano, Esq. Law Office of June Castellano 150 Allens Creek Road Rochester, NY 14618 tel. (585)256-1927; fax (585)242-7873</p>	<p>Valerie G. Gardner, Esq. Attorney at Law 215 Main Street Penn Yan, NY 14527 tel. (315)536-2851; fax (315)536-2837 <a href="mailto:info@vgardnerlaw.com">info@vgardnerlaw.com</a></p>	<p>Judith A. Palumbo, Esq. 269 W Pulteney Street Corning, NY 14830-2165 tel. (607)936-3739</p>
<p>Michael T. Harren, Esq. Chamberlain D'Amanda Oppenheimer &amp; Greenfield LLP Two State Street, Suite 1600 Rochester, NY 14614 tel. (585)295-4014</p>	<p>Paul E. Richardson, Esq. Attorney at Law 2 State Street Rochester, NY 14614 tel. (716)454-3616</p>	<p>Paul E. Richardson, Esq. Attorney at Law 2 State Street Rochester, NY 14614 tel. (716)454-3616</p>

Martha A. Roberts, Esq.  
Legal Assistance of Western  
New York, Inc.  
Geneva Office  
361 South Main Street  
Geneva, NY 14456  
tel. (315)781-1465  
tel. (866)781-5235;  
fax (315)781-2565

Elizabeth A. Sammons, Esq.  
Attorney at Law  
P. O. Box 20  
Williamson, NY 14589  
tel. (315)589-8132

Jeffrey E. Squires, Esq.  
14 Pulteney Square South  
Bath, NY 14810-1516  
tel. (607)776-2158

Mary Walpole-Lightsey, Esq.  
Walpole-Lightsey & Jones Law  
21 Sly Street  
Canandaigua, NY 14424  
tel. (585)394-3930  
[kadcmd@aol.com](mailto:kadcmd@aol.com)

Mr. Michael Wiedemer  
255 Woodcliff Drive  
Fairport, NY 14450  
tel. (585)598-0900,  
tel. (800)801-3830;  
fax (585)598-0909

Edward Z. Menkin, Esq.  
Chair  
Attorney Grievance  
Committee, 5th District  
224 Harrison Street, Suite 408  
Syracuse, NY 13202-3066  
tel. (315)471-1835;  
fax (315)479-0123

Deanne M. Tripi, Esq.  
Chair  
Attorney Grievance  
Committee, 8th District  
438 Main Street, Suite 800  
Buffalo, NY 14202-3212  
tel. (716)845-3630;  
fax (716)856-2701

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<sup>34</sup> The complaint of February 19, 2010, the request for acknowledgment of receipt and status inquiry of March 19, and the request for reconsideration of April 16, were sent in individualized envelopes and with individualized covers letter to each of the chair and staffers of the Grievance Committee for the Seventh Judicial District, namely:

1. Thomas N. Trevett, Esq., Chair
2. Gregory J. Huether, Esq., Chief Counsel
3. Daniel A. Drake, Esq., Principal Counsel
4. Andrea E. Tomaino, Esq., Principal Counsel
5. Janet A. Montante, Investigator

Attorney Grievance Committee  
for the Seventh Judicial District  
50 East Avenue, Suite 404  
Rochester, NY 14604-2206  
tel. (585)530-3180  
fax (585)530-3191

**ATTORNEY GRIEVANCE REFEREES  
APPOINTED BY  
THE APPELLATE DIVISION  
FOURTH JUDICIAL DEPARTMENT  
OF THE NEW YORK STATE SUPREME COURT**

M. Dolores Denman Courthouse, 50 East Av., Rochester, NY 14604; (585) 530-3100 <http://courts.state.ny.us/ad4/>

**Demand for Information and Evidence**

1. Upon referral by the Appellate Division, Fourth Department, of an attorney grievance complaint about the conduct of several attorneys, the Referees appointed thereby exercise their power to investigate or act upon such conduct under the Rules of Professional Conduct<sup>1</sup> (Rules or Rule #), the Rules of the Appellate Division on the Attorney Grievance Committee<sup>2</sup>, the referral order, and other applicable laws and rules, and issue this Demand for Information and Evidence(Demand) to demand and subpoena the following as set forth below.

