

## Dr. Richard Cordero

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March 17, 2005

Ms. Karen Greve Milton  
Circuit Executive  
U.S. Courts for the Second Circuit  
40 Foley Square, Rm 2904  
New York, NY 10007

Re: public comments on the reappointment of Judge John C. Ninfo, II

Dear Ms. Milton,

I hereby bring to the attention of the Second Circuit Court of Appeals and Judicial Council facts on the basis of which they should decide not to reappoint Bankruptcy Judge John C. Ninfo, II, WBNY, to a new term of office because of his participation in a pattern of wrongdoing and bias.

Those facts are found in the 15 orders of Judge Ninfo (235 et seq., *infra*) and other documents and statements entered in the dockets of two cases which I, as a party, know first-hand, i.e., *Pfuntner v. Gordon et al*, no. 02-2230 (401), and *In re DeLano*, no. 04-20280 (425). These writings are supplemented by the stenographic recordings of the 15 hearings in those cases (56). These materials produced by or in connection with Judge Ninfo describe action taken by him since 2002 that so repeatedly and consistently disregards the law, the rules, and the facts (cf. 7§2) to the benefit of local parties (15C), including debtors (471 et seq.) that the evidence indicates have concealed assets (18§1;24§3), and to my detriment, I being the only non-local and pro se party, as to establish his participation in a pattern of non-coincidental, intentional, and coordinated (89F; 168§II) wrongful acts (66§I) supporting a bankruptcy fraud scheme (216§V).

In a judicial misconduct complaint (111) and in motions filed in this Court (125; 201) in *In re Premier*, dkt. no. 03-5023 (451), I informed of these facts Chief Judge John M. Walker, Jr., (cf. 151; 219) and members of this Court and of the Judicial Council, who dismissed them without any investigation. So routinely this is the way that judges dispose of complaints about their peers that last June Justice Rehnquist appointed Justice Breyer to head a committee to study the judges' misapplication of the Misconduct Act of 1980. Indeed, judges have turned the self-disciplining mechanism of judicial complaints into a sham, a term used advisedly upon the foundation of facts. Do judges also disregard systematically comments from the public before reappointing a bankruptcy judge, thereby turning the request for such comments into a public relations sham (cf 23§2)? The term is justified given that under 28 U.S.C. §152 the appointment does not even require such request, let alone the holding of public hearings, cf. §44(a).

If the judges of the Court or the Council are serious about judicial integrity, they can review the exhibits (51) and ask themselves whether Judge Ninfo abides by his oath of office at §453 or knows the law (41D;131B-C). But if they cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the *DeLano* case (31). Then they can ascertain what drives his conduct and the scheme through a DoJ and FBI investigation (44F). If the appearance, not the reality, of bias is enough under §455 to require the recusal of a judge, as was reaffirmed in *Microsoft v. U.S.*, 530 U. S. 1301, 1302 (2000) (*Rehnquist, C. J.*), how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for a judge to discharge his or her duty to investigate a complaint about it or report it for investigation under 18 U.S.C. §3057? How much must Judge Ninfo abuse a litigant or how public must his wrongdoing be before his peers care?

sincerely, *Dr. Richard Cordero*

**Blank**

## Dr. Richard Cordero

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August 4, 2005

Ms. Karen Greve Milton  
Circuit Executive  
U.S. Court of Appeals for the Second Circuit  
40 Foley Square, Rm 2904  
New York, NY 10007

Re: supplementation of comments on the reappointment of J. John C. Ninfo, II

Dear Ms. Milton,

Last March 17, I made a submission to the Second Circuit Court of Appeals and Judicial Council in response to the request for public comments on the reappointment of Bankruptcy Judge J.C. Ninfo, WBNY. This is a supplement (cf. FRCivP 26(e)) that evidences the pertinence of the statement that I made there: "If the judges of the Court or the Council...cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct"

Indeed, on March 1, 2005, the evidentiary hearing took place of the motion to disallow my claim against Mr. DeLano in the bankruptcy case of David and Mary Ann DeLano. Judge Ninfo disallowed it. Oddly enough, Mr. DeLano is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank. He declared having only \$535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years \$291,470, whose whereabouts the Judge refused to request that he account for and, thus, are unknown to date.

At the end of the hearing, I asked Reporter Mary Dianetti to count and write down the numbers of stenographic packs and folds that she had used, which she did. For my appeal from the disallowance and as part of making arrangements for her transcript, I requested her to estimate its cost and state the numbers of packs and folds that she would use to produce it. As shown in the exhibits pgs. E:1-11, she provided the estimate but on three occasions expressly declined to state those numbers. Her repeated failure to state numbers that she necessarily had counted and used to calculate her estimate was quite suspicious. So I requested that she agree to certify that the transcript would be complete and accurate, distributed only to the clerk and me, and free of tampering influence. However, she asked me to prepay and explicitly rejected my request! If a reporter in this Circuit refuses to vouch for the reliability of her transcript, does this Court vouch in her stead to the Supreme Court? Would you want your rights and obligations decided on such a transcript?

There is evidence that Reporter Dianetti is not acting alone. Other clerks answerable to Judge Ninfo have also violated the rules to deprive me of that transcript and, worse still, did likewise concerning the transcript of a hearing before him in *Pfuntner v. Trustee Gordon et al.*, where Mr. DeLano, who handled the bankruptcy for M&T, and I are parties. In both cases, timely and reliable transcripts carried the risk of enabling the peers of Judge Ninfo to 'listen' to his bias and disregard for the law, the rules, and the facts at those hearings. Therefore, I respectfully request that you submit the accompanying supplement and exhibits to the Court and the Council so that they **1)** consider in the reappointment process the evidence showing that Judge Ninfo's conduct and that of others in his court form a pattern of non-coincidental, intentional, and coordinated wrongdoing that supports a bankruptcy fraud scheme and **2)** report it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely,

*Dr. Richard Cordero*

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September 6, 2005

**[also sent to Circuit Justice Ginsburg and the other 2<sup>nd</sup> circuit judges]**

Circuit Judge Dennis Jacobs  
Member of the Judicial Council of the 2<sup>nd</sup> Circuit  
U.S. Court of Appeals for the Second Circuit  
40 Foley Square  
New York, NY 10007

Re: 2<sup>nd</sup> supplement to comments against  
reappointing J. John C. Ninfo, II, WBNY

Dear Judge Jacobs,

Last March I responded to the Appeals Court's request for comments on the reappointment of Judge Ninfo. I indicated that the Court and the Judicial Council could 'hear' him express his bias and disregard for the law, the rules, and the facts by obtaining the transcript of the evidentiary hearing held on March 1, 2005, of the motion raised by the debtors in *David and Mary Ann DeLano* (04-20280) to disallow my claim. Revealingly enough, that is the transcript that Bankruptcy Court Reporter Mary Dianetti has refused to certify as complete, accurate, and untampered-with. (E:9-11) The evidence thereof is what I submitted to the Court and the Council in the supplement of last August 3.

New evidence discussed in the supplement below shows that the Reporter's refusal is part of a bankruptcy fraud scheme: Judge Ninfo has confirmed the DeLanos' debt repayment plan upon the pretense that the trustee investigated and cleared them of fraud in his "Report" (E:271-273; §I) although the Judge knew that there was no investigation (§IIA) because he had refused to order them to produce even checking and savings account statements and because the trustee, who before asking for any documents from the DeLanos vouched for the good faith of their bankruptcy petition, had a conflict of interests in conducting an investigation that could prove him wrong (§IIB; E:309-323). Through his confirmation without investigation (§IIC), Judge Ninfo allowed the whereabouts of \$291,470 earned by the DeLanos in just 2001-03 to remain unknown and the astonishing string of mortgages (§53, E:284-298) to go unexplained through which the DeLanos took in \$382,187 since 1975 only to end up 30 years later with equity in the very same home of a meager \$21,415 and a mortgage debt of \$77,084! Over \$670,000 unaccounted for! Not enough, for Judge Ninfo spared them repayment of over \$140,000. Thereby Judge Ninfo protected a scheme and Mr. DeLano, who has spent his 32-year career in banking, is currently in charge of bankruptcies of clients of his bank (§36), and has learned so much about bankruptcy abuses that the Judge could not risk letting an investigation indict Mr. DeLano for playing the system, lest he disclose his incriminating knowledge in a plea bargain.

Hence, Judge Ninfo cannot let the transcript be produced and the Reporter be investigated or the Trustee be removed. I moved for that on July 18 and 13, respectively; but neither the Reporter nor the Trustee has bothered to file even a stick-it with the scribble "I oppose it". But wait! I raised those motions in my appeal before Judge David Larimer (05cv6190, WDNY). How did they know that he would not grant them by default and cause them to lose their jobs? Yet, they must know that Judge Larimer's protection of Judge Ninfo and the others by not ruling on my motions -four, the earliest filed in *June*- can lead me to petition for a writ of mandamus again (cf. 03-3088, CA2). Do they know that the Court will deny it and leave me with a frozen appeal or no option but to file my brief without the transcript? (E:333-343) The scheme! How high does it reach? (cf. 03-8547 and 04-8510, CA2)

Circumstantial and documentary evidence warrants that Judge Ninfo not be appointed. Instead, let your duty to safeguard the integrity of judicial officers and process cause him to be investigated for participating in a bankruptcy fraud scheme; and let your duty under 18 U.S.C. 3057(a) cause you to report this matter to A.G. Alberto Gonzales for investigation. Looking forward to hearing from you,

sincerely,

*Dr. Richard Cordero*

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, docket no: 04-20280

**Motion**  
to request that  
Judge John C. Ninfo, II  
recuse himself under 28 U.S.C. §455(a)  
due to his lack of impartiality

---

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

**I. The standard for recusal under 28 U.S.C. § 455(a) is the appearance, not the reality, of bias and prejudice**

1. Section 455(a) of 28 U.S.C. provides as follows:

Any justice, judge, or magistrate judge of the United States **shall** disqualify himself in any proceeding in which his impartiality **might** reasonably be questioned. (emphasis added)

2. The Supreme Court recently reaffirmed in *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.) the standard for interpreting and applying this section thus:

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

3. Those surrounding facts and circumstances are to be assessed by "the "reasonable person" standard which [§455(a)] embraces", *Microsoft Corp.* at 1303.

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**II. The facts and circumstances surrounding Judge Ninfo’s handling of the DeLano case have the appearance of bias and prejudice**

**A. Judge Ninfo has given precedence to what he calls “local practice” over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero**

4. On January 27, 2004, Mr. David DeLano and Mrs. Mary Ann DeLano filed for bankruptcy under Chapter 13. Mr. DeLano is far from an average debtor: Interestingly enough, he has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, he is a member of a

class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition successfully for bankruptcy relief. Consequently, his petition warranted to be examined with the equivalent of strict scrutiny. But Judge Ninfo would have none of such common sense approach.

5. On the contrary, Judge Ninfo excused the Standing Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., who unlawfully prevented any examination of the DeLanos even by the only creditor, Dr. Cordero, who showed up at the meeting of creditors held on March 8, 2004. Convened under 11 U.S.C. §341, that meeting had the purpose, as provided under §343, of enabling the creditors to meet the “debtor [who] shall appear and submit to examination under oath...”. What is more, FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of “any other matter relevant to the case”. Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until “the final meeting of creditors”.
6. It should be noted that none of the other 20 creditors of the DeLanos, all institutional, attended the meeting, of which notice is officially given by the court. This is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition. This imputed intention is reasonably supported by the fact that he distributed his unsecured credit card debt of \$98,092 over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine the DeLanos.
7. Their examination was not conducted by Trustee Reiber because contrary to the Code -11 U.S.C. §341(a)- the rules –FRBkrP Rule 2003(b)(1)- and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos’ debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail. Mr. Weidman alleged that there was no time for such questions and put an end to the examination despite the fact that there was more than ample time to continue it since Dr. Cordero was only at his second question! In so doing, he violated Dr. Cordero’s statutory right to examine the DeLanos. Why could Att. Weidman not risk exposing the DeLanos to have to answer under oath Dr. Cordero’s question before finding



out how much Dr. Cordero already knew about fraud committed by them?

8. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition.
9. For his part, Judge Ninfo started off his response in open court and for the record by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called 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 until 8 in the evening, particularly when he had a room full of people.
10. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Mr. Weidman's conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied the law too strictly and ignored the local practice...

13. That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers engages in "local practice", which consists in the disregard of the law, the rules, and the facts and the systematic application of the law of the locals. That law is based on both personal relationships among people that work in the same small federal building and with people who appear before Judge Ninfo frequently and who must fear antagonizing him by challenging his rulings, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and the available facts . Such local practice of disregard of legality has resulted in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias in which Judge Ninfo together with others have participated to the benefit of local parties and the detriment of Dr. Cordero. (Cf. §II.C-E of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals for the Second Circuit, herein incorporated by reference.)

**1. Frequency of appearance by local parties before Judge Ninfo**

14. The evidence that such personal relationships has developed is indisputable. Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo; cf. Chapter 7 Trustee Kenneth Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that in the other case to which both Mr. DeLano and Dr. Cordero are parties, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230, which is of course also before Judge Ninfo, Plaintiff James Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times. Similarly, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times; he is the attorney for another party, David Palmer, the owner of Premier Van Lines, the company to which M&T Loan Officer DeLano lent money and which went bankrupt.
15. If those local parties know what is good for them, they take what they are given by Judge Ninfo and hope for something as good or better next time, which can be fifteen minutes later when they appear in their next case before him. In so doing, they make the Judge's life so much easier. A non-local party like Dr. Cordero, who comes into his court with no other relation than that to the law, the rules, and the facts, and who tries to confine the Judge's rulings to the provisions of such relation and even dare appeal from his rulings, can only upset the Judge's relationship to the local parties and the modus operandi that they have developed. That Judge

Ninfo will not tolerate.

16. Hardly did the Judge have to tolerate it, for Dr. Cordero not only was a non-local appearing merely through the written word or over the phone in only one case, that is, the Pfuntner one, but he was also a pro se litigant, as he still is in the DeLano case. Thus, Dr. Cordero neither stood nor stands any chance of making Judge Ninfo apply the law and the rules or respect the constraint of the facts. He was and is supposed merely to take whatever is left that the Judge throws at him. As a result of such disregard for legality and of bias, Judge Ninfo has for the last three years caused this non-local pro se party the loss of an enormous amount of effort, time, and money and inflicted upon him tremendous emotional distress. It should not continue any longer.

2. Judge Ninfo's disregard for the law, the rules, and the facts led him to make the ludicrous statement that "local practice" can be found out by making a phone call

17. The facts demonstrate Judge Ninfo's disregard for legality. In his orders in the Pfuntner and the DeLano cases, whether they be written or issued from the bench, he makes no mention of, let alone discusses, the law of Congress or the procedural rules approved by it, much less any court decision, not even decisions of the Supreme Court, and that in spite of Dr. Cordero's numerous citations, after painstaking research, of both statutory and case law as well as the rules and the facts, in support of the arguments in his briefs and motions, and at hearings. Judge Ninfo's decisions have no more basis than 'because-I-say-so-and-what-I-say-goes-here'. Why should he bother with the law to provide for the impartiality required by due process when he is accustomed to receiving the whole of due respect that comes with exercising unchallenged judicial power?

18. Only a person used to making rulings with the expectation that they be accepted uncritically by those depending on his good will rather than be examined under the criteria of the law and logic could make in the presence of a stenographer who is supposed to be keeping a record of his every word Judge Ninfo's comment on March 8, 2004, that Dr. Cordero should have called to find out what the local practice for the meeting of creditors was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. In addition to being flatly contradicted by the law (para. 5, supra), that comment is ludicrous!

