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

CA2 dkt. no. 03-5023

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

Dear Mr. Werner,

I faxed to you my request of September 29, 2004, for discovery from Mr. David DeLano pursuant to the Order of August 30, 2004, of Judge John C. Ninfo, II. Beginning on October 14, I called you several times and left messages on your answering machine and with Receptionist Patricia Casilo requesting that you let me know by when you would respond to my request and the extent to which you would do so. Finally, on Friday, October 22, you returned my call.

In our phone conversation on that occasion, you indicated that Mr. DeLano intended not to produce the items requested in my September 29 letter except for item 15, considering that all 'the other items are not relevant and have nothing to do with my claim against him'.

Given that Judge Ninfo asked you at the hearing on August 25 how much time would be needed for discovery and upon your response set the limit on December 15, you must be aware that proceeding with due diligence is necessary. Thus, in my request I anticipated certain objections to complying with it and presented legal arguments to overcome them, particularly as to:

- a) the scope of discovery under FRCivP 26(b)(1) and its explanation by the Advisory Committee;
- b) the previous 14 documents in which since March 4, 2004, I or, at my instigation, Trustee George Reiber, have requested the same or similar documents. They point up the fact that Mr. DeLano has had more than enough time –not to mention the experience of a bank loan officer for 15 years- to collect and produce those documents or already made up his mind not to produce them. It follows that there would be no need or justification for him to wait until the very last day of the 30 days that he is allowed under FRCivP 34(b) to state that he will not produce any documents except for those in one single item, that is, item no. 15. As to this item you stated that the file is so thin that you can fax it to me. If Mr. DeLano had already gathered the documents for that item and knew that he would not comply with the request in the other items, there is no justification either for him or you not to have produced them. (Concerning faxing documents, I indicated that I only accept them if the sender calls me and we agree what and when to send; and that documents with fine print are not appropriate for faxing because such print is hard to read or illegible after being faxed.); and
- c) the relevance of the requested documents, for they go not only to establish my claim against Mr. DeLano, but also to support my defense against the motion to disallow my claim against him, so that the documents come within the scope of what is "relevant to the claim or defense of any party".

Thus, my efforts to contact you, my statements when we finally talked, and this letter are part of my good faith effort under FRCivP 37(a)(2) to obtain discovery before moving for an order to compel such and for sanctions. As stated in my recorded message, please call me soonest.

Sincerely, 