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**A. Duty To Comply With, And Addressees Of, The Demand**

2. The Referees demand that the persons named below and others who possess knowledge or evidence concerning the subject matter of this Demand respond to it, as is their duty to do pursuant to a) the subpoena issued for the Referees, mutatis mutandis, under 22 NYCRR

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<sup>1</sup> 22 NYCRR 1200; <http://www.courts.state.ny.us/rules/jointappellate/index.shtml>

<sup>2</sup> 22 NYCRR 1022.19 et seq.; <http://www.courts.state.ny.us/AD4/Court/Rules/Rules.htm>

1022.19(d)(1)(iv); b) the referral; and c) Rule 8, which provides thus: [emphasis added]

RULE 8.3: Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer **shall report** such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.
- (b) A lawyer who possesses knowledge or evidence concerning another lawyer or a judge shall not fail to **respond to a lawful demand for information** from a tribunal or other authority empowered to investigate or act upon such conduct.

RULE 8.4: Misconduct

A lawyer or law firm shall not:

- (a) violate or attempt to violate the Rules of Professional Conduct, **knowingly assist** or induce another to do so, or do so **through the acts of another**;
- (b) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (f) **knowingly assist a judge** or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- [(g) on discrimination]
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

3. Named lawyers to whom this Demand is addressed:

- 1) Kenneth W. Gordon, Esq.  
Chapter 7 Trustee  
Gordon & Schaal, LLP  
1039 Monroe Avenue  
Rochester, NY 14620  
tel. (585)244-1070; fax (585)244-1085  
[kengor@rochester.rr.com](mailto:kengor@rochester.rr.com)  
<http://www.gordonandschaal.com/aboutus.html>
- 2) David D. MacKnight, Esq.  
Lacy, Katzen, Ryen & Mittleman, LLP  
The Granite Building, 2nd Floor  
130 East Main Street  
Rochester, NY 14604-1686

- tel. (585)324-5724; fax (585)269-3047  
[dmacknight@lacykatzen.com](mailto:dmacknight@lacykatzen.com)  
<http://lacykatzen.com/bio-dmacknight.aspx>
- 3) George Max Reiber, Esq.  
Chapter 13 Trustee; and
- 4) James W. Weidman, Esq.  
Attorney for Trustee George Reiber  
Winton Court  
3136 Winton Road S., Suite 206  
Rochester, NY 14623-2928  
tel. (585)427-7225; fax (585)427-7804  
[trustee13@roch13.com](mailto:trustee13@roch13.com)

- 5) Christopher K. Werner, Esq. and  
6) Devin Lawton Palmer, Esq.  
Boylan, Brown, Code,  
Vigdor & Wilson, LLP  
2400 Chase Square  
Rochester, NY 14604  
tel. (585)232-5300; fax (585)232-3528  
[cwerner@boylanbrown.com](mailto:cwerner@boylanbrown.com)  
[dpalmer@boylanbrown.com](mailto:dpalmer@boylanbrown.com)  
<http://www.boylanbrown.com/attorneys.aspx>
- 7) Michael J. Beyma, Esq.  
Underberg & Kessler, LLP  
300 Bausch & Lomb Place  
Rochester, NY 14604  
tel. (585)258-2890; fax (585)258-2821;  
[mbeyma@underbergkessler.com](mailto:mbeyma@underbergkessler.com), &  
assistant [breed@underbergkessler.com](mailto:breed@underbergkessler.com)  
<http://www.underbergkessler.com/Attorneys/Detail/?ID=30>
- 8) Kathleen Dunivin Schmitt, Esq.  
Assistant United States Trustee  
Office of the United States Trustee  
100 State Street, Room 609  
Rochester, NY 14614  
tel. (585)263-5812, fax (585)263-5862  
<http://www.justice.gov/ust/r02/rochester.htm>
- 9) Ms. Diana G. Adams  
[incumbent] U.S. Trustee for Region 2
- 10) Ms. Deirdre A. Martini and
- 11) Ms. Carolyn S. Schwartz  
Former U.S. Trustees 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  
<http://www.justice.gov/ust/r02/>
- 12) 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  
<http://www.nywb.uscourts.gov/>
- 13) Raymond C. Stilwell, Esq.  
Adair Law Firm, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883  
tel. (585)419-9000, fax (585)248-4961  
<http://www.adairlaw.com;>  
[rcstilwell@adairlaw.com](mailto:rcstilwell@adairlaw.com)
- 14) Karl S. Essler, Esq.  
Principal, Fix Spindelman Brovitz & Goldman, P.C.  
295 Woodcliff Drive, Suite 200  
Fairport, NY 14450  
tel. (585)641-8000, ext. 242; fax (585)641-2702;  
[kessler@fixspin.com](mailto:kessler@fixspin.com); <http://fixspin.com/>  
<http://fixspin.com/attorneys/karl-s-essler/>
- 15) William E. Brueckner, Esq.  
Attorney for Trustee Kenneth Gordon in *In re Premier Van Lines, Inc.*, 01-20692, WBNY;  
at the time at:  
Ernstrom & Drete, LLP  
2000 Winton Road South  
Building One, Suite 300  
Rochester, NY 14618-3922;  
now at:  
Underberg & Kessler  
300 Bausch & Lomb Place  
Rochester, NY 14604  
tel. (585)258-2892, fax (585)258-2821  
[wbrueckner@underbergkessler.com](mailto:wbrueckner@underbergkessler.com)  
<http://www.underberg-kessler.com/Attorneys/Detail/?ID=78>