19. A person reflexively expecting to be challenged by the participants in truly adversary proceedings would hardly even think that a non-local who lives hundreds of miles from

Rochester can phone somebody there to find out what the “local practice” is and such somebody would have the time, selfless motivation, and capacity to explain accurately and comprehensively the details of the “local practice” and its divergencies from the law and rules of the land of Congress. How could the details of such somebody place the non-local at arms length with his local adversaries, let alone with the judges and other court officers? By contrast, the details of how to implement such comment will readily reveal how impracticable it is and how impaired by bias and prejudice the judgment of he who made it is:

- a) Whom was Dr. Cordero supposed to call to obtain all the details of “local practice”? Had he called a clerk of court and asked that she tell him all there is about “local practice”, would she not have jumped and said, “Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m...” “No! no! I mean “local practice”, you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law.” Would the baffled clerk not think that Dr. Cordero was being facetious or conspiratorial and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by “local practice”?
- b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with him the winning secrets of “local practice”?
- c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether “local practice” would allow him to ask more than two questions at the officially convened meeting of creditors if he was the only creditor present?
- d) Should so much futile effort have justified Dr. Cordero in calling Tony Soprocal, the notorious Rochester attorney, whom the media calls “the master of local practice”? Dr. Cordero would come clean –Tony requires that from those he deals with- and admit that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten “local practice”. Tony would smirk, for in his line of work a euphemism is more expressive than any long speech. “Sure! You can retain me for the unwritable dirty secrets of how things get done in our local court. You can’t get more ‘local’ than through a chat with me...unless you also want ‘practice’, but that will cost them an arm and a leg...you too, but you pay me in money.”

“For...forgeta’bout it, Tony,” would babble a shaky Dr. Cordero, “the chat will be enough.”

- e) Then what? Could it be reasonable for Dr. Cordero to state at the next meeting or hearing what he expects Judge Ninfo to do because Tony said that’s the way it is done in “local practice”? Will Judge Ninfo say, “Now you are talking, Dr. Cordero! If Tony told you what the “local practice” is and you relied on it, then that’s the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance on the basis of my conduct as a judge.”

20. What nonsense! But the description of such scenes is not meaningless at all, for it shows starkly how uneven the field is when Judge Ninfo gives precedence to whatever it is that he calls “local practice” over both the written and published laws of Congress and official notices of the court, such as the notice of the meeting of creditors (para. 6, supra). The practical consequences of such abrogation by him of the law are very serious, for in addition to frustrating Dr. Cordero’s reasonable expectations that the proceedings will be held according to law, it renders for naught all his enormous effort to educate himself about the Bankruptcy Code, procedural rules, and case law as well as the time and money that he spends whenever he travels all the way to Rochester to appear in person in his court. By unfairly surprising him with his trump card of “local practice”, Judge Ninfo has created an untenable situation of legal uncertainty and arbitrariness. That is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice of the law given in advance and opportunity to be heard without bias or prejudice, not tidbits about “local practice” that one must ferret out on a hit and miss basis and rely on at one’s own risk.

21. That risk is all the more real and constant because Judge Ninfo’s bias and prejudice lead him to break faith even with his own statement of that “local practice”, whether stated orally or in a written order.

**B. Judge Ninfo said in open court that he would issue Dr. Cordero’s written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero’s instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity**

22. On July 9, 2004, Dr. Cordero submitted to Judge Ninfo a Statement analyzing the DeLanos’

bankruptcy petition and other few documents, which they belatedly produced upon request of Trustee Reiber after Dr. Cordero's repeated demands under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that the Trustee request them. The statement showed, among other things, how the DeLanos had engaged in bankruptcy fraud and how Trustee Reiber had failed to review the initial petition, to request documents for months, to subpoena documents when the DeLanos would not produce any, and how the Trustee had instead moved to dismiss the case due to the DeLanos' "unreasonable delay" in producing documents. Included in that Statement Opposing the Motion to Dismiss was Dr. Cordero's request for an order for the production of a specific list of documents.

23. At the hearing on July 19, 2004, of the Trustee's motion to dismiss, Dr. Cordero asked Judge Ninfo to grant his request for the order described in his July 9 Statement. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo decided that Dr. Cordero could do so and gave him his fax number to make it possible for him to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away.
24. Dr. Cordero reformatted into a proposed order the same text of the requested order, with the changes necessary to take into account what had occurred at the hearing, and faxed it to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was incorrect; he was then given the correct one.
25. But Judge Ninfo did not issue it. Instead, he gave precedence to the untimely objections of a local party, the DeLanos' attorney, Christopher Werner, Esq. In a letter addressed to Judge Ninfo delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." That was it. But that was enough for the Judge to take the hint. Att. Werner's letter was docketed immediately and made available through PACER. By contrast, Judge Ninfo not only failed to issue the proposed order; but he also did not even have it docketed forthwith, whereby he violated FRBkrP Rule 7005 and FRCivP Rule 5(e) and showed bias toward Att. Werner and the DeLanos.
26. In so doing, Judge Ninfo disregarded Dr. Cordero's statement in his letter accompanying the

proposed order that Att. Werner had had ten days since Dr. Cordero faxed his July 9 Statement to him to learn the breath of his requested order, yet he had failed to object to the Judge's decision at the hearing that Dr. Cordero should convert it into a proposed order and fax it to him. If, as the Attorney stated at the July 19 hearing, he has been in this business for 28 years, then he had to know his obligation to raise timely objections, particularly since:

- a) Att. Werner and the Judge knew what documents had been requested, many for months since Dr. Cordero's written Objections of March 4, 2004!;
- b) the Judge agreed to its production; and
- c) FRCivP Rule 26(b)(1) favors broad discovery (made applicable by FRBkrP Rule 7026).

27. It was simply too late for Att. Werner to object for the first time after the hearing was over; cf. FRCivP Rule 26(a)(1)(E) last paragraph, providing for disclosure "unless the party objects during the conference"; and FRCivP Rule 46, requiring exceptions to be made "at the time the ruling or order of the court is made or sought". Att. Werner's objection was untimely and constituted an unfair surprise. Dr Cordero protested. To no avail. Judge Ninfo, showing bias once more, did not even acknowledge Dr. Cordero's objection.

28. Nor did Judge Ninfo issue the faxed proposed order as agreed at the July 19 hearing, or for that matter any production order at all. Yet, by July 21 PACER<sup>1</sup> already contained the minutes of that hearing, which included the statement in capital letters:

Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

29. So Judge Ninfo made Dr. Cordero waste his time and effort once more (cf. §III of Dr. Cordero's motion of August 14, 2004, for docketing and other relief, herein incorporated by reference) in preparing and submitting a document that the Judge knew he was not going to act upon at all. Did he ask for it for leverage? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word cannot justifiably be relied on.

30. Even as late as July 26, the Judge had not caused Dr. Cordero's faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order to be docketed.

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<sup>1</sup> PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

31. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

07/20/2004	<u>53</u>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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When Dr. Cordero clicked on the hyperlink 53, only the letter –page 1 of 5- downloaded as an Adobe PDF (Portable Document Format), but not the order! Why?!

32. By contrast, the entry for Att. Werner’s objection of July 19, 2004, to Dr. Cordero’s claim as creditor of the DeLano Debtors read thus.

07/22/2004	<u>51</u>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <u>1</u> Proposed Order # <u>2</u> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
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33. When Dr. Cordero clicked on the hyperlinks 51>2 an order proposed by Att. Werner to disallow Dr. Cordero’s claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo’s bias (cf. §II of Dr. Cordero’s motion of August 14, 2004, for other instances of a pattern of docket manipulation).

1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero’s proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, “expressed concerns”, thereby protecting the DeLanos from discovery that could show their bankruptcy fraud

34. As late as July 27, there had been no docketing of Dr. Cordero’s letter of July 21 to Judge Ninfo protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him.

35. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004, rather than Dr. Cordero’s proposed order that he had agreed to enter and the minutes of the July 19 hearing recorded its intended entry.

36. In his order, Judge Ninfo stated what it took to deny in effect Dr. Cordero’s proposed order:

WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached;



37. This is an unfortunate hybrid between ‘objections to’ and ‘concerns about’. It is indicative of Judge Ninfo’s awareness that due to untimeliness, Att. Werner could not have raised valid objections for the first time after the hearing was over. Nevertheless, it shows how little it took for the Judge to break faith with his word given in open court: “concerns” expressed untimely by the debtors’ attorney. On such “concerns”, the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud, such as:

- a) the bank account and debit card statements that could show the whereabouts of the DeLanos’ declared earnings of \$291,470 in only the three fiscal years 2001-2003, while they declared having:
- b) only \$535 in cash or in bank accounts...with Mr. DeLano’s bank, M&T, which may have issued a bank officer like him with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare possessing any such M&T Bank card, not to mention ‘sticking’ his employer with a bankruptcy debt, as they did other credit card issuers –most likely those that Veteran Banking Industry Mr. DeLano would know have a higher threshold of loss to trigger their participation in bankruptcy proceedings- on whose 18 credit cards they owe a whopping \$98,092;
- c) two cars worth together merely \$6,500;
- d) equity in their home of only \$21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe \$78,084;
- e) household goods worth only \$2,910...that’s all they have accumulated throughout their work lives!, despite the fact that they have earned over a hundred times that amount in only the last three years...unbelievable! Where did the money go or is?

38. But that common sense question Judge Ninfo would not ask, much less let Dr. Cordero find the answer to, never mind that the Judge has a duty under 11 U.S.C. §1325(a)(3) to ascertain whether “the [debtor’s debt repayment] plan has been proposed in good faith and not by means forbidden by law”. In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

The purpose of the examination [at the meeting of creditors] is to enable

creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

39. Far from pursuing this statutory line of inquiry, Judge Ninfo entered his July 26 Order, which was an inexcusably watered down version of Dr. Cordero's proposed order that he had agreed to enter. Despite the evidence of concealment of assets by the DeLanos, the Judge failed to require them to produce bank or *debit* account statements; documents concerning their undated "loan" of \$10,000 to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the mobile home admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents?
40. Consequently, Judge Ninfo's failure even to do his job under the Code, in addition to failing to keep his word, provides the foundation for the question whether he in effect denied Dr. Cordero's proposed order for document production by the DeLanos merely because of the undefined "concerns" expressed by Att. Werner or because of his own concerns and, if the latter, what are his concerns. Is the Judge protecting them because they are local parties and in general he has developed relationships with local parties that make him biased toward them, or because in particular Mr. DeLano is a 32-year veteran of the lending industry and knows too much about how abusive bankruptcies, even those to avoid repayment of loans to his bank, are handled? There is solid basis for the latter part of this question (§C, *infra*).

2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in *Pfuntner v. Gordon et al.* he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered

41. Still by Friday, August 6, neither Dr. Cordero's proposed order of July 19 nor his letter of July 21 had been docketed. On that day, Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
42. On Monday, August 9, Mr. Stickle informed Dr. Cordero that upon asking Judge Ninfo and his Assistant, Ms. Andrea Siderakis, he had been told that Dr. Cordero's July 21 fax never arrived.
43. That explanation for its not being docketed was definitely unacceptable: The fax went through

on July 22 and a copy sent to the Judge of Dr. Cordero's telephone bill showed that he did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: Judge Ninfo's chambers.

44. This was by no means the first time that Judge Ninfo sprung on Dr. Cordero such a surprise: In the *Pfuntner v. Gordon et al.*, docket no. 02-2230, in which both Mr. DeLano and Dr. Cordero are parties, the Judge dismissed Dr. Cordero's claims against Chapter 7 Trustee Kenneth Gordon, a local that so very frequently appears in his court (cf. ¶14, supra). Dr. Cordero timely mailed a notice of appeal on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that Dr. Cordero's motion had been timely filed on January 29, Judge Ninfo surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! By such expedient allegation contrary to fact, Judge Ninfo denied Dr. Cordero's motion. Moreover, the Judge would not even look into how that discrepancy could have arisen between his alleged date of January 30 for the filing and Trustee Gordon's admission against legal interest that the filing occurred on January 29. Thereby the Judge insured that Dr. Cordero's appeal against his dismissal was doomed. (cf. §I.A.1. of Dr. Cordero's motion of August 8, 2003, for Judge Ninfo to recuse himself from the *Pfuntner* case, which is herein incorporated by reference).
45. The trust that a party must have in the integrity of a judge and that a judge must earn by his irreproachable conduct was thus shattered; subsequent events have only replaced it with distrust. Under these circumstances, it is not just the appearance of lack of impartiality that warrants the recusal of Judge Ninfo, but also of lack of integrity. Alas, there is even further factual basis for such assertion.

**C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan**

46. The DeLanos commenced this case by their bankruptcy petition of January 26, 2004. Had they

wanted to object to Dr. Cordero's claim, they could and should have done so at that time. The reasons for this are that:

- a) It was they who in Schedule F therein named Dr. Cordero among their creditors;
- b) Mr. DeLano knew the nature and basis of Dr. Cordero's claim against him since he was served with his complaint of November 21, 2002, in *Pfuntner v. Gordon et al.*;
- c) Att. Werner signed that petition and, therefore, also knew of Dr. Cordero's claim against the DeLanos;
- d) both the DeLanos and Att. Werner knew that Dr. Cordero was determined to pursue his claim as stated in his Objection of March 4, 2004, to the Confirmation of the DeLanos' Plan of Debt Repayment, so determined that he traveled all the way from New York City, and in fact was the only creditor, to attend the meeting of creditors on March 8, 2004, at which, interestingly enough, Mr. DeLano was accompanied also by his attorney in the *Pfuntner* case, Michael Beyma, Esq., of Underberg & Kessler, LLP;
- e) Att. Werner objected to Dr. Cordero's status as creditor in his statement to Judge Ninfo of April 16, 2004, which Dr. Cordero refuted in his timely reply of April 25, after which Att. Werner dropped the issue and went on for months treating Dr. Cordero as a creditor; and
- f) Att. Werner continued to treat Dr. Cordero as a creditor for more than two months even after he filed his proof of claim on May 15, 2004.

47. But then only after Dr. Cordero faxed to Att. Werner his Statement of July 9, 2004 –in which he opposed Trustee Reiber's motion to dismiss and presented the evidence pointing to the DeLanos' having engaged in bankruptcy fraud, particularly concealment of assets- and after the hearing on July 19, 2004, did the DeLanos and Att. Werner come up with the idea of moving to disallow Dr. Cordero's claim.

48. It should be noted that for months Dr. Cordero had repeatedly requested under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate the DeLanos and require them to produce specific types of documents. His requests were met only with Trustee Reiber's avoidance of his duty to investigate, his ineffectiveness in obtaining documents when, at Dr. Cordero's insistence, he appeared to request them, and the DeLanos' effort to produce as few documents and as late as possible. Hence, in his July 9 Statement Dr. Cordero presented Judge Ninfo for the first time with a requested order for specific documents. How the Judge dealt with

that request has been described above (para. 23, supra). In addition, how he dealt in his Orders of August 30 and November 10, 2004, with the DeLanos' motion to disallow is no less revealing of his bias and disregard for the law, the rules, and the facts.

49. To begin with, the DeLanos' motion to disallow was untimely and barred by laches, coming as it did almost two years after Mr. DeLano had known of Dr. Cordero's claim and six months after they had acknowledged in their petition his status as a creditor and during which they dealt with him as a creditor. Mr. DeLano, with his career long experience as a bank *loan* officer, had reason to expect that during that time Dr. Cordero, a non-local, non-institutional, and pro se creditor, would be worn down, for he Mr. DeLano knew that even institutional lenders simply stay away from the overwhelming majority of bankruptcies and write off what is owed them. However, Dr. Cordero not only continued pursuing his claim, but also requesting documents that could show the DeLanos' bankruptcy fraud and even pointed to the evidence of their concealment of assets. Then they came up with the subterfuge of moving to disallow Dr. Cordero's claim. And Judge Ninfo played along with them!