4. Individuals and entities that may possess knowledge or evidence concerning this Demand and from whom the Referees demand that they provide information by stating such knowledge and producing such evidence include, but are not limited to, the following:

- a) Bankruptcy Judge John C. Ninfo, II  
U.S. Bankruptcy Court

1220 U.S. Courthouse  
100 State Street, Rochester, NY 14614  
tel. (585)613-4200; <http://www.nywb.uscourts.gov/>

b) any and all current and former members of Judge Ninfo's staff, including, but not limited to:

- 1) Ms. Andrea Siderakis  
Assistant to Judge Ninfo  
courtroom tel. (585)613-4281, fax (585)613-4299
- 2) Mr. Todd M. Stickle  
Deputy Clerk in Charge  
tel. (585)613-4223, fax (585)613-4242
- 3) Case Administrator Karen S. Tacy
- 4) Case Administrator Paula Finucane
- 5) Court Directory:  
[http://www.nywb.uscourts.gov/rochester\\_court\\_directory\\_11004.php](http://www.nywb.uscourts.gov/rochester_court_directory_11004.php)

c) U.S. District Judge David G. Larimer (Ret.)

U.S. District Court  
2120 U.S. Courthouse  
100 State Street, Rochester, N.Y. 14614  
tel. (585)613-4000, fax (585)613-4035; <http://www.nywd.uscourts.gov/mambo/>

d) any and all current and former members of Judge Larimer's staff, including, but not limited to:

- 1) Rodney C. Early, Esq.  
Former Clerk of Court

e) David J. Palmer  
Owner of Premier Van Lines, Inc.  
1829 Middle Road  
Rush, NY 14543  
tel. (585)292-9530

f) Auctioneer Roy Teitsworth  
6502 Barber Hill Road  
Geneseo, NY 14454  
tel. (585)243-1563, fax (585)243-3311; [www.teitsworth.com](http://www.teitsworth.com);  
<http://www.auctionzip.com/NY-Auctioneers/13102.html>.

g) Bonadio & Co., LLP  
Corporate Crossings  
171 Sully's Trail, Suite 201  
Pittsford, NY 14534-4557  
tel. (585)381-1000; fax (585)381-3131; <http://www.bonadio.com/Profile/Locations/>

- h) Ms. Bonsignor  
Court Reporter  
Alliance Shorthand  
183 East Main Street, Suite 1500  
Rochester, NY 14604  
tel. (585)546-4920
- i) Ms. Melissa L. Frieday  
Contracting Officer for court reporters  
U.S. Bankruptcy Court  
Olympic Towers, 300 Pearl Street, Suite 250  
Buffalo, NY 14242  
tel. (716)362-3200, fax (716)551-5103
- j) The Circuit Judges of the Court of Appeals for the Second Circuit (CA2)  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY, 1007  
Main tel. (212)857-8500; Clerk of Court tel. (212)857-8585  
<http://www.ca2.uscourts.gov/>
- k) any and all members of the CA2 judges' and the Court's staff, including, but not limited to:
  - 1) Clerk of Court Catherine O'Hagan Wolfe
  - 2) Former Clerk of Court Roseann B. MacKechnie
  - 3) Court Directory: <http://www.ca2.uscourts.gov/clerk/navfiles/contact.htm>