50. Thus, the Judge stated in his August 30 Order, without providing any reasons in accordance with law or in light of the facts, as judges are supposed to do, but in another "local practice" this-is-so-because-I-say-so fiat that:

...the Claim Objection [the motion to disallow] was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection;

51. Through such fiat, without any citation of any authority, Judge Ninfo disregarded the Bankruptcy Code, which considers untimeliness such a grave fault that it provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. There can be no doubt that it is prejudicial to Dr. Cordero to have been treated as a creditor by the DeLanos for six months, during which he spent a lot of effort, time, and money researching and writing numerous papers, preparing for hearings, and even traveling to Rochester, only to be challenged, after he presented evidence of their bankruptcy fraud, on the threshold question whether he is a creditor at all.

52. Then Judge Ninfo severed Dr. Cordero's claim against Mr. DeLano from the Pfuntner case and required Dr. Cordero to take discovery of Mr. DeLano to prove his claim, the one that the DeLanos themselves had taken the initiative to acknowledge in their petition. In so doing, he

severed that claim from the Pfunter case to try it out of the context of all the other parties and issues in that case, to the benefit of Mr. DeLano and the detriment of Dr. Cordero. Thereby he disregarded his own order entered at the hearing on October 16, 2003, where he suspended all proceedings in the Pfunter case until Dr. Cordero had appealed his decisions all the way to the Court of Appeals for the Second Circuit, where they had been since May 2, 2003, docket no. 03-5023, and from there to the Supreme Court. (Cf. §I of Dr. Cordero's motion of September 9, 2004, in the Court of Appeals, hereby incorporated by reference.) Once more the Judge had sprung another surprise on Dr. Cordero, frustrating his reasonable expectations, and further proving that the Judge's word cannot be relied on.

53. Likewise, in asking Dr. Cordero to prove his claim, the Judge disregarded FRBkrP Rule 3001(f) and the presumption of validity that had attached thereunder since May 15, 2004, to Dr. Cordero's properly filed claim (*id.*, §II).
54. Moreover, Judge Ninfo suspended every other aspect of the case, to the detriment of all the other creditors, and without citing any authority or giving any reason for taking a step that so unnecessarily redounds to the detriment of all the other 20 creditors, whose interest it is to have the case move along so that they can start receiving payment under the plan or see it denied and be free to collect from the DeLanos. Thereby, however, the Judge protected the DeLanos by not having to deal with the issue under 11 U.S.C. §1325(a)(3) whether "the plan has been proposed in good faith and not by means forbidden by law" (*cf.* ¶38, *supra*). Moreover, by so doing, he provided the DeLanos a subterfuge for not providing to Dr. Cordero the documents that could prove their bankruptcy fraud, so that they claimed in the Statement by Att. Werner of November 9, 2004, "All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtor's finances and have nothing to do with the matter at hand, which is Cordero's claim", targeted by the DeLanos' motion to disallow. Perfect pitcher-catcher coordination, but severely defective by its disregard of the rules (§C.2, *infra*).

1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity

55. To comply with the Order to prove his claim, Dr. Cordero requested the DeLanos on September 29, to produce a specific list of documents very similar to those on his proposed request of July 19, as well as other documents relating specifically to his claim against Mr. DeLano stemming

from the Pfuntner case.

56. In his Response of October 28, 2004, by Att. Werner, Mr. DeLano declined discovery of every item requested by Dr. Cordero either as irrelevant or not in the DeLanos' possession. However, that statement is irreconcilable with the facts and the legal obligations of the DeLanos.
57. Let's begin with the pretense that the DeLanos did not have in their possessions the requested documents. At of Dr. Cordero's instigation, Trustee Reiber requested on April 20 and May 18, 2004, that the DeLanos produce documents to support their petition. Although his request was unjustifiably insufficient in its scope given the claims and statements that the DeLanos had made in their petition, the Trustee requested the statements for the last three years of each of 8 of the 18 credit cards that they had listed in Schedule F. Even so, what the DeLanos produced on June 14, 2004, was a single statement for each of those 8 cards and they were between 8 and 11 months old! That fell indisputably short of what they had been requested to produce and showed their effort to avoid producing any documents at all, so much so that the Trustee moved to dismiss their case for "unreasonable delay". Nevertheless, by producing them the DeLanos also showed that they did keep such statements for many months and presumably for all their cards, for it is implausible that they just happened to have one single statement of each of the cards that happened to be included in the request.
58. Dr. Cordero brought to Trustee Reiber's attention the gross insufficiency of what they had produced. Eventually, on July 28, 2004, the DeLanos produced some of the statements that Att. Werner had subpoenaed from issuers of those credit cards. Among them was the set produced by Discover Card for Mr. DeLano's account 6011 0020 4000 6645. It included the statements since April 16, 2001, until the one with the payment due date of May 29, 2004. All of them were addressed to him at the DeLanos' home on 1262 Shoecraft Road, Webster, NY 14580-8954. This shows that as late as May 2004, months after filing their petition, the DeLanos kept receiving monthly credit card statements. It is also all but certain that they kept receiving the monthly statements for the other credit card that they had. The evidence for this is found in the credit bureau reports for each of the DeLanos, which show credit cards with activity well into 2004.

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	<b>i: July 2004</b> <b>p: January 2004</b>
2.			D	Capital One Bank	4862 3621 5719*	<b>i: July 2004</b> <b>p: February 2004</b>
3.			D	Cbusa sears	3480 0743 0*	<b>i: July 2004</b>
4.			D	Genesee Regional Bank		<b>i: July 2004</b> <b>p: June 2004</b>
5.			D	MBNA Amer	4313 0229 9975*	i: May 2004
6.			D	Wells Fargo Financial	674-1772	<b>i: February 2004</b>
7.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	p: February 2004
8.	Experian	July 26, 04	D	Bank of America	4024 0807 6136...	b: May 2004
9.			D	Bank of Ohio	4266 86 99 5018	<b>p: May 2004: \$197</b>
10			D	Bk I TX	4712 0207 0151...	<b>p: May 2004: \$205</b>
11			D	Capital One Auto Finance	6206 2156 8765 2	b: June 2004
12			D	Fleet M/C	5487 8900 2018...	<b>p: May 2004: \$172</b>
13			D	HSBC Bank USA	5215 3170 0105...	<b>p: February 04: \$160</b>
14			D	MBGA/JC Penney	80246...	<b>p: July 2004: \$57</b>
15			D	MBNA America Bank NA	7499 0999 89...	b: May 2004
16			D	MBNA America Bank NA	5329 0319 9996...	b: May 2004
17			D	W F Finance	1070 9031 772...	b: June 2004
18			D	First Premier Bank	4610 0780 0310...	<b>p: July 2004: \$48</b>
19			D	Kaufmanns	R25243	b: April 2004
20			D	The Bon Ton	8601...	b: June 2004
21	Experian	July 26, 04	M	Capital One Bank	4862 3622 6671...	b: February 2004
22			M	Fleet M/C	5487 8900 2018...	<b>p: May 2004: \$172</b>
23			M	MBGA/JC Penney	80246...	<b>p: July 2004: \$57</b>
24			M	MBNA America Bank NA	4313 0229 9975...	b: May 2004
25			M	Kaufmanns	R25243	b: April 2004
26			M	The Bon Ton	8601...	b: June 2004
27	TransUnion	July 26, 04	D	Norwest Finance	1070 9031 7720 544	u: June 2004
28			D	First USA Bank.	4712 0207 0151 3292	u: April 2004
29			D	First USA Bank	4266 8699 5018 4134	u: April 2004
30			D	Summit Acceptance Corp	6206 2156 8765 2100 1	u: June 2004



	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
31			D	Citi Cards	3480 0743 0593 0	u: July 2004
32			D	MBNA America	4313 0228 5801 9530	u: April 2004
33	TransUnion	July 26, 04	M	Discover Financial Svc	6011 0020 4000 6645	u: June 2004
34			M	Chase NA	4102 0082 4002 1537	u: May 2004
35			M	Citi Cards	3480 0743 0593 0	u: July 2004
36			M	JC Penney/MBGA	1069 9076 5	<b>p: July 2004</b>

59. These 36 accounts are by no means all those that the DeLanos have, just those for which those particular credit bureau reports as of July of last year provide a date under any of the categories of the last column of the table above and for which that date is in 2004. Nevertheless, they are enough to show that only an utterly biased person toward the DeLanos could even imagine that they did not receive any credit card statements so that they could no produce them to comply with the requests for those statements. They had no shortage of such requests: of April 20 and May 18 by Trustee Reiber; of August 14, September 29, and November 4 by Dr. Cordero; and the Order of July 26 of Judge Ninfo. Only a person utterly biased could disregard the fact that the DeLanos not only were billed, but also paid credit card charges as late as July 2004, the month when they requested those credit bureau reports. In fact, at the meeting of creditors held on February 1, 2005, at Trustee Reiber's office, Mr. DeLano admitted for the record that he currently uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156.

60. Likewise, only a person utterly biased toward the DeLanos could assume that they no longer have any checking or savings accounts despite their reference in Schedule B to their having them with M&T Bank, where Mr. DeLano still works. Therefore, they must have received monthly statements of those accounts, which they could also have produced.

61. Consequently, they must be presumed to have concealed those statements. But if they did not have them in their possession, that would only mean that they systematically destroyed them. In so doing, they could have followed the example of their advisor, Att. Werner. He stated for the record at their examination that he destroyed documents that the DeLanos had provided him for the preparation of the petition and that he engages in that practice routinely. That constitutes a

flagrant violation of 18 U.S.C. §1519, found in Chapter 73-Obstruction of Justice and providing as follows:

Whoever knowingly alters, destroys, mutilates, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of...any case filed under title 11, or in relation to or contemplation of any such...case, shall be fined under this title, imprisoned not more than 20 years, or both.

62. In the same vein, the few credit card statements that they produced, and more so the credit bureau reports, show that the DeLanos were systematically engaged in a skip and pay pattern for juggling their astonishingly high number of credit cards. This follows from the Equifax reports of July 23, 2004, which show that the DeLanos failed to make the minimum monthly payment a staggering 279 times!
63. It follows that Att. Werner's assertion in that April 16 Statement to the Court that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" was plainly untrue. If Att. Werner had conducted even a cursory inquiry, let alone a reasonable one under the suspicious circumstances of a bank loan officer that goes bankrupt owing \$98,092 on unsecured credit cards, he would have readily realized that such a statement was untrue. Therefore, Att. Werner violated FRBkrP Rule 9011(b). As to the DeLanos, to the extent that they gave him that information, they intentionally misled him, the Court, and all the creditors and parties in interest.
64. Consequently, the DeLanos' 1) scores of credit card accounts; 2) their charging since "1990 and prior credit card purchase" (Schedule F) tens of thousands of dollars for "living expenses" (Att. Werner's written statement to the Court dated April 16, 2004) and for the two-year educational expenses of their two children at a low in-state tuition, near-home community college; 3) their systematic failure to make even the minimum payments, 4) their expert knowledge about the lending industry's handling of delinquencies and bankruptcies; and 5) their concealment of account statements that they indisputably received and were legally bound to keep, show that the DeLanos made the life-style choice to live it up on credit cards without ever intending to pay their unsecured issuers while concealing the whereabouts of the \$291,470 that they earned in just the 2001-03 fiscal years according to their petition and their 1040 IRS forms.
65. Consequently, only a disingenuous person could pretend that the DeLanos did not produce the

requested documents because they did not have them in their possession. Moreover, only a person utterly biased toward them could disregard these facts about the conduct of the DeLanos for more than 15 years, since ‘1990 and prior years’, and still refer to them, as Judge Ninfo did in his August 30 Order, as “honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case”. How impartial can he appear to a reasonable observer?

2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!

66. Confirming this favorable prejudgment of the DeLanos before they had ever taken the stand or even had their petition formally submitted to him by Trustee Reiber, Judge Ninfo stated in his Order of November 10, 2004, that he “in all respects denied...the Cordero Discovery Motion” of November 4, “because DeLano indicated in the Response [to Dr. Cordero’s discovery request of September 29] that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding”. This the Judge stated although Mr. DeLano did not provide a single document requested by Dr. Cordero! He just took Mr. DeLano’s self-serving assertion at face value and purely and simply disregarded the facts and common sense.
67. Judge Ninfo made that decision by disregarding once more the rules. He did not even mention, let alone discuss, as judges do who apply the law, Dr. Cordero’s argument in his November 4 motion about the broad scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), providing that “Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or **defense** of any party” (emphasis added). Based thereon, Dr. Cordero argued that he was entitled to defend against the DeLanos’ untimely motion to disallow his claim, which led to Judge Ninfo’s August 30 Order requiring him to take discovery from Mr. DeLano. His defense is dependent precisely on taking discovery that will allow him to establish, among other things, that the DeLanos’ motion is a desperate attempt in contravention of FRBkrP 9011(b) to eliminate him from their case because he is the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of documents that can show whether they submitted their petition in bad faith in violation of 11 U.S.C. §1325(a)(3) and are engaged in bankruptcy fraud, particularly

concealment of assets.

68. Had Judge Ninfo had any regard for the rules, he would not have uncritically sustained Att. Werner's wholesale denial in his October 28 Response to Dr. Cordero's discovery request on the pretense that "all of such demands are not relevant to the claim of Richard Cordero against the Debtors." Instead, he would have complied, as judges respectful of the legality do, with FR CivP Rule 26(b)(1), which provides that:

...Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

69. Moreover, had Judge Ninfo not been so blind by his bias, he would have put two and two together to conclude that the DeLanos' avoidance for months of their duty to comply under 11 U.S.C. §521(3) and (4) with Trustee Reiber's document production requests to the point that the Trustee moved to dismiss for "unreasonable delay" constituted reasonable evidence that in refusing to provide even one single document requested by Dr. Cordero Mr. DeLano was engaging in the same conduct aimed at the same objective, namely, concealing documents to prevent the discovery of his bankruptcy fraud.

70. By Judge Ninfo forcing Dr. Cordero to take discovery of Mr. DeLano to prove his claim against Mr. DeLano without requiring the latter to overcome the presumption of validity attached to a properly filed claim under FRBkrP Rule 3001(f), only to deny him every single document requested, the Judge has made sure that Dr. Cordero is deprived of the means of examining effectively Mr. DeLano at the upcoming evidentiary hearing. Judge Ninfo has set up Dr. Cordero to fail at a hearing that will be a sham!

3. Judge Ninfo has protected from Dr. Cordero's discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero's application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge's bias or because a 32-year veteran bank loan officer knows too much not to be protected

71. Mr. DeLano was the M&T Bank Officer who lent money for Mr. David Palmer to run his moving and storage company Premier Van Lines, which went bankrupt and gave rise to Pfuntner v. Gordon et al., in which both Mr. DeLano and Dr. Cordero are parties. Mr. Palmer too is a party in that case. He was supposed to store Dr. Cordero's property, but in fact abandoned it while he kept taking in his storage and insurance fees. Dr. Cordero served him

with a summons and complaint, which Mr. Palmer never answered. Consequently, Dr. Cordero served him with an application dated December 26, 2002, for default judgment for a sum certain under FRCivP Rule 55, made applicable by FRBkrP Rule 7055, and applied to Judge Ninfo for the entry of such judgment.