5. An officer with authority to execute this Demand is hereinafter referred to as the Referees.

## **B. Subject Matter Of The Demand**

6. The subject matter of this Demand includes, but is not limited to:
- a) the specific information or evidence demanded hereunder;
  - b) the complained-about conduct, including, but not limited to, fraud, bankruptcy fraud, toleration of or participation in a bankruptcy fraud scheme, racketeering, concealment or wrongful disposition of assets, wrongful hiring of bankruptcy professionals, wrongful payment or sharing of fees, wrongful trusteeship, violation of fiduciary or official duty, wrongful influencing a judge, bribery, perjury, conflict of interest, wrongful denial of discovery, wrongful docketing, wrongful transmission of the record, tampering with the preparation and filing of a transcript, ex-parte contacts, bias, prejudice, partiality, abuse of process, abuse of judicial power, denial of due process, and any violation of the Rules

or any other provision of law, whether the complained-about conduct was engaged in, or any such violation was committed by, the complained-against lawyers or the named judges or any other lawyer or judge;

c) the following cases, their progeny, and the parties thereto:

- 1) *In re Premier Van Lines, Inc.*, 01-20692, WBNY, (*Premier*);  
[http://Judicial-Discipline-Reform.org/dockets/1Premier\\_01-20692\\_15jan10.pdf](http://Judicial-Discipline-Reform.org/dockets/1Premier_01-20692_15jan10.pdf)
- 2) *James Pfuntner v. Trustee Kenneth Gordon et al.*, 02-2230, WBNY, (*Pfuntner*);  
[http://Judicial-Discipline-Reform.org/dockets/2Pfuntner\\_02-2230\\_15jan10.pdf](http://Judicial-Discipline-Reform.org/dockets/2Pfuntner_02-2230_15jan10.pdf)
- 3) *Richard Cordero v. Kenneth Gordon, Esq.*, 03-cv-6021L, WDNY;  
[http://Judicial-Discipline-Reform.org/dockets/3Gordon\\_03cv6021\\_15may6.pdf](http://Judicial-Discipline-Reform.org/dockets/3Gordon_03cv6021_15may6.pdf)
- 4) *Richard Cordero v. David Palmer*, 03-mbk-6001L, WDNY;  
[http://Judicial-Discipline-Reform.org/dockets/4Cordero\\_v\\_Palmer\\_03mbk6001L\\_19may3.pdf](http://Judicial-Discipline-Reform.org/dockets/4Cordero_v_Palmer_03mbk6001L_19may3.pdf)
- 5) *In re Premier Van*, 03-5023, CA2;  
[http://Judicial-Discipline-Reform.org/dockets/5Premier\\_03-5023\\_CA2\\_15may6.pdf](http://Judicial-Discipline-Reform.org/dockets/5Premier_03-5023_CA2_15may6.pdf)
- 6) *Richard Cordero v. Kenneth W. Gordon, Trustee, et al.*, 04-8371, SCt;  
[http://Judicial-Discipline-Reform.org/dockets/6TrGordon\\_04-8371\\_SCt.pdf](http://Judicial-Discipline-Reform.org/dockets/6TrGordon_04-8371_SCt.pdf)
- 7) *In re David and Mary Ann DeLano*, 04-20280, WBNY, (*DeLano*);  
[http://Judicial-Discipline-Reform.org/dockets/7DeLano\\_04-20280\\_WBNY\\_20jan9.pdf](http://Judicial-Discipline-Reform.org/dockets/7DeLano_04-20280_WBNY_20jan9.pdf)
- 8) *Cordero v. DeLano*, 05-cv-6190L, WDNY;  
[http://Judicial-Discipline-Reform.org/dockets/8DeLano\\_05cv6190\\_WDNY\\_27oct6.pdf](http://Judicial-Discipline-Reform.org/dockets/8DeLano_05cv6190_WDNY_27oct6.pdf)
- 9) *Dr. Richard Cordero v. David and Mary Ann DeLano*, 06-4780-bk, CA2;  
[http://Judicial-Discipline-Reform.org/dockets/9DeLano\\_06-4780\\_CA2\\_20jan9.pdf](http://Judicial-Discipline-Reform.org/dockets/9DeLano_06-4780_CA2_20jan9.pdf)
- 10) *Dr. Richard Cordero v. David and Mary Ann DeLano*, 08-8382, SCt  
[http://Judicial-Discipline-Reform.org/dockets/10DeLano\\_08-8382\\_SCt\\_6feb10.pdf](http://Judicial-Discipline-Reform.org/dockets/10DeLano_08-8382_SCt_6feb10.pdf)

7. A reference to *Pfuntner* or *DeLano* includes its progeny, respectively, as reasonably applicable to obtain production of information and evidence as a means to investigate or act upon the complained-about conduct.