72. However, even after Mr. Palmer was defaulted by the Clerk of Court Paul Warren on February 4, 2003, the Judge would not enter such judgment. Instead, flatly contradicting the requirements of Rule 55, Judge Ninfo imposed on Dr. Cordero the obligation to conduct an “inquest” to establish loss or damage of his property. Dr. Cordero participated in such an “inquest” on May 19, 2003. At the hearing on May 21, it was established that there had been loss or damage of Dr. Cordero’s property to the point that Judge Ninfo himself asked Dr. Cordero to resubmit his application for default judgment. Dr. Cordero did resubmit the same application on June 7. Nevertheless, at the hearing on June 25, 2003, Judge Ninfo would not enter it! He denied it by raising for the first time the pretext that Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back in December 2002 and that the Judge had had six months to examine! (Cf. §§I.B. and C. of Dr. Cordero’s motion of August 8, 2003.)
73. Why would Judge Ninfo ask him to resubmit the application, make him spend his effort, time, and money to do so while getting his hopes high if the Judge was going to deny it on the basis of an element that he had known for six months? Why did Judge Ninfo feel the need to become the advocate of defaulted Mr. Palmer and keep him away from his court rather than protect Dr. Cordero, whose property Mr. Palmer had lost or damaged through negligence, recklessness, and fraud? These questions are particularly pertinent because it was Mr. Palmer who had invoked the protection of the law by applying for voluntary bankruptcy on March 5, 2001, and thereby submitted himself to the jurisdiction of Judge Ninfo, under which he still was. Why did the Judge not hold Mr. Palmer to his obligation under the law to answer a summons or let him contest for himself a default judgment, as he could do under FRCivP Rules 55(c) and 60(b)?
74. Therefore, how inconsistent for Judge Ninfo to state in his Order of August 30, 2004, that “...the Court is not aware of any evidence whatsoever, produced either in the Premier A[dversary]P[roceeding] or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage...”. How can the Judge cast doubt on the fact of such loss or damage since

he so much acknowledged that there had been such that he asked Dr. Cordero to resubmit the application for default judgment?...only to deny it again! What this shows is that Judge Ninfo does not know what he has done and only knows that he will do and say anything so long as it is to protect the local parties and injure Dr. Cordero. (Cf. §II of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals.)

75. This background provides the foundation for asking how much Mr. DeLano, as a party in the Pfuntner case and the lender to Mr. Palmer, knows that could incriminate others in bankruptcy fraud. In turn, this begs the question in how many other cases during his 32-year long career as a bank officer Mr. DeLano has been involved one way or another so that now he knows too much not to be protected. The same motives for Judge Ninfo to protect Mr. Palmer from Dr. Cordero's application for default judgment may explain why he is now protecting Mr. DeLano from Dr. Cordero's effort to obtain the documents showing his involvement in bankruptcy fraud. None of those motives, however, can legally justify Judge Ninfo's bias and prejudice against Dr. Cordero.

### **III. The totality of circumstances assessed by a reasonable person gives rise to the appearance of bias and prejudice on the part of Judge Ninfo that requires his recusal**

76. Every assertion that Dr. Cordero has made in this motion or in his other papers referred to here has been supported either by citations and discussion of the applicable law and rules or facts established by other documents in the dockets of the cases under consideration (Table of References, *infra*). Moreover, in our system of justice a person can lose his property, his freedom, and even his life on the basis of circumstantial evidence. Hence, the approach taken by fair and impartial persons, whether they be judges, jurors, or observers, when examining evidence is, not to chip away at it by discarding its elements one by one out of context, but rather to take into consideration "the totality of circumstances" and analyze it from the point of view of the reasonable persons that the law requires people to be. Such persons would proceed on the sound principle that two similar events can be explained away as a coincidence, but three form a pattern.

77. In the DeLano case, just as in the Pfuntner case, Judge Ninfo, without citing a single law or rule, let alone discussing any, but rather disregarding their provisions as well as the surrounding facts and instead engaging in his very own "local practice" (§§9 et seq., *supra*), has made a series of

decisions that so consistently benefit the local parties and injure Non-local Pro se Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias. This is the antithesis of process in accordance with law and constitutes a denial of due process (cf. §III of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals).

78. In light thereof, would it appear to a reasonable person informed of all the surrounding facts and circumstances of these cases that in the DeLano case generally, and at the upcoming evidentiary hearing in particular, Mr. DeLano or Dr. Cordero could say anything that would cause Judge Ninfo to reach any other but the forgone conclusion that Dr. Cordero has no claim against Mr. DeLano, that his claim should be disallowed, and that he has no standing to oppose the confirmation of the DeLanos' plan?...and good riddance! If so, the appearance of partiality has been reasonably questioned and Judge Ninfo has a statutory duty to recuse himself from the DeLano case. (Cf. §II of Dr. Cordero's motion of August 8, 2003.)

#### IV. Relief Requested

79. Therefore, Dr. Cordero respectfully requests that:

- 1) in the interest of justice the DeLano case and the Pfuntner case, and at any rate the former, be removed under 28 U.S.C. §1412 to another district where a court unrelated to any of the parties or Judge Ninfo can give rise to the expectation that it will afford all parties a fair and impartial process, as presumably will do the U.S. court for the Northern District of New York in Albany (cf. §III of Dr. Cordero's motion of August 8, 2003);
- 2) a report be made under 18 U.S.C. §3057(a) of these cases to U.S. Attorney General Alberto Gonzales for investigation into bankruptcy fraud; into concealment of assets and other bankruptcy offenses under 18 U.S.C. §152 et seq.; and of the trustees pursuant to 28 U.S.C. §526(a)(1); and that it be recommended that the investigation be conducted by neither the U.S. Attorney's Office nor the FBI Office in Rochester or Buffalo, NY, but rather by such Offices whose personnel is not related to or familiar with any party in these cases, as presumably are the Offices in Washington, D.C., and Chicago;
- 3) Judge Ninfo recuse himself from both cases, and at any rate from the DeLano case.

February 17, 2005  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*  

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

## CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated February 17, 2004, for Judge John C. Ninno, II, WBNY, to recuse himself:

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**TABLE OF REFERENCES**  
**papers and documents referred to**  
**in the motion for Judge Ninfo to recuse himself**  
**of February 17, 2005,**  
**by Dr. Richard Cordero**

1. **\*Dr. Cordero's motion of August 8, 2003, for Judge Ninfo to remove the Pfuntner case and recuse himself**
2. **\*Dr. Cordero's motion of November 3, 2003, to the Court of Appeals for the Second Circuit for leave to file updating supplement of evidence of bias in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury**
3. Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines
4. Voluntary Petition of January 26, 2004, under Chapter 13 of the Bankruptcy Code, with Schedules, of David DeLano and Mary Ann DeLano
5. Chapter 13 Plan of January 26, 2004
6. Dr. Cordero's Objections of March 4, 2004, to the confirmation of the DeLanos' Chapter 13 debt repayment plan
7. "Debtors' statement of April 16, 2004, in opposition to Cordero objection [sic] to claim of exemptions", submitted and filed with the court by Att. Werner
8. Dr. Cordero's Statement of July 9, 2004, in opposition to Trustee Reiber's motion to dismiss the DeLano petition and containing in the relief the text of a requested order
9. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:  
Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004, to the court
10. Att. Werner's notice of hearing and order of July 19, 2004, objecting to Dr. Cordero's claim and moving to disallow it
11. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:
12. Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004

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\* Incorporated by reference.

13. Att. Werner's letter of July 20, 2004, to Judge Ninfo, delivered via messenger, objecting to Dr. Cordero's proposed order for document production
14. Att. Werner's letter of July 20, 2004, to Dr. Cordero accompanying the following document:

Dr. Cordero's letter of July 21, 2004, faxed to Judge Ninfo, requesting that he issue the proposed order as agreed at the hearing on July 19, 2004
15. Judge Ninfo's order of July 26, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter"
16. \*Dr. Cordero's motion of **August 14**, 2004, for **docketing** and issue, **removal**, referral, examination, and other relief, noticed for August 23 and 25, 2004
17. Judge Ninfo's Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor DeLano arising from the Pfuntner v. Gordon et al. case on appeal in the Court of Appeals for the Second Circuit
18. \*Dr. Cordero's motion of **September 9**, 2004, in the **Court of Appeals** for the Second Circuit to **quash** the **order** of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to sever a claim from the case on appeal in the **Court of Appeals** to try it in the DeLano bankruptcy case, docket no. 04-20280
19. Dr. Cordero's letter of September 29, 2004, to Att. Werner requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals
20. Att. Werner's letter of October 28, 2004, to Dr. Cordero accompanying Mr. DeLano's Response to discovery demand of Richard Cordero-Objection to Claim of Richard Cordero, where discovery of every item requested is denied as not relevant and the item concerning Mr. Palmer is said not to be in Mr. DeLano's possession
21. Dr. Cordero's motion of November 4, 2004, to enforce Judge Ninfo's Order of August 30, 2004, by ordering Mr. DeLano to produce the requested documents and declaring that the Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos
22. Att. Werner's statement of November 9, 2004, to the court on behalf of the DeLanos to oppose Cordero [sic] motion regarding discovery and request that it be denied in all respects
23. Judge Ninfo's Order of November 10, 2004, denying in all respects Dr. Cordero's motion of November 4 and holding the hearing, noticed for November 17, to be moot

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\* Incorporated by reference.

3/1/05

1 PK - 6 - 158 1/2 - Numbered.  
2 PK - 3 - 181 - numbered  
3 PK - 188 7.1 ds.  
4 PK - 99 1/2 7.1 ds.

Mary Dianetti

Statement by Bankruptcy Court Reporter Mary Dianetti of the number of stenographic tapes and folds comprising her recording of the evidentiary hearing in the DeLano case held on March 1, 2005

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Judge Ninfo's bias and disregard for legality can be heard from his own mouth through the transcript of the evidentiary hearing held on March 1, 2005, and can be read about in a caveat on ascertaining its authenticity that illustrates his tolerance for wrongdoing

1. The transcript in question concerns an evidentiary hearing that Judge John C. Ninfo, II, WBNY, ordered in connection with the DeLano Debtors' motion to disallow Dr. Richard Cordero's claim against Mr. David DeLano, which claim the latter and his wife, Ms. Mary Ann DeLano, had taken the initiative to include in their bankruptcy petition of January 26, 2004. The hearing took

place on March 1, 2005, and was recorded by Reporter Mary Dianetti. She also recorded the very first hearing before Judge Ninfo in which Dr. Cordero participated. What happened with the transcript of that earlier hearing illustrates the kind of bias and disregard for the law, the rules, and the facts that occur when Judge Ninfo is in the background. Knowing it will help to understand the circumstances surrounding the above statement by Ms. Dianetti and the need to ascertain the authenticity of the transcript of the recent hearing so that through it the peers of Judge Ninfo can witness the blatant bias and disregard for legality that he engages in when he is very much in the foreground.

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**A. Court Reporter Dianetti participated in the manipulation of a transcript of a hearing before Judge Ninfo, which she failed to deliver to Dr. Cordero in more than two and a half months after he requested it**

2. On December 18, 2002, the hearing was held of the motion of Chapter 7 Trustee Kenneth

Gordon to dismiss Dr. Cordero's cross-claims in *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY. Dr. Cordero appeared by telephone. Judge Ninfo dismissed his cross-claims for negligence, recklessness, and defamation in the context of the Trustee's liquidation of Premier Van Lines, a moving and storage company. The Judge did so despite the legitimate issues of material fact that Dr. Cordero had raised and although the Trustee had provided no disclosure and there had been no discovery under FRCivP Rule 26. At the end of the hearing, Dr. Cordero stated that he would appeal.

3. After Judge Ninfo's order of December 30, 2002, was sent from Rochester and arrived in New York City, where Dr. Cordero lives, he called Reporter Dianetti on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Yet, weeks went by without hearing from her. Dr. Cordero had to call her on several occasions to ask why he had not received it. She screened part of another message that he was leaving on her answering machine and finally picked up the phone on Monday 10, 2003. She said that the transcript would be ready in two days.
4. As attested to by her certificate, Ms. Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after she was first requested it, whereby she violated FRBkrP Rule 8007(a). Moreover, in violation of 28 U.S.C. §753(b), Ms. Dianetti did not deliver the transcript directly to Dr. Cordero. Much worse yet, although the date on Ms. Dianetti's certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for rehearing for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26, in violation of FRBkrP Rule 8007(b). Interestingly enough, after Dr. Cordero made a statement at the March 26 hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. This reasonably suggests that the transcript was unlawfully withheld from Dr. Cordero until it could be found out what he would say at the hearing.
5. The transcript turned out to consist, not of 27 pages, but only of 15 pages of transcription! Were

pages left out containing what was said between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after Judge Ninfo cut him off at the December 18 hearing? That would constitute an ex parte communication between them “concerning matters affecting a particular case or proceeding” in violation of FRBkrP Rule 9003.

6. Interestingly enough, when Ms. Dianetti finally picked up the phone on March 10, she said to Dr. Cordero ‘you want it [the transcript] from the moment you came in on the phone’, that is, speakerphone. This implies that something had been said before or after Dr. Cordero was on the phone and that she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said ‘Good morning, Dr. Cordero.’ He said no, that he wanted everything from the moment the Judge had said ‘Good morning, Mr. Gordon.’ She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero’s hearing had begun at 9:30 a.m.
7. Was Reporter Dianetti told to leave exchanges between Judge Ninfo and Trustee Gordon while Dr. Cordero could not hear them and, if so, who told her so and why? Was the mailing of the transcript to Dr. Cordero delayed so that it could first be vetted for compliance with those instructions? Have transcripts in other cases been manipulated to alter their contents or delay or even prevent their transmission either to the clerk or the party who ordered it? Was a benefit offered or received to participate in such manipulation? None of these and many other questions have been answered through any investigation. Yet, they arouse suspicion that transcripts may not be reliable. This experience prompted Dr. Cordero to ask certain questions of Reporter Dianetti at the recent hearing.

**B. Reporter Dianetti suffered a most strange attack of confusion and nervousness when at the end of the hearing on March 1, 2005, Dr. Cordero asked for a count of stenographic packs and folds**

8. When the evidentiary hearing of the DeLanos’ motion to disallow Dr. Cordero’s claim against

Mr. DeLano began at 1:31 p.m. on March 1, 2005, Dr. Cordero asked Reporter Dianetti whether there was any marker for the point where she was beginning to record. She said that she was beginning a new pack, that is, a pack of folds of stenographic tape.

9. After the hearing ended at 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Lorraine Parkhurst was still by her side. He asked the Reporter how many packs she had used. That question spun Ms. Dianetti into an astonishing state of confusion and nervousness, all the more astonishing since she was still gathering the materials that she had just finished using to record the single hearing that afternoon.
10. First she said that there were two, but then she said that there was also a third pack that she had made by taping two sections together. Dr. Cordero asked her that she count the folds in each pack. She said that the estimate of pages was difficult to make because it could be three or four...He told her that he was not asking for an estimate of pages but for a simple count of folds in each pack. That only heightened her nervousness. She said that she needed a pencil. He asked what for. She said to count them. He asked what a pencil had to do with counting folds. She said she needed the head, that is, the head of the pencil, the eraser at the head, then she dropped that and began to show him the numbers on the back of the folds to try to determine the range, but that only made her confusion more pronounced and she said that it depended where she had began in pack the pack fold 1 to this is 159 then she no it is begun she began on fold it is 3 to 159 said that she rather it is 6 in one to 158 and a half she jumped to pack three that she had not marked pack 3 said came back to the issue of the estimate the pages of estimating the how many pages per fold she protested that nobody ever had asked her to do so why you are asking me to do counting what for you don't trust you think that when the pages come more pages but last time there were the number of the pages what she would send and the cost what had happened before that she had asked another person because she had not understood some words and it doesn't pay to be honest and this counting the pack is that it depende... 'Ms. Dianetti, please, I just want to know the number of the packs and folds used today.'
11. Dr. Cordero noticed the date on two packs that she had said belonged among those used for that hearing. He asked Court Attendant Parkhurst to look at them, she did, and he pointed out that they had been dated 2/1/05! Ms. Dianetti protested and asked Dr. Cordero whether he never made mistakes. Then she wrote on them the correct date of March 1.