## **C. Instructions For Producing Information And Evidence**

8. A lawyer shall:

- a) understand a reference to an individual named herein to include any and all members of such individual's staff, entity, partnership, group, or organization, whether incorporated or unincorporated;
- b) comply with the instructions stated herein and complete such compliance within 14 days of being served with this Demand unless a different deadline for compliance is stated in ¶15 infra;
- c) deem himself or herself served with this Demand as provided for, mutatis mutandis, under Rule 5(b)(2) of the Federal Rules of Civil Procedure (FRCP)<sup>3</sup>, whether service is made on the lawyer or the attorney last known to be representing the lawyer;
- d) compute time as provided for mutatis mutandis under FRCP 6 and understand a reference there to a court or a clerk's office to be a reference to the Referees; Rule 6(b)(2) does not apply;
- e) be held responsible for any non-compliance and subject to the continuing duty to comply with this Demand within the day each day after the applicable deadline is missed, under pain of being named the subject of a disciplinary proceeding.

9. A lawyer shall produce to the Referees upon its demand and volunteer to it:

- a) information concerning evidence herein identified, including, but not limited to, its author, existence, nature, condition, use, actual or likely whereabouts, person who is, is believed to be, is likely to be, or could be in possession or control of, or have access to, it;
- b) information and evidence without passing judgment on its degree of relevance or lack thereof relative to the subject of the Demand in recognition of the fact that the relevance of a piece of information or evidence may only become apparent in the broader context of information or evidence already gathered or yet to be gathered by the gathering entity; and
- c) information and evidence in application of the principle of honest compliance effort, i.e., "If in doubt, produce the information and evidence to the Referees and disclose the doubt".

10. A lawyer shall with respect to evidence herein demanded produce it, produce information about it, and issue a certificate, as defined in ¶14 infra, to the Referees whenever a reasonable person would who:

- a) acts in good faith, or with due diligence, or competently, or in an official or fiduciary

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<sup>3</sup> <http://www.uscourts.gov/rules/index.html> >Rules and Forms in Effect, Federal Rules of Civil Procedure

capacity or with the training or experience that is the same as, or equivalent to, that of a person in such official or fiduciary capacity;

- b) reasonably believes that at least one part of such evidence is herein demanded;
- c) produces the information or evidence demanded and discloses any doubt as to whether any part thereof is relevant; or
- d) believes that another person with an adversarial interest would want such information, evidence, or certificate or would find it of interest to the end of ascertaining whether an individual or entity:
  - 1) is a holder or an identifier, as defined in ¶¶11 and 12, respectively, infra; or
  - 2) has committed, covered up, or tolerated a violation of the Rules or any other applicable law, or engaged in complained-about conduct;

11. A lawyer who with respect to any evidence herein demanded has possession or control of, or access to, it is hereinafter referred to as a holder and shall on behalf of the Referees:

- a) produce the original or a true, correct, and complete copy thereof together with a certificate, as defined in ¶14 infra;
- b) if not complying for a legitimate reason under law with clause a) of this paragraph, certify that such holder holds the evidence and acknowledges the duty under this Demand to:
  - 1) hold it in a secure place, which the holder shall name;
  - 2) ensure its chain of custody; and
  - 3) produce it without delay once the legitimate reason no longer justifies non-compliance;

12. A lawyer who with respect to any evidence herein demanded knows its actual, likely, or possible whereabouts is referred to hereinafter as an identifier and shall on behalf of the Referees:

- a) identify the evidence of which the identifier knows the actual, likely, or possible whereabouts;
- b) name such whereabouts,
- c) identify the actual, likely, or possible holder of such evidence by stating his or her known, likely, or possible name, physical and electronic addresses, and telephone and fax numbers;
- d) send to the Referees a true, correct, and complete copy of such evidence or of any secondary evidence that concerns such evidence and that directly or indirectly was

received from, or generated by, the actual, likely, or possible holder of such evidence.