12. Ms. Dianetti's state of confusion was such that Dr. Cordero asked Ms. Parkhurst whether she would count the folds. She agreed to do so but Ms. Dianetti protested because it was not fair to keep Ms. Parkhurst in the courtroom that she had to go to the house to stay here when she should be so late that it was... 'Ms. Parkhurst, asked Dr. Cordero, do you mind staying here a while longer to count the folds? If we do not know exactly how many packs and folds were used, all that was said today and all the effort in preparing and attending this hearing will have been in vain'. Ms. Parkhurst said that she did not mind and with Dr. Cordero at her side, she counted aloud the folds of the three packs and made a note for herself of what she had counted. Then he asked Ms. Dianetti to copy the numbers on his notepad so that she could sign it. She protested but went ahead and did it... 'and this pack too I used today'. Unbelievable! There was a fourth pack! It had been right there on her table all along. Dr. Cordero asked Ms. Parkhurst to count its folds, she did, and then added her count to her list; Reporter Dianetti also added it to the list that she was making for Dr. Cordero.
13. Dr. Cordero asked Attendant Parkhurst to sign as witness the list that Ms. Dianetti had made and signed (pg. 31, supra), but she declined to do so, showed him her list on her own notepad, and said that she had made a note of all the packs and folds and that would be enough. Dr. Cordero thanked her and Ms. Dianetti, went to his table and began to gather his book, exhibits, and his portable computer. What could possibly have triggered such confusion in Reporter Dianetti and caused her to become so nervous?
14. Interestingly enough, the attorney for Mr. DeLano, Christopher Werner, Esq., burst half way through the hearing with a protest to Judge Ninfo because he suspected that Dr. Cordero was recording the hearing on his computer. Did they have an understanding that there would be no independent recording of the hearing, nothing other than what Ms. Dianetti would record or rather, what a vetted transcript would contain? This question finds support in the fact that at the examination of the DeLanos under 11 U.S.C. §§341 and 343 on February 1, 2005, at the office of Chapter 13 Trustee George Reiber, the latter had made an official recording on audio tapes, a reporter had also stenographically recorded the meeting, and still Dr. Cordero had made his own recording using a tape recorder. This experience in conjunction with a hearing that was not going as well for Att. Werner as he could have expected in light of Judge Ninfo's undisguised bias toward his client, Mr. DeLano, before and during the hearing, could have suggested to Att. Werner, perhaps a bit too late, that Dr. Cordero might likewise have come prepared to make his



own recording of the hearing, which would frustrate any other arrangement for a different type of recording. Did it?

15. Was something going on between Court Reporter Dianetti, Att. Werner, and Judge Ninfo with regard to the transcript? Interestingly enough, as of February 28, 2005, PACER<sup>1</sup> showed that Att. Werner appeared as attorney in 575 cases, and in 525 the judge was Judge Ninfo. They have worked together on so many cases for so long that they have developed a special relationship. This relationship helps to understand not only why Att. Werner was so upset at the possibility that the benefit of the relationship could be diminished by Dr. Cordero making his own recording of the hearing, but also why Att. Werner took a back seat and let Judge Ninfo be so unashamedly biased as to become the advocate of Mr. DeLano while the latter was being examined by Dr. Cordero.

**C. Judge Ninfo manifested such undisguised bias before and during the hearing as to become the chief advocate for Mr. DeLano and counsel opposing Dr. Cordero**

16. The evidentiary hearing was triggered by the untimely motion of July 19, 2004, to disallow Dr. Cordero's claim against Mr. DeLano, that is, after the DeLanos and Att. Werner had treated Dr. Cordero as a creditor for six months since the filing of the bankruptcy petition in which the DeLanos listed Dr. Cordero among their creditors. Mr. DeLano had known of that claim since Dr. Cordero served him with his third-party complaint of November 21, 2002, in the Pfuntner case. Therein the claim for compensation was predicated on the negligent and reckless way in which Mr. DeLano, as a bank loan officer of M&T Bank, had exercised the Bank's security interest in the storage boxes that Premier Van Lines, a moving and storage company, had bought with a loan. Premier was storing Dr. Cordero's property and went bankrupt too, like Mr. DeLano, a 32-year veteran of the banking and lending industry and as such an expert in managing borrowed money...and he went bankrupt? How suspicious!
17. Interestingly enough, the motion to disallow was raised on July 19, the day of the hearing of Trustee Reiber's motion to dismiss the petition due to the DeLanos' "unreasonable delay" in producing requested documents. At that hearing, Dr. Cordero presented evidence that the

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<sup>1</sup> PACER is the system for **P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords. To corroborate the PACER statistics cited here go to <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>>PACER>Query and write in the query box the name of the attorney or trustee in question.

DeLanos had engaged in bankruptcy fraud, particularly concealment of assets.

18. The DeLanos' motion to disallow was heard on August 25. By order of August 30, 2004, Judge Ninfo required Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him and present it at an evidentiary hearing. Dr. Cordero requested documents from Mr. DeLano, who denied every single one of them. Dr. Cordero moved to compel production, but Judge Ninfo denied every single one of them too! It was a set up! The motion to disallow was a subterfuge to eliminate from the bankruptcy case Dr. Cordero, the only creditor that had presented evidence of the DeLanos' bankruptcy fraud. Even documents that Dr. Cordero requested to defend against the motion and show that it had been raised in bad faith were denied by Judge Ninfo, who simply disregarded the broad scope of discovery under FRCivP Rule 26.
19. So Dr. Cordero arrived at the evidentiary hearing on March 1, 2005, without a single additional document having been produced by Mr. DeLano. However, he had prepared a set of questions. But very soon the most extraordinary fact became apparent: Mr. DeLano did not have any idea of the nature of Dr. Cordero's claim against him, the very one that he had moved to disallow. What is more, Att. Werner did not have any idea either! So much so that during the first recess in the hearing, he and Mr. DeLano walked out of the courtroom with the attorney for M&T Bank, Michael Beyma, Esq., and then Att. Werner and Mr. DeLano came back in and asked Court Attendant Lorraine Parkhurst whether she had a copy of Dr. Cordero's complaint of November 2002 against Mr. DeLano! He was told that it had been filed with the court. Then Mr. Werner turned around and asked Dr. Cordero whether he had a copy. Dr. Cordero said that he had and Att. Werner asked him for a copy!
20. Att. Werner had come to the evidentiary hearing to have a claim disallowed of which he did not even have a copy. Not only that, but he also did not have even the pertinent parts of the complaint that Dr. Cordero had attached to the proof of his claim against Mr. DeLano, a copy of which Dr. Cordero had served on Att. Werner on May 15, 2004. As a result, Att. Werner did not have a clue either what the claim was all about. Therefore, how could he possibly have overcome the presumption of validity that under FRBkrP Rule 3001(f) attached to Dr. Cordero's claim upon its being filed on May 19, 2004? He could not. He was simply relying on his relationship with Judge Ninfo and their denial of Dr. Cordero's request for documents.
21. Dr. Cordero declined to provide Att. Werner with a copy of the complaint. Instead, he asked Att.

Werner not to leave the courtroom to get a copy of it in the records office only to come back in and pretend that he and Mr. DeLano knew all along what the claim was that they were trying to disallow. Att. Werner retorted that Dr. Cordero could not tell him, who has been in this business for over 28 years, how to practice law. Thereupon Dr. Cordero asked Ms. Parkhurst and Law Clerk Megan Dorr to call in Judge Ninfo before Att. Werner and Mr. DeLano could leave the courtroom.

22. When the Judge came in and the hearing was back on the record, Dr. Cordero related the whole incident. The Judge found nothing objectionable in such irrefutable proof that Att. Werner had not had before and did not have then any idea of the nature of the claim that he had moved to disallow. Nor did he find reprehensible that during an ongoing examination, Att. Werner had attempted to take advantage of a recess to feed Mr. DeLano answers to critically important questions. On the contrary, when Dr. Cordero moved to dismiss the motion to disallow because raised in bad faith as a subterfuge to eliminate him from the case and as abuse of process, Judge Ninfo denied his motion out of hand and said that it was Dr. Cordero who was making a motion in bad faith!
23. The hearing went on. Under examination, Mr. DeLano not only admitted facts asked of him about his handling of the storage boxes containing Dr. Cordero's property, but also volunteered others. Thus, he said that:
  - a) Premier Van Lines had used the Jefferson-Henrietta warehouse to store the storage boxes bought with the loan from M&T Bank and containing the stored property of its clients, such as Dr. Cordero;
  - b) Mr. DeLano had seen boxes there with Dr. Cordero's name and told Dr. Cordero so;
  - c) Mr. DeLano was under pressure to have the storage boxes moved out of the Jefferson-Henrietta warehouse because the latter was going to put a lien on the boxes to secure unpaid warehousing fees, an action that would have delayed the sale and diminished Mr. DeLano's net recovery from liquidating M&T Bank's security interest in the boxes;
  - d) So Mr. DeLano hired an auctioneer, John Renolds, to sell the storage boxes and the auctioneer sold them in a private auction to the single warehouse that he contacted;

- e) Mr. DeLano did not check and did not know whether the auctioneer had checked the capacity of the buying warehouse, whose name he did not remember, to store property safely from damage or loss due to pests, water, humidity, extreme temperature, fire, and theft;
- f) Mr. DeLano did not notify the owners of the property in the boxes to let them know how he intended to dispose of the boxes and find out from them how they wanted their property handled, such as by having it inspected before being removed, or moving it to a place of their choice, or finding out in advance the fees and terms and conditions of the buying warehouse;
- g) After the sale, Mr. DeLano directed Dr. Cordero to the buying warehouse to deal with it about his property;
- h) Dr. Cordero contacted that buying warehouse and its owner –neither of whose names and address Dr. Cordero use at the hearing but he did use them in the complaint containing the claim against Mr. DeLano- but the owner told him that he had no boxes bearing Dr. Cordero’s name and that Mr. DeLano had sent him an acknowledgment of receipt that included Dr. Cordero’s name, but that he would not sign it because he did not have any boxes holding Dr. Cordero’s property;
- i) Mr. DeLano admitted that he had sent the owner such acknowledgment of receipt but that the owner had turned out to be right because the boxes with Dr. Cordero’s property had not been delivered to him given that they had not been in the Jefferson-Henrietta warehouse at all and that Mr. DeLano had made another mistake when he checked the slips in the business records that Premier had in its office in the Jefferson-Henrietta warehouse before including Dr. Cordero’s name in that receipt;
- j) Mr. DeLano admitted that his mistakes could have caused Dr. Cordero confusion and anxiety and cost him a lot of effort, time, and money as Dr. Cordero tried to find out where his property could be, which eventually was found in part lost or damaged in yet another warehouse, namely, that of Plaintiff Pfuntner; and that it was reasonable for Dr. Cordero to claim therefor compensation from him and M&T Bank and for Mr. DeLano and the Bank to compensate Dr. Cordero to a degree.

24. Upon Mr. DeLano making that frank admission, Dr. Cordero said that the degree of compensation was what had to be determined at trial where all the parties and issues could be tried as a whole. Mr. DeLano further admitted that at trial M&T Bank would call upon him to represent it since he was the officer who had handled the defaulted loan to Premier.

**D. Judge Ninfo disregarded the law and rules of Congress and abdicated his position as a neutral arbiter in order to apply the law of relationships with the local parties**

25. During the examination, Judge Ninfo intervened repeatedly and consistently as the advocate of Mr. DeLano, either answering questions put to Mr. DeLano; spinning Mr. DeLano's answers away from any admission of mistakes or liability; providing explanations for Mr. DeLano to escape difficult questions leading to the admission of the reasonableness of compensation; and finding fault with Dr. Cordero's conduct at the time of the events in question or at the hearing. It is by listening to his own words conveyed in an accurate and complete transcript that the indisputable proof of Judge Ninfo's shocking bias can be obtained. It is for that reason that it is so important that the transcript be requested from Reporter Dianetti and that it be checked against the number of packs and folds in her signed statement and that their authenticity be determined.

26. Where was Att. Werner during Judge Ninfo's advocacy of his client's interests? He was seated in his lower chair from which he would stand up at times to object to questions asked by Dr. Cordero, but not once did he object to any ruling of Judge Ninfo. What a remarkable deferential attitude throughout an examination that lasted from 1:31 p.m. to 7:00 p.m.!

27. Failure to preserve any objection for appeal has to be suspicious in itself, unless Att. Werner knew that there would be no need for him to appeal because he could take a favorable outcome for granted. This explains why he not only did not have to read Dr. Cordero's claim before or after moving to disallow it, but why he also stated several times that he did not have to prepare himself or Mr. DeLano for the hearing. In what impartial court where the outcome of a proceeding is uncertain would a lawyer volunteer a statement that he and his client are unprepared? The fear of a malpractice suit would deter the lawyer from making such a statement. But there would be no cause for fear if the lawyer had the assurance that, however unprepared, he would deliver the desired outcome to his client thanks to having made the best preparation possible: a well developed positive relation to the judge that made both teammates. Att. Werner

has had the necessary deferential attitude and opportunity to develop such relation: 525 cases before Judge Ninfo, according to PACER.

28. In return, Judge Ninfo takes care of him. Indeed, what judge who respects his office and is considerate of the effort, time, and money of others would hear with indifference and allow a lawyer to say with impunity that he came to his courtroom so awfully unprepared and brought a witness totally unprepared? By not making any comment, let alone rebuking Att. Werner for his utter unpreparedness, Judge Ninfo showed his disregard for FRBkrP Rule 1, which provides that “[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding”; a statement of purpose that is repeated in FRCivP Rule 1.
29. It is no wonder that, in the assurance of his protective relationship with Judge Ninfo, Att. Werner showed up at the hearing, not only without a copy of the claim that he was trying to disallow, but also without a single law book. After all, what need would he have for such books since he did not cite any rule to support his objections at the hearing, just as he has not cited, let alone discussed, any rule or law, forget about citing a case, in any of his papers submitted to the court. In so doing, he follows the example of Judge Ninfo, who does not cite any authority -unless he cites back what Dr. Cordero after painstaking legal research has cited and discussed- but only states or adds his conclusory statements without any discussion to support what in fact are rulings and decisions by fiat, not by legal reasoning, whether it be in any of his 15 orders or 15 hearings in the Pfuntner and DeLano cases. This is not the way a judge administers justice in a court of law deserving the public’s trust, but rather this is how a lord runs the private affairs of his fiefdom in his and his loyal vassals’ interest. Hence, they need not cite authorities to derive or buttress a persuasive argument since they can simply send or have received the signal of a win.

**E. Judge Ninfo looked on in complicit silence while Atts. Werner and Beyma signaled answers to Mr. DeLano during his examination under oath**

30. The transcript of that hearing will also show another shocking manifestation of bias that demonstrates Judge Ninfo’s contempt for due process: During the examination, Dr. Cordero remained at his table. To his right were Mr. DeLano, sitting in the witness stand; Att. Werner, at his table five feet away; and Att. Beyma, the lawyer for M&T Bank, in the first bench behind the bar, some nine feet away. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look

away from him and toward where the two attorneys were seated and as Dr. Cordero looked at them he caught them signaling to him with their arms!

31. Dr. Cordero protested such utterly unacceptable conduct to Judge Ninfo. He was sitting some 25 feet in front and between Att. Werner and Dr. Cordero and some 30 feet from Att. Beyma. Yet, Judge Ninfo found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything.
32. However, from the distance and higher level of his bench he had an unobstructed view of the two attorneys and Dr. Cordero, who were in his central field of vision so that it was all but impossible for him not to catch the distraction of either of them flailing his arm. Nevertheless, what he said was belied more patently by precisely what he did not say than by their relative physical positions: Not only did he not say that such conduct, intended to suborn perjury, would not be tolerated in his courtroom, but he also did not even ask either of the attorneys on any of those occasions whether they had signaled an answer to Mr. DeLano. Even if, assuming arguendo, he had not seen them signaling, he did no care to find out either. Yet, he had every reason to ask, precisely because of the same revealing nature of what neither of the attorneys said: Neither protested Dr. Cordero's accusation, which they reflexively would have done had it not been true that they had signaled to Mr. DeLano how to answer.
33. Judge Ninfo's reaction to such unlawful and unethical conduct shows that he runs a court tilted by bias that prevents progress toward a just and fair resolution of cases and controversies, swerving instead toward his own interests. He proceeds, not on the strength of the law or procedural rules, which he does not cite or discuss, but rather by the power of relationships developed with local parties. The opportunity to develop those relationships is ample. Thus, while Att. Werner has appeared before Judge Ninfo in 525 cases, Trustee Gordon has appeared before him in 3,382 out of 3,383 cases as of June 26, 2004; and Trustee Reiber in 3,907 out of 3,909 as of April 2, 2004, according to PACER. As to Att. Beyma, he is a partner in the same firm in which Judge Ninfo was a partner at the time of his appointment, that is, Underberg & Kessler.
34. These locals appear before him so frequently as to become dependent on his goodwill for the distribution of favorable and unfavorable decisions. What a lawyer or trustee may not get in one case, he may get 15 minutes later when he stands up again before Judge Ninfo for the next case...that is, if he has not shown disrespect by objecting to his rulings and dragging it up on

appeal, for the Lord of the Fiefdom grants rewards to those vassals who show deference, but he also meets out punishment to those who challenge him and show rebelliousness. As a result, the law of relationships is the basis on which Judge Ninfo runs his court, rather than a Court of the United States ruled by the law of Congress.

35. Bias is the device for implementing that law. It motivated Judge Ninfo's protection of Trustee Gordon by disregarding Congressional law and rules in order to dismiss out of hand Dr. Cordero's cross-claims against the Trustee at the first hearing on December 18, 2002. Dr. Cordero, a non-local appearing pro se, was expected to accept the ruling and leave it at that. But he didn't. He went on appeal. *The horror of it!* Ever since Judge Ninfo has treated Dr. Cordero as an enemy, not as a litigant exercising his rights and entitled to due process.
36. Then the DeLanos filed their bankruptcy petition and Dr. Cordero presented evidence of their bankruptcy fraud. But Mr. DeLano has been a bank officer for 32 years and as a *loan* officer, he has handled defaulting borrowers, some of whom have ended filing for bankruptcy, as did the owner of Premier, Mr. David Palmer. Mr. DeLano knows too much to be left outside the castle of the Fiefdom, the courtroom where Lord Ninfo protects deserving vassals.
37. The chronicler of the Fiefdom is Court Reporter Dianetti. What will she report in her chronicle of the campaign that Lord Ninfo mounted against the Diverse Citizen of the City of New York, Dr. Cordero, at the hearing on March 1, 2005? Did she become so confused and nervous when asked for a count of the stenographic packs and folds that she had barely finished using because she felt under attack by the Enemy of the Fiefdom and torn in her loyalty to her Lord and the truth?

**F. The transcript can allow the peers of Judge Ninfo to hear his bias from his own mouth, but its authenticity must first be ascertained by unrelated investigators, who should then investigate those related to him and these cases**

38. There are so many interesting questions posed by circumstances in these cases that reinforce each other to impress a bias to their outcomes. They are enough to eliminate coincidences as the phenomenon that explains them away. Instead, when the totality of circumstances are assessed as a whole in terms of the law and common sense, they indicate intentional conduct supported by coordination in furtherance of a wrongful scheme. Its nature and extent can only be ascertained by an investigation.



39. The investigators must be experienced because the persons to be investigated are capable of concealing their unlawful coordination under the cover of their frequent or even daily work contacts. This also provides reasonable grounds to exclude the peers of Judge Ninfo from acting as the investigators of his conduct and that of the people around him. Hence, the investigation should be conducted by U.S. attorneys and FBI agents.
40. However, for their work to have a chance to be trustworthy rather than a whitewash, the investigators must not even know any of the persons that they may investigate. So they must not come from the DoJ or FBI offices in Rochester or Buffalo, who are housed in the same federal building as the courts. By way of example, the U.S. Attorney's Office in the six story federal building in Rochester is the next door neighbor of the U.S. Trustees Office. Of necessity, these officers see each other every day and the relationship that has developed among them is most likely to cloud their objectivity and influence their thoroughness and zeal when investigating their building acquaintances, let alone friends. In brief, they must not be subject to the law of relationships that gave rise to the wrongdoing under investigation in the first place.
41. By the same token, the first element of the investigation should be the transcript itself that Reporter Dianetti may provide. It must be checked against the original stenographic packs and folds and the statement of their count that she signed off on. Likewise, the authenticity of those claimed to be the originals must be ascertained as well as their untampered-with condition. If this preliminary work establishes that they are the basis for an accurate and complete transcript, the latter will also be the basis from which to gain a first view of Judge Ninfo acting as a biased advocate for local parties rather than an impartial arbiter.
42. If you would not treat a litigant before you, much less allow to be treated as a litigant, the way Judge Ninfo treated Dr. Cordero, then it is respectfully submitted here that you have a professional and moral duty to call for a more comprehensive and independent investigation to determine the extent to which Judge Ninfo's pattern of bias and disregard for legality is motivated by his participation in non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.

March 12, 2005

*Dr. Richard Cordero*

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in support of the comments requested from the public  
on the reappointment to a new term of office of  
Bankruptcy Judge John C. Ninfo, II, WBNY  
submitted to  
**the Court of Appeals**  
for the Second Circuit  
and  
**the Judicial Council of the Second Circuit**  
on March 18, 2005  
by **Dr. Richard Cordero**

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and

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as of March 14, 2005

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2. **January 10, 2003**, Pre-trial conference in the Pfuntner case
3. **February 12, 2003**, Hearing of Dr. Cordero's motion of January 27, 2003, in Bankruptcy Court to extend time to file notice of appeal
4. **March 26, 2003**, Hearing of Dr. Cordero's motion of February 26, 2003, in Bankruptcy Court for relief from Judge Ninfo's order denying the motion to extend time to file notice of appeal from his dismissal of Dr. Cordero's cross-claims against Trustee Gordon
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6. **May 21, 2003**, Hearing for Dr. Cordero to report to Judge Ninfo on the inspection of property at Plaintiff Pfuntner's warehouse on May 19, 2003
7. **June 25, 2003**, Hearing of Dr. Cordero's motion of June 6, 2003, for sanctions and compensation predicated on Mr. Pfuntner's and Mr. MacKnight's failure to comply with discovery orders; and of Dr. Cordero's application, resubmitted on June 16, 2003, for default judgment against David Palmer
8. **July 2, 2003**, Adjourned hearing for Judge Ninfo to set a series of hearings in the Pfuntner case, beginning with hearings in October and November and followed by monthly hearings for 7 to 8 months all of which Dr. Cordero would be required to travel from New York City to Rochester to participate in them in person (and having the clear intention to wear Dr. Cordero down)
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13. **August 25, 2004**, Hearing of the DeLanos' motion of July 19, 2004, to disallow Dr. Cordero's claim
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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re:

PREMIER VAN LINES, INC.,

Chapter 7  
Case no: 01-20692

Debtor

JAMES PFUNTER,

Plaintiff

Adversary Proceeding  
Case no: 02-2230

-vs-

KENNETH W. GORDON, as Trustee in Bankruptcy  
for Premier Van Lines, Inc., RICHARD CORDERO,  
ROCHESTER AMERICANS HOCKEY CLUB, INC.,  
and M&T BANK,

Defendants

**MOTION  
FOR RECUSAL  
AND  
REMOVAL**

RICHARD CORDERO

Third party plaintiff

-vs-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO,  
JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

Dr. Richard Cordero affirms under penalty of perjury the following:

1. This court, the Hon. John C. Ninfo, II, presiding, and court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice against Dr. Cordero.
2. Therefore, Dr. Cordero moves for Judge Ninfo to recuse himself from this adversary proceeding under 28 U.S.C. §455(a), which provides that:

Any justice, judge, or magistrate of the United States **shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned; (emphasis added).

3. The court officers in this court as well as in the District Court, located in the same building upstairs, that have participated in such a pattern of wrongful conduct have thus far deprived Dr.

Cordero of rights, forced him to shoulder oppressive procedural burdens, and exposed him to grave procedural risks. They have given rise to the reasonable fear that due to their bias and prejudice they will in the future likewise disregard facts, rules, and law in both courts and thereby subject Dr. Cordero to similar judicial proceedings, including eventually a trial, that will be tainted with unfairness and partiality.

4. To prevent this from happening and this court and other court officers from causing Dr. Cordero further waste of time, effort, and money as well as even more emotional distress, it is necessary that this case be removed to a district court in another district where it can be reasonably expected that Dr. Cordero will be afforded the fair and impartial judicial proceedings to which he is legally entitled.

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**I. Statement of facts illustrating a pattern of non-coincidental, intentional, and coordinated acts of this court and other court officers from which a reasonable person can infer their bias and prejudice against Dr. Cordero**

5. Systematically the court has aligned itself with the interests of parties in opposition to Dr. Cordero. Sua sponte it has become their advocate, whether they were absent from the court because in default, as in Mr. Palmer's case, or they were in court and very much capable of defending their interests themselves, as in the cases of Trustee Gordon, Mr. Pfuntner, and Mr. MacKnight.

**A. The court has tolerated Trustee Gordon's submission to it of false statements as well as defamatory statements about Dr. Cordero**

6. Dr. Cordero -who resides in NY City, entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993. From then on he paid storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about his property. Mr. Palmer and his attorney, Raymond Stilwell, Esq., assured him that it was safe and in his warehouse at Jefferson-Henrietta, in Rochester). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.

7. In search of his property in storage with Premier Van Lines, Dr. Cordero was referred to Kenneth Gordon, Esq., the trustee appointed for its liquidation. The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him.

8. Eventually Dr. Cordero found out from third parties that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to



the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but in a letter of September 23, 2002, improper in its tone and unjustified in its content, he also enjoined Dr. Cordero not to contact him or his office anymore.

9. Dr. Cordero applied to this court, to whom the Premier case had been assigned, for a review of the Trustee's performance and fitness to serve.
10. In an attempt to dissuade the court from undertaking that review, Trustee Gordon submitted to it false statements as well as statements disparaging of the character and competence of Dr. Cordero. The latter brought this matter to the court's attention. However, the court did not even try to ascertain whether the Trustee had made such false representations in violation of Rule 9011(b)(3) F.R.Bkr.P.. Instead, it satisfied itself with just passing Dr. Cordero's application to the Trustee's supervisor, an assistant U.S. Trustee, who was not even requested and who had no obligation to report back to the court.
11. By so doing, the court failed in its duty to ensure respect for the conduct of business before it by an officer of the court and a federal appointee, such as Trustee Gordon, and to maintain the integrity and fairness of proceedings for the protection of injured parties, such as Dr. Cordero. The court's handling of Dr. Cordero's application to review Trustee Gordon's performance, even before they had become parties to this adversary proceeding, would turn out to be its first of a long series of manifestations of bias and prejudice in favor of Trustee Gordon and other parties and against Dr. Cordero.

**1. The court dismissed Dr. Cordero's counterclaims against the Trustee before any discovery, which would have shown how it tolerated the Trustee's negligent and reckless liquidation of the Debtor for a year, and with disregard for the legal standards applicable to a 12(b)(6) motion**

12. In October 2002, Mr. Pfuntner served the papers for this adversary proceeding on several defendants, including Trustee Gordon and Dr. Cordero.
13. Dr. Cordero, appearing pro se, cross-claimed against the Trustee, who moved to dismiss. Before discovery had even begun or any initial disclosure had been provided by the other parties –only Dr. Cordero had disclosed numerous documents with his pleadings- and before any conference of parties or pre-trial conference under Rules 26(f) and 16 F.R.Civ.P., respectively, had taken place, the court summarily dismissed the cross-claims at the hearing on December 18, 2002. To

do so, it disregarded the genuine issues of material fact at stake as well as the other standards applicable to motions under Rule 12(b)(6) F.R.Civ.P., both of which Dr. Cordero had brought to its attention.

**2. The court excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues," thereby condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero**

14. At the December 18 hearing, the court excused the Trustee in open court when it stated that:

"I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court...it's all part of the Trustee just trying to resolve these issues." (Transcript, pp.10-11)

15. Thereby the court approved of the use of defamation and falsehood by an officer of the court trying to avoid review of his performance. By thus sparing Trustee Gordon's reputation as trustee at the expense of Dr. Cordero's, the court justified any reasonable observer in questioning its impartiality. Moreover, by blatantly showing its lack of ethical qualms about such conduct, the court also laid the foundation for the question whether it had likewise approved the Trustee's negligent and reckless liquidation of Premier, which would have been exposed by allowing discovery. In the same vein, the court's approval of falsehood as a means 'to resolve issues' warrants the question of what means it would allow court officers to use to resolve matters at issue, such as its own reputation.

**3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed and, surprisingly finding that it had been untimely filed, denied it**

16. The order dismissing Dr. Cordero's crossclaims was entered on December 30, 2002, and mailed from Rochester. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003. It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved in district court to dismiss it as untimely filed. it.

17. Dr. Cordero timely mailed a motion to extend time to file the notice under Rule 8002(c)(2)

F.R.Bkr.P. Although Trustee Gordon himself acknowledged on page 2 of his brief in apposition that the motion had been timely filed on January 29, this court surprisingly found that it had been untimely filed on January 30!

18. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly have made a mistake on such a critical matter. Nevertheless, the court disregarded the factual discrepancy without even so much as wondering how it could have come about, let alone ordering an investigation into whether somebody and, if so, who, had changed the filing date and on whose order. The foundation for this query is provided by evidence of how court officers mishandled docket entries and the record for Dr. Cordero's cases (paras. 32 below and 97 below). Instead, the court rushed to deny the motion to extend, which could have led to the review of its dismissal of Dr. Cordero's cross-claims.

**4. The court reporter tried to avoid submitting the transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it**

19. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript.

20. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for... "You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript.

21. There is further evidence supporting the implication of Reporter Dianetti's comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant the court engages in exchanges with parties in Dr. Cordero's absence. Thus, on many occasions the court has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms

of civility and of its duty to afford all parties the same opportunity to be heard and hear it.

22. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking its gavel, but simply by just pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, the court brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left. What is not only likely but in fact certain is that by so doing, the court, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the court have given by such conduct to any reasonable person at the opposite end of the phone line cause for offense and the appearance of partiality and unfairness?
23. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, the date on her certificate. Indeed, it was filed two weeks later on March 26, a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28.
24. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering the transcript "to the party or judge" –was she even the one who sent it to the party?- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.
25. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in use. But no imagination is needed, only an objective assessment of the facts and the applicable legal provisions, to ask whether the Reporter was told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript to a higher-up court officer to be vetted before mailing a final version to Dr. Cordero. When a court officer or officers so handle a transcript,

which is a critical paper for a party to ask on appeal for review of a court's decision, an objective observer can reasonably question in what other wrongful conduct that denies a party's right to fair and impartial proceedings they would engage to protect themselves.

**B. The bankruptcy and the district courts denied Dr. Cordero's application for default judgment although for a sum certain by disregarding the plain language of applicable legal provisions as well as critical facts**

26. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees for years. Mr. Palmer, as president of the Debtor, was already under the bankruptcy court's jurisdiction. Nonetheless, he failed to answer Dr. Cordero's summons and complaint. Hence, Dr. Cordero timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain on December 26, 2002. But nothing happened for over a month during which Dr. Cordero had no oral or written response from the court to his application.

27. Dr. Cordero called to find out. He was informed by Case Administrator Karen Tacy that the court had withheld his application until the inspection of his property in storage because it was premature to speak of damages. Dr. Cordero indicated that he was not asking for damages, but rather for default judgment as a result of Mr. Palmer's failure to appear. Ms. Tacy said that Dr. Cordero could write to the court if he wanted.

28. Dr. Cordero wrote to the court on January 30, 2003, to request that the court either grant his application or explain its denial.

29. Only on February 4, did the court take action, or Clerk of Court Paul Warren, or Clerk Tacy, for that matter. In addition, when Dr. Cordero received a copy of the papers file by the court, what he read was astonishing!

**1. The Bankruptcy Clerk of Court and the Case Administrator disregarded their obligations in the handling of the default application**

30. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added) upon receiving Dr. Cordero's application of December 26, 2002. Yet, it was only on February 4, 41 days later and only at Dr. Cordero's instigation), that the clerk entered default, that is, certified a fact that was such when

he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay. He had to certify the fact of default to the court so that the latter could take further action on the application. It was certainly not for the Clerk to wait until the court took action.

31. It is not by coincidence that Clerk Warren entered default on February 4, the date on the bankruptcy court's Recommendation to the district court. Thereby the Recommendation appeared to have been made as soon as default had been entered. It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.
32. Likewise, his 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" (docket entries no. 51, 43, 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. Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it?
33. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

## **2. The court disregarded the available evidence in order to prejudge a happy ending to Dr. Cordero's property search**

34. In its Recommendation of February 4, 2003, to the district court, the bankruptcy court characterized the default judgment application as premature because it boldly forecast that:

...within the next month the Avon Containers will be opened in the presence of Cordero, at which point 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.

35. The court wrote that on February 4, but the inspection did not take place until more than 3 three months later on May 19; it was not even possible to open all containers; the failure to enable the opening of another container led to the assumption that other property had been lost; and the single container that was opened showed that property had been damaged. (paras. 63 below).

36. What a totally wrong forecast! Why would the court cast aside all judicial restraint to make it? Because it was in fact a biased prejudgment. It sprang from the court's need to find a pretext to deny the application. Such denial was pushed through by the court disregarding the provisions of Rule 55, which squarely supported the application since it was for judgment for Mr. Palmer's default, not for damage to Dr. Cordero's property; Mr. Palmer had been found in default by Clerk of Court Warren; and it requested a sum certain. .
37. What is more, for its biased prejudgment, the court not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, the storage containers with Dr. Cordero's property were said to have been left behind by Mr. Palmer in the warehouse of Mr. Pfuntner. The latter had written in his complaint that property had been removed from his warehouse premises without his authorization and at night. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged.
38. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From a court who forms anticipatory judgments, a reasonable person would not expect to receive fair and impartial treatment, much less a fair trial because at trial the prejudiced court could abuse his authority to show that its prejudgments were right.

**3. The court prejudged issues of liability, before any discovery or discussion of the applicable legal standards, to further protect Mr. Palmer at the expense of Dr. Cordero**

39. In the same vein, the court cast doubt on the recoverability of "moving, storage, and insurance fees...especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property." On what evidence did the court make up its mind on the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero? The court has never requested disclosure of, not to mention scheduled discovery or held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry.

40. Such a leaning of the mind before considering pertinent evidence is called bias. From such a biased court, a reasonable person would not expect impartiality toward a litigant such as Dr. Cordero, who as pro se may be deemed the weakest among the parties; as the only non-local, and that for hundreds of miles, may be considered expendable; and to top it off has challenged the court on appeal.

**4. The court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application, but that is a pretense factually incorrect and utterly implausible**

41. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in its Recommendation of February 4, 2003, that:

10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers...

42. However, that suggestion was never made. Moreover, Dr. Cordero would have had absolutely no motive to accept it if ever made: Under Rule 55 an application for default judgment for a sum certain against a defaulted defendant is not dependent on proving damages. It is based on the defendant's failure to heed the stark warning in the summons that if he fails to respond, he will be deemed to consent to entry of judgment against him for the relief demanded. Why would a reasonable person, such as Dr. Cordero, ever put at risk his acquired right to default judgment in exchange for aleatory damages that could not legally be higher than the sum certain of the judgment applied for? What fairness would a disinterested observer fully informed of the facts underlying this case expect from a court that to excuse its errors puts out such kind of untenable pretense?

**C. The district court repeatedly disregarded the outcome-determinative fact that the application was for a sum certain**

43. The district court, the Hon. David G. Larimer presiding, accepted the bankruptcy court's February 4 Recommendation and in its order of March 11, 2003, denied entry of default judgment. Its stated ground therefor was 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. (emphasis added)



44. What an astonishing statement!, for in order to make it, the district court had to disregard five papers stating that the application for default judgment did involve a sum certain:
- 1) Dr. Cordero's Affidavit of Amount Due; ;
  - 2) the Order to Transmit Record and Recommendation; ;
  - 3) the Attachment to the Recommendation; ;
  - 4) Dr. Cordero's March 2 motion to enter default judgment; and
  - 5) Dr. Cordero's March 19 motion for rehearing re implied denial of the earlier motion.
45. The district court made it easy for itself to disregard Dr. Cordero's statement of sum certain, for it utterly disregarded his two motions that argued that point, among others.
46. After the district court denied without discussion and, thus, by implication, the first motion of March 2, Dr. Cordero moved that court for a rehearing so that it would correct its outcome-determinative error since the matter did involve a sum certain. However, the district court did not discuss that point or any other at all. Thereby it failed to make any effort to be seen if only undoing its previous injustice, or at least to show a sense of institutional obligation of reciprocity toward the requester of justice, a quid pro quo for his good faith effort and investment of countless hours researching, writing, and revising his motions. It curtly denied the motion "in all respects" period!
47. Also with no discussion, the district court disregarded Dr. Cordero's contention that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.
48. By making such a critical mistake of fact and choosing to proceed so expediently, the district court gave rise to the reasonable inference that it did not even read Dr. Cordero's motions, thereby denying him the opportunity to be heard, particularly since there was no oral argument. Instead, it satisfied itself with just one party's statements, namely the bankruptcy court's February 4 Recommendation. If so, it ruled on the basis of what amounted to the ex parte approach of the bankruptcy court located downstairs in the same building. It merely rubberstamped the bankruptcy court's conclusion...after mistranscribing its content, a quick job that did justice to nobody. Would such conduct give to an objective observer the appearance of unfairness toward Dr. Cordero and partiality in favor of the colleague court?

**1. The district court disregarded Rule 55 to impose on Dr. Cordero the obligation to prove damages at an “inquest” and dispensed with sound judgment by characterizing the bankruptcy court as the “proper forum” to conduct it despite its prejudgment and bias**

49. The equities of this case show that Mr. Palmer had such dirty hands that he did not even dare come to court to answer Dr. Cordero’s complaint. Yet, both courts spared him the consequences of his default and instead weighed down Dr. Cordero’s shoulders with the contrary-to-law burden of proving damages at an inquest. The latter necessarily would have to be conducted by the bankruptcy court playing the roles of the missing defendant, its expert witness, the jury, and the judge. For a court to conduct an inquest under such circumstances would offend our adversarial system of justice, and all the more so because the court has demonstrated to have already prejudged the issues at stake and its outcome. Would an objective observer reasonably expect the bankruptcy court to conduct a fair and impartial inquest or the district court to review with any degree of care its findings and conclusions?

**2. The bankruptcy court asked Dr. Cordero to resubmit the default judgment application only to deny the same application again by alleging that Dr. Cordero had not proved how he had arrived at the amount claimed or that he had served Mr. Palmer properly, issues that it knew about for six or more months**

50. Pursuant to court order, Dr. Cordero flew to Rochester on May 19 and inspected the storage containers said to hold his stored property at Mr. Pfunter’s warehouse in Avon. At a hearing on May 21, he reported on the damage to and loss of property of his. Thereupon, the court sua sponte asked Dr. Cordero to resubmit his application for default judgment against Mr. Palmer. Dr. Cordero resubmitted the same application and noticed a hearing for June 25 to discuss it.

51. At that hearing, the court surprised Dr. Cordero and how! The court alleged that it could not grant the application because Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back on December 26, 2002! So why did the court ask Dr. Cordero to resubmit the application if it was not prepared to grant it anyway? But this was not all.

52. At a hearing the following week, on July 2, Dr. Cordero brought up again his application for default judgment. The court not only repeated that Dr. Cordero would have to prove damages, but also stated that he had to prove that he had properly served Mr. Palmer because it was not

convinced that service on the latter had been proper. What an astonishing requirement!

53. And so arbitrary: Dr. Cordero served Mr. Palmer's attorney of record, David Stilwell, Esq., who has proceeded accordingly; Dr. Cordero certified service on him to Clerk of Court Warren and the service was entered on the docket on November 21, 2002; subsequently Dr. Cordero served the application on both Mr. Palmer and Mr. Stilwell on December 26. What is more, Clerk Warren defaulted Mr. Palmer on February 4, 2003, thus certifying that Mr. Palmer was served but failed to respond. Hence, with no foundation whatsoever, the court cast doubt on the default entered by its own Clerk of Court.
54. Likewise, with no justification it disregarded Rule 60(b), which provides an avenue for a defaulted party to contest a default judgment. Instead of recommending the entry of such judgment under Rule 55 and allowing Mr. Palmer to invoke 60(b) to challenge service if he dare enter an appearance in court, the court volunteered as Mr. Palmer's advocate in absentia. In so doing, the court betrayed any pretense of impartiality. Would a reasonable person consider that for the court to protect precisely the clearly undeserving party, the one with dirty hands, it had to be motivated by bias and prejudice against Dr. Cordero or could it have been guided by some other interest?

**3. The court intentionally misled Dr. Cordero into thinking that it had in good faith asked him to resubmit with the intent to grant the application**

55. If the court entertained any doubts about the validity of the claim or proper service although it had had the opportunity to examine those issues for six and eight months, respectively, it lacked any justification for asking Dr. Cordero to resubmit the application without disclosing those doubts and alerting him to the need to dispel them. By taking the initiative to ask Dr. Cordero to resubmit and doing so without accompanying warning, it raised in him reasonable expectations that it would grant the application while it could also foresee the reasonable consequences of springing on him untenable grounds for denial: It would inevitably disappoint those expectations and do so all the more acutely for having put him through unnecessary work. It follows that the court intentionally inflicted emotional distress on Dr. Cordero by taking him for a fool! Would a reasonable person trust this court at all, let alone trust it to be fair and impartial in subsequent judicial proceedings?

**D.** The bankruptcy court has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations

**1. After the court issued the first order and Dr. Cordero complied with it to his detriment, it allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months**

56. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect the storage containers that bear labels with his name at Plaintiff Pfuntner's warehouse. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it 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 the court and the parties. Nonetheless, the court neither answered it nor informed Dr. Cordero of the most convenient date.

57. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, Mr. MacKnight, who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed. But Dr. Cordero had to keep those six dates open on his calendar for no good at all and to his detriment.

**2. When Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the court, which changed the terms of the first order**

58. Months later Mr. Pfuntner wanted to get the inspection over with to clear his warehouse, sell it, and be in Florida worry-free to carry on his business there. Out of the blue he called Dr. Cordero on March 25 and proposed dates in one week. When Dr. Cordero asked him whether he had taken the necessary preparatory measures discussed in his January 29 letter, Mr. Pfuntner claimed not even to have seen the letter.

59. Thereupon, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P.. Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.

**3. The court requires that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester**

60. Dr. Cordero raised a motion on April 3 to ascertain this change of the terms of the court's first order and insure that the necessary transportation and inspection measures were taken beforehand. The court received the motion on April 7, and on that very same day, thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing –as he had 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, That this was an illogical pretext is obvious and that it was arbitrary is shown by the fact that after that the court allowed Dr. Cordero to appear four more times by phone. Unable to travel to Rochester shortly after that surprising requirement, Dr. Cordero had to withdraw his motion.

**4. The court showed no concern for the disingenuous motion that Mr. MacKnight submitted to it and that Dr. Cordero complained about in detail, whereby the court failed to safeguard the integrity of judicial proceedings**

61. Meantime Mr. MacKnight raised his own motion. Therein he was so disingenuous that, for example, he pretended that Mr. Pfunter had only sued in interpleader and should be declared not liable to any party, while concealing the fact that Trustee Gordon and the Bank had stated in writing, even before the law suit had started, that they laid no claim to any stored property. So there were no conflicting claims and no basis for interpleader at all. Mr. MacKnight also pretended that Mr. Pfunter had abstained from bringing that motion before “as an accommodation to the parties,” while holding back that it was Mr. Pfunter, as plaintiff, who had sued them to begin with even without knowing whether they had any property in his warehouse, but simply because their names were on labels affixed to storage containers...some ‘accommodation’ indeed! Mr. MacKnight also withheld the fact that now it suited Mr. Pfunter to drop the case and skip to sunny Florida, so that he was in reality maneuvering to strip the parties of their claims against him through the expedient of a summary judgment while leaving them holding the bag of thousands and thousands of dollars in legal fees and shouldering the burden of an enormous waste of time, effort, and aggravation. . Dr. Cordero analyzed in detail for the court Mr. MacKnight's mendacity and lack of candor, to no avail.

62. Although the court has an obligation under Rule 56(g) to sanction a party proceeding in bad faith, it disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would a reasonable person expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

**5. The court issued at Mr. Pfunter's instigation its second order imposing on Dr. Cordero an onerous obligation that it never imposed on any of the other parties and then allowed Mr. Pfunter and Mr. MacKnight to flagrantly disobey it as they did the first one**

63. Nor did the court impose on Mr. Pfunter or Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfunter wanted, the court order Dr. Cordero to carry out the inspection within four weeks or it 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.

64. Pursuant to the second court order Dr. Cordero went all the way to Rochester and on to Avon on May 19 to inspect at Mr. Pfunter's warehouse the containers said to hold his property. However, not only did both Mr. Pfunter and his warehouse manager fail even to attend, but they had also failed to take any of the necessary preparatory measures discussed since January 10 and which Mr. MacKnight had assured the court at the April 23 hearing had been or would be taken care of before the inspection.

65. At a hearing on May 21 Dr. Cordero reported to the court on Mr. Pfunter's and Mr. MacKnight's failures concerning the inspection and on the damage to and loss of his property. Once more the court did not impose any sanction on Mr. Pfunter or Mr. MacKnight for their disobedience of the second discovery order and merely preserved the status quo.