13. A lawyer shall produce all the parts of each piece of evidence herein demanded that state as to each transaction covered by such piece of evidence or, if not available each transaction, then for a set of such transactions:

- a) the time, place, amount, and currency or currency equivalent of each such transaction;
- b) the rates, including but not limited to, the normal, delinquent, introductory, preferential, promotional, special, and exchange rates, applied to the transaction;
- c) the description of the goods, goods seller, service, and service provider concerned by each transaction;
- d) the source or recipient of funds or the person or entity that made any charge or claim for funds;
- e) the opening and closing dates of the piece of evidence;
- f) the payment due date of the amount owing and such amount concerning each transaction;
- g) the good or delinquent standing of the account, agreement, or contract dealt with in the piece of evidence;
- h) the beneficiary of any payment;
- i) the surety, codebtor, or collateral for each transaction; and
- j) any other matter concerning the formulation of the terms and conditions of the transaction or relationship dealt with in the piece of evidence.

14. A lawyer shall certify in an affidavit or an unsworn declaration subscribed under penalty of perjury as provided for under 28 U.S.C. §1746 (hereinafter collectively referred to as a certificate), with respect to each piece of evidence 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 piece of evidence and consists of both all the parts requiring its production and all other parts without regard to their degree of relevance or lack thereof relative to the Demand for production; or
- c) the certificate required under clauses a) and b) of this paragraph cannot be made with respect to any part or the whole of any piece of evidence and the reason therefor and attach the available evidence to the certificate.

15. A lawyer shall produce evidence demanded herein pursuant to the following timeframes measured

from the time the Demand is served on such lawyer as provided for under ¶8c), d), e) supra:

- a) within 14 days with respect to evidence that a lawyer has possession or control of, or access to, it at home or other permanent or temporary dwelling; in the office or place of work or business; in a land, sea, or air vehicle; in a security box or storage place; or equivalent place;
- b) with respect to evidence that both does not fall within the scope of clause a) of this paragraph and must be requested from the third party (or parties) that has, is likely to have, or possibly has possession or control of, or access to, it:
  - 1) within 14 days send a request for such evidence to such third party and send a copy of such request to the Referees;
  - 2) within 10 days of receiving either such evidence or any communication concerning such request, send the evidence or a true, correct, and complete copy thereof to the Referees and, if such communication is not in writing, commit it to writing and send the resulting written communication to the Referees;
  - 3) proceed to obtain such evidence from the third party as a lawyer would who with due diligence makes a good faith and proactive effort to obtain on behalf of his or her client materially important evidence from a third party, including, but not limited to:
    - i) applying to a court of competent jurisdiction for an order of production addressed to such party;
    - ii) issuing a subpoena under FRCP 45 or equivalent state law provision;
    - iii) proceeding under the discovery rules of FRCP or equivalent state rules.
- c) within 14 days explain in writing to the Referees the lawyers' legitimate inability under law to comply with clauses a) and b) of this paragraph and continue to make an effort as described in clause b.3) of this paragraph to obtain and send to the Referees the evidence demanded.

## **D. Evidence In General, Production, And Certification**

16. Evidence means information that already is or can be caused to be contained in a physical object and that relates to the subject of this Demand.

17. Information is the message that tells one entity something about another entity. It includes

knowledge in the mind of a person that can be conveyed to, and received by, another person.

18. Evidence identified with particularity or in general in this Demand is to be understood broadly to include a physical object that holds information in any form and format about something related to the subject of the Demand and can convey knowledge about it directly to a human being or indirectly through a machine.
19. The information may be in the form of text, symbols, graphics, data, clip art, pictures, sound, or video; the format may be handwritten, print, digital, electronic, or otherwise; and the physical object may be any of the following or similar objects, any of which may be referred to as a document when it contains information:
  - a) paper, carton, other paper pulp product; cloth, fabric, plastic, and similar materials;
  - b) graphic or photographic paper, photo or movie film, microfilm, and equivalent;
  - c) a removable storage device, such as a floppy disk; data tape; CD, DVD, Blue Ray, mini, or external hard disk; memory flash, stick, chip, or card; electronic memory strip, such as found on plastic cards, whether credit, debit, identity, security, medical cards and similar information-holding cards;
  - d) fixed storage device, such as an internal hard disk of a computer, server, mainframe, or recorder box;
  - e) an audio or video cassette, tape, or disk, such as used in a tape recorder, camcorder, telephone answering machine; surveillance or security system or device; phone switchboard or PBX; or central, control, or base unit that communicates with outside units, clients, and in-bound callers;
  - f) a wireless handheld digital device, such as an iPod, Blackberry, Palm, or smartphone.
20. A lawyer from whom evidence is demanded herein and who has only or also information about it shall cause that information to be contained in the physical object, such as those listed in ¶19 supra, that is reasonably calculated to be the best means of conveying it to the Referees.
21. A lawyer that has evidence is referred to herein as evidence producer, whether the lawyer:
  - a) is only in a position as a matter of fact rather than as a matter of law to produce such evidence but has not produced it yet;
  - b) is in the process of producing such evidence; or
  - c) has already produced such evidence.
22. Evidence includes information qualified by the evidence producer as:

- a) information believed by the evidence producer to be a fact;
- b) information reasonably believed by the evidence producer to be true but not known to be a fact;
- c) information qualified by the evidence producer as known to be false, likely to be false, or possibly false;
- d) information qualified by the evidence producer as hearsay, regardless of its admissibility in court.

23. Evidence may be produced in the form of:

- a) a written statement or affidavit composed to respond to this Demand;
- b) an object that already exists at the time the evidence producer becomes aware that it contains evidence an oral communication or testimony;
- c) an oral communication, such as a conversation, interview, deposition, or hearing, if such form of production is acceptable to the Referees; otherwise, it must be caused to be contained in a physical object, as described in ¶18 supra.

24. A reference herein to a specific piece of evidence includes the source evidence from which it was derived, such as through addition, deletion, merge, update, modification, correction, translation, transformation from one form to another, or rearrangement for inclusion in a database. Conversely, a demand for evidence that is the source from which other evidence was derived includes such derivative evidence.

## **E. Particular Evidence To Be Produced**

25. A lawyer shall produce to the Referees the following and reasonably similar evidence:

### **1. Financial evidence**

26. Evidence of any payment, compensation, or transfer of value, whether in cash or in kind and for any reason whatsoever, or offer, promise, or contingent arrangement for such payment, compensation, or transfer by any partner, officer, any other employee, service provider, or person in any way and to any degree related to Underberg & Kessler, LLP, to U.S. Bankruptcy Judge John C. Ninfo, II, WBNY, since January 1, 1992, to date or in future.

27. The documents that during the preparation for, and the course of, their bankruptcy proceedings until their discharge and thereafter, if related to such proceedings, were made available directly

or indirectly:

- a) by David Gene and Mary Ann DeLano or their children, Michael David and Jennifer, to Christopher Werner, Esq., Devin Lawton Palmer, Esq., any other members or employee of Boylan, Brown; Trustee George Reiber, Assistant U.S. Trustee Kathleen Dunivin Schmitt, U.S. Trustees for Region 2 Deirdre A. Martini and Diana G. Adams; any other panel or official trustee; Judge Ninfo and District Judge David Larimer and any other judge or court staffer;
- b) by David Palmer to Raymond C. Stilwell, Esq., Trustee Kenneth Gordon, U.S. Trustee Trudy Nowak, U.S. Trustee for Region 2 Carolyn Schwartz, and any other person mentioned by name or capacity in clause a) of this paragraph.

28. The documents obtained by Trustee Reiber in connection with *DeLano* and by Trustee Gordon in connection with *Premier* and *Pfuntner*, regardless of the source, up to the date of compliance with this Demand, whether such documents relate generally to the bankruptcy petition of the DeLanos or Mr. Palmer or his former moving and storage company, Premier Van Lines, Inc., or its successor; or particularly to the investigation of whether either or both of them 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.

29. The financial documents in either or both of the names of:

- a) David Gene and Mary Ann DeLano;
- b) David Palmer and 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.

30. The dates of the documents referred to in this §E.1. 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.

31. The financial documents referred to in this §E.1. 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, retire-

- ment, 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 warehouses at:
    - i) 2130 Sackett Road, Avon, NY, 14414, owned by Mr. James Pfuntner;
    - ii) Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607;
    - iii) 10 Thruway Park Drive, West Henrietta, NY 14586;
  - 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 loans 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.

## **2. Minutes, transcripts, and recordings**

32. 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.

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

a) in *Pfuntner* on:

- |                      |                   |                     |
|----------------------|-------------------|---------------------|
| 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:

- |                    |                      |                      |
|--------------------|----------------------|----------------------|
| 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     |                      |

34. Trustee Schmitt and Trustee Reiber or their respective successors shall within 10 days of this Demand 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. James 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 appeared providing the introduction to it.

35. The transcript of the meeting of creditors of the DeLanos held on February 1, 2005, at Trustee Reiber's office, made by Court Reporter Ms. Bonsignor of Alliance Shorthand, and kept by Trustee Reiber, shall be produced by him or his transferee on paper and as a PDF file on a floppy disc or CD.

36. 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 demand to the Referees.

37. 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.

### 3. Court orders

38. The Clerk of the Bankruptcy Court shall produce certified copies of all the orders in *DeLano* and *Pfuntner*, including the following:

a) in *DeLano*:

- 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 the obligation to make any 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 from any attempt to collect any discharged debt, the closing of the DeLanos' estate, and the release of

their employer from the order to pay the Trustee;

b) in *Pfuntner*:

- 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 application for entry of default judgment against David Palmer;
- 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.

#### **4. Documents entered on dockets and publicly filed**

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

a) Documents entered on 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 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*, 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.

40. Judge Ninfo's and Judge Larimer's annual financial disclosure reports since 1992, required to be filed publicly under the Ethics in Government Act of 1978, 5 U.S.C. Appendix (Appendix 4 in West publications) shall be obtained from the Administrative Office of the U.S. Courts, One Columbus Circle, NE, Washington, D.C. 20544, tel. (202)502-2600, for the purpose of:

- a) comparing them with their salaries, made a public matter by 5 U.S.C. §5332, The General Schedule, Schedule 7–Judicial Salaries, and other declared and otherwise discovered sources of income;
- b) determining plausibility and compliance with the disclosure requirements; and
- c) facilitating asset tracking as necessary in the context of the Demand's subject matter.

for the Referees,  
of the Appellate Division, 4<sup>th</sup> Department:

\_\_\_\_\_  
Date

SEVENTH JUDICIAL DISTRICT  
ROCHESTER

CHIEF COUNSEL  
GREGORY J. HUETHER

CHAIRPERSON  
THOMAS N. TREVETT, ESQ.



PRINCIPAL COUNSEL  
DANIEL A. DRAKE

PRINCIPAL COUNSEL  
ANDREA E. TOMAINO

INVESTIGATOR  
JANET A. MONTANTE

August 10, 2010

**CONFIDENTIAL**

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Dear Dr. Cordero:

This letter is to respond to your latest submission, sent directly to each Committee member of the Seventh District Attorney Grievance Committee, as well as the two Chairpersons of the Fifth and Eighth Judicial District Attorney Grievance Committees.

As you were previously advised by letters of April 16, and April 23, 2010, my determination to not initiate an investigation based upon your submission is final pursuant to the Court's Rules found at 22 NYCRR 1022.19 (d) (2)(I).

The further relief you have requested directly from the Committees is beyond the scope of the Committee's authority to provide.

Very truly yours,

Gregory J. Huether  
Chief Counsel

GJH/km

Blank

612 S. Lincoln Road  
East Rochester, N.Y. 14445  
November 4, 2005

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

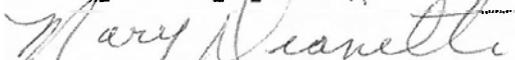
Dear Dr. Cordero:

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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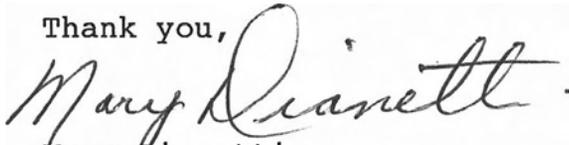
S T A T E M E N T

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

18  
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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.

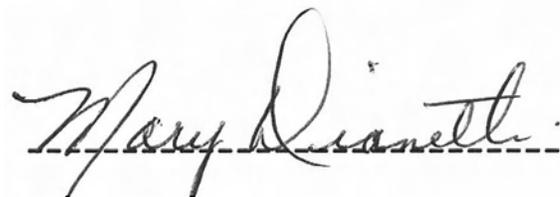
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REPORTER CERTIFICATE

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