**6. The court asked Dr. Cordero to submit a motion for sanctions and compensation only to deny granting it even without Mr. Pfunter and Mr. MacKnight responding or otherwise objecting to it**

66. But the court was not going to make it nearly that easy for Dr. Cordero. At that May 21 hearing Dr. Cordero asked for sanctions against and compensation from Mr. Pfunter and Mr.

MacKnight for having violated to his detriment both of the discovery orders. The court asked that he submit a written motion. Dr. Cordero noted that he had already done so. The court said that he should do so in a separate motion and that in asking him to do so the court was trying to help him.

67. Dr. Cordero wrote a motion on June 6 for sanctions and compensation under Rules 37 and 34 F.R.Civ.P., made applicable in adversary proceedings by Rules 7037 and 7034 F.R.Bkr.P., respectively, to be imposed on Mr. Pfuntner and Mr. MacKnight. It was not only a legal document that set out in detail the facts and the applicable legal standards, but also a professionally prepared statement of account with exhibits to demonstrate the massive effort and time that Dr. Cordero had to invest to comply with the two discovery orders and deal with the non-compliance of the other parties. To prove compensable work and its value, it contained an itemized list more than two pages long by way of a bill as well as a statement of rates and what is more, it provided more than 125 pages of documents to support the bill.

68. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions too were warranted: Neither Mr. Pfuntner, Mr. MacKnight, nor the warehouse manager attended the inspection and none of the necessary preparatory measures were taken. Worse still, they engaged in a series of bad faith maneuvers to cause Dr. Cordero not to attend the inspection, in which case they would ask the court to find him to have disobeyed the order and to order his property removed at his expense from Mr. Pfuntner's warehouse; and if Dr. Cordero nevertheless did attend, to make him responsible for the failure of the inspection, for the fact is that Mr. Pfuntner never intended for the inspection to take place. It was all a sham!

69. Yet, Mr. Pfuntner and Mr. MacKnight had nothing to worry about. So much so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and compensation. Mr. MacKnight did not even object to it at its hearing on June 25. The court did it for them at the outset, volunteering to advocate their interests just as it had advocated Mr. Palmer's to deny Dr. Cordero's application for default judgment.

**7. The court's trivial grounds for denying the motion showed that it did not in good faith ask Dr. Cordero to submit it for it never intended to grant it**

70. The court refused to grant the motion alleging that Dr. Cordero had not presented the tickets for

transportation –although they amount to less than 1% of the total- or that that he had not proved that he could use Mr. MacKnight’s hourly rate –even though that is the legally accepted lodestar method for calculating attorney’s fees-.But these were just thinly veiled pretexts. The justification for that statement is that the court did not even impose any of the non-monetary sanctions. It simply was determined to protect Mr. Pfuntner and Mr. MacKnight from any form of punishment for having violated two of its own orders, its obligation to safeguard the integrity of the judicial process notwithstanding.

71. The court was equally determined to expose Dr. Cordero to any form of grief available. Thus, it denied the motion without giving any consideration to where the equities lay between complying and non-complying parties with respect to its orders; or to applying a balancing test to the moral imperative of compensating the complying party and the need to identify a just measuring rod for the protection of the non-complying parties required to compensate; or to the notion of substantial compliance when proving a bill for compensation; let alone the applicable legal standards for imposing sanctions. Even a court’s intent can be inferred from its acts: Once more, this court had simply raised Dr. Cordero’s expectations when requiring him to submit this motion because ‘I’m trying to help you here’ while it only intended to dash them after Dr. Cordero had done a tremendous amount of extra work. Once more, the court took Dr. Cordero for a fool and thereby intentionally inflicted emotional distress on him! Is this not the way for a court to impress upon a reasonable person the appearance of deep-seated prejudice and gross unfairness?

**E. The court has decided after 11 months of having failed to comply with even the basic case management requirements that starting on the 13<sup>th</sup> month it will build up a record over the next nine to ten months during which it will maximize the transactional cost for Dr. Cordero, who at the end of it all will lose anyway**

72. The June 25 hearing was noticed by Dr. Cordero to consider his motion for sanctions and compensation as well as his default judgment application. However, the court had its own agenda and did not allow Dr. Cordero to discuss them first. Instead, it alleged, for the first time, that it could hardly understand Dr. Cordero on speakerphone, that the court reporter also had problems understanding him, and that he would have to come to Rochester to attend hearings in person; that the piecemeal approach and series of motions were not getting the case anywhere and that it had to set a day in October and another in November for all the parties to meet and



discuss all claims and motions, and then it would meet with the parties once a month for 7 or 8 months until this matter could be solved.

73. Dr. Cordero protested that such a way of handling this case was not speedy and certainly not inexpensive for him, the only non-local party, who would have to travel every month from as far as New York City, so that it was contrary to Rules 1 F.R.Civ.P. and 1001 F.R.Bkr.P.

74. The court replied that Dr. Cordero had chosen to file cross-claims and now he had to handle this matter that way; that he could have chosen to sue in state court, but instead had sued there, and that all Mr. Pfuntner wanted was to decide who was the owner of the property; that instead Dr. Cordero had claimed \$14,000, but the ensuing cost to the court and all the parties could not be justified; that the series of meetings was necessary to start building a record for appeal so that eventually this matter could go to Judge Larimer.

75. The court's statements are mind-boggling by their blatant bias and prejudice as well as disregard of the facts and the law. To begin with, it is just inexcusable that the court, which has been doing this work for over 30 years, has mismanaged this case for eleven months since September 2002, so that it has:

- a) failed to require even initial disclosure under Rule 26(a);
- b) failed to order the parties to hold a Rule 26(f) conference;
- c) failed to demand a Rule 26(f) report;
- d) failed to hold a Rule 16(f) scheduling conference;
- e) failed to issue a Rule 16(f) scheduling order;
- f) failed to demand compliance with its first discovery order by not requiring Mr. MacKnight as little as to choose one of Dr. Cordero's six proposed dates for the Rochester trip and inspection;
- g) failed to insure execution by Mr. Pfuntner and Mr. MacKnight of its second and last discovery order.

76. It is only now that the court wants to 'start building a record' ... what a damning admission that it has not built anything for almost a year! However, it wants to build it at Dr. Cordero's expense by requiring him to travel monthly to Rochester for an unjustifiably long period of seven to eight months after the initial hearings next October and November. This is not so much an admission of incompetence as it is an attempt to further rattle Dr. Cordero and

maximize the transactional cost to him in terms of money and inconvenience, just as the court put Dr. Cordero through the extra work of resubmitting the default judgment application (paras. et seq. 50 above) and writing a separate sanctions and compensation motion (paras. 66 above) only to deny both of them on already known or newly concocted grounds.

**1. The court will in fact begin in October, not with the trial, but with its series of hearings, or rather “discrete hearings,” whatever those are**

77. At the June 25 hearing to the court proposed a slate of dates for the first hearings in October and November and asked the parties to state their choice at a hearing the following week.
78. At the July 2 hearing, Dr. Cordero again objected to the dragged-out series of hearings. The court said that the dates were for choosing the start of trial. Nevertheless, Dr. Cordero withheld his choice in protest.
79. But the court has just issued an order dated July 15 where there is no longer any mention of a trial date. The dates in October and November are for something that the court designates as “discrete hearings.” Dr. Cordero has been unable so far to find in either the F.R.Bkr.P. or the F.R.Civ.P. any provision for “discrete hearings,” much less an explanation of how they differ from a plain “hearing.” Therefore, Dr. Cordero has no idea of how to prepare for a “discrete hearing.”
80. In any event, the point is this: There is no trial, just the series of hearings announced by the court at the June 25 hearing, which will be dragged out for seven to eight months after those in October and November. There is every reason to believe that the court will in fact drag out this series that long, for it stated in the order that at the “discrete hearings” it will begin with Plaintiff Pfuntner’s complaint. Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case past the opening pleading. Given the totality of circumstances relating to the way the court has treated Dr. Cordero, would an objective observer reasonably fear that by beginning at that elemental stage of the case, the court will certainly have enough time to teach Dr. Cordero a few lessons of what it entails for a non-local pro se to come into its court and question the way it does business with Trustee Gordon or the other locals?

**2. The court is so determined to make Dr. Cordero lose that at a hearing it stated that it will require him to prove his motions' evidence beyond a reasonable doubt**

81. At the July 2 hearing Dr. Cordero protested the court's denial of his motion for sanctions and compensation and his default judgment application. The court said that if he wanted, he could present his evidence for his motions in October. However, it warned him that he would have to present his evidence properly, that it was not enough to have evidence, but that it also had to be properly presented to meet the burden of proof beyond a reasonable doubt, and that on television sometimes the prosecutor has the evidence but he does not meet the burden of reasonable doubt and he ends losing his case, and that likewise at trial Dr. Cordero would have to be prepared to meet that burden of proof.

82. What an astonishing statement! It was intended to shock Dr. Cordero and it did shock him with the full impact of its warning: It did not matter if he persisted in pursuing his motions, the court would hold the bar so high that the he would be found to have failed to clear it. It was not just a warning; it was the announcement of the court's decision at the end of trial, the one that had not yet started!

83. But the shock was even greater when Dr. Cordero, a pro se litigant, realized that he could not be required to play the role of a prosecutor, that this is an adversary proceeding and as such a civil matter, not a criminal case. Upon further research and analysis, Dr. Cordero became aware of the fact that to prove something beyond a reasonable doubt is the highest of three standards of proof, and that there are two lower ones applied to civil matters, namely proof by a preponderance of the evidence and the one requiring clear and convincing evidence. Moreover, there is not compelling reason why Dr. Cordero should not be allowed to prove his claims against Mr. Palmer, Mr. Pfuntner, and Mr. MacKnight by a preponderance of the evidence, the lowest standard. The court's warning was just intended to further rattle Dr. Cordero and intentionally inflict on him even more emotional distress. There is further evidence supporting this statement.

**3. The court latched on to Mr. MacKnight's allegation that he might not have understood Dr. Cordero and that it might be due to his appearances by phone so as to justify its denial of further phone appearances that it nevertheless continues to allow in other cases**

84. It was Mr. MacKnight who in a paper dated June 20 alleged that:

The undersigned has been unable to fully understand all Cordero's presentations when he appears by telephone means, though the undersigned believes though is by no means certain that he has understood the substance of Cordero's arguments. [sic]

85. From this passage it becomes apparent that the source of Mr. MacKnight's inability to understand does not reside in Dr. Cordero, regardless of how he appears in court. Nonetheless, the court rallied to Mr. MacKnight's side and picked up his objection to make it its own. Requiring Dr. Cordero to appear in person in court will run up his expenses excessively and wreak havoc with his calendar, for the court will require him to be in court at 9:30 a.m. so that he will have to leave New York City on Tuesday and stay at a hotel in order to be in court on time the next morning.
86. Indeed, the court's objective at the end of this dragged-out process is not to achieve a just and equitable solution to the controversy among the parties. Rather, it already knows that the record will be that of a case so unsatisfactorily decided that it will be appealed; it even knows that the appeal will land in Judge Larimer's hands. Could an objective observer who knew how receptive Judge Larimer was to the court's recommendation to deny Dr. Cordero's default judgment application (paras. 43 above) reasonably infer from the court's comment that the court was letting Dr. Cordero know that he could be as dissatisfied with its rulings and object as much as he liked, an appeal would again get him nowhere?; and thus, that Dr. Cordero is doomed to lose, they will make sure of it?

**4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights**

87. The court blames Dr. Cordero for having to travel now to Rochester monthly since he chose to sue in federal court. This statement flies in the face of the facts. At the outset is the fact that Mr. Palmer had the bankruptcy and liquidation of his company, Premier Van Lines, dealt with in federal court under federal law. Then Mr. Pfuntner brought his adversary proceeding in federal court and under federal law. He sued not only Dr. Cordero, but also Trustee Gordon, a federal appointee, and other parties. He claims from them \$20,000 and has asked for contribution from all of them.

88. Contrary to the court's misstatement, Mr. Pfuntner did not only want to determine who owned what in his warehouse. He also sued for administrative and storage fees. What is more, no two parties were adverse claimants to the same property in Mr. Pfuntner's warehouse. Far from it, Trustee Gordon and the Bank have let the court know in writing that neither lays claim to Dr. Cordero's property and that they encourage Mr. Pfuntner to release that property to him. Thus, Mr. Pfuntner's claim in interpleader is bogus. All Mr. Pfuntner wanted was to recoup somehow the lease fees that Mr. Palmer owes him. To that end, he sued everybody around, even the Hockey Club, which has stated not to have any property in the warehouse at all, but whose name Mr. Pfuntner found on a label.
89. If Dr. Cordero had filed his counter-, cross-, and third-party claims in state court, he would still have had to travel to Rochester, so what difference does it make whether he has to travel to Rochester to attend proceedings in a state court in Rochester or in a federal court in Rochester? If Dr. Cordero had filed his claims in state court, whether in New York City or in Rochester, Mr. Pfuntner and the other parties could have removed them to federal court under 28 U.S.C. §1452(a) if only for reasons of judicial economy, assuming that the state court had agreed to exercise jurisdiction at all given that property of the Premier estate was involved, e.g. the storage containers and vehicles, over which the federal court has exclusive jurisdiction under 28 U.S.C. §1334(e).

**5. The court already discounted one of Dr. Cordero's claim against one party and ignores his other claims against the other parties**

90. The court asserts that Dr. Cordero sued for \$14, 000. This amount is only one item of Dr. Cordero's claim against only one party, namely, Mr. Palmer. The total amount of that claim appears in Dr. Cordero's application for default judgment against that party, to wit, \$24,032.08. The reason for the court asserting that the claim is only \$14,000 is that in its Recommendation of February 4, 2003, for the district court to deny the application, the court cast doubt on the recoverability of "moving, storage, and insurance fees" (para. 39 above), never mind that to do so it had to indulge in a prejudgment before having the benefit of disclosure, discovery, or a defendant given that Mr. Palmer has not showed up to challenge either the claim or the application.
91. Since that February 4 prejudgment, the court's prejudice against Dr. Cordero has intensified to

the point that now the court has definitely discounted the amount in controversy, although it legally remains valid until disposition of the claim at trial or on appeal. What is more, the court has already dismissed Dr. Cordero's claims against the other parties, for example, the claim for \$100,000 against Trustee Gordon for defamation and the claim for the Trustee's reckless and negligent liquidation of Premier, claims that the court dismissed but that are on appeal and can be reinstated, unless the court presumes to prejudge the decision of the Court of Appeals for the Second Circuit. Likewise, the court's prejudice has already dismissed Dr. Cordero's claims against Mr. Dworkin, Jefferson Henrietta Associates, Mr. Delano, and the Bank for their fraudulent, reckless, or negligent conduct in connection with Dr. Cordero's property as well as those for breach of contract, not to mention the request for punitive damages. And why would the court ignore Dr. Cordero's claims against Mr. MacKnight's client, Mr. Pfunter, for compensation, among other things, for denying his right to access, inspect, remove, and enjoy his property?

92. This set of facts warrants the question whether a court that reduces a party's claim to a minimal expression even before a trial date is anywhere in the horizon and loses sight altogether of other claims can give the appearance of either impartiality or knowing what it is talking about. Would an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic facts of a case that has been before it for almost a year or rather because its bias and prejudice against Dr. Cordero prompts it to make any statement, however ill-considered or contrary to the facts, so long as it is to Dr. Cordero's detriment? Is it not quite illogical for the court, on the one hand, to blame Dr. Cordero for having run up excessive costs for the court and the parties given that his claim is only for \$14,000, and on the other hand, to drag out this case for the next 9 to 10 months?

**6. The court gave short notice to Dr. Cordero that he had to appear in person, the cost to him notwithstanding, to argue his motion for sanctions for the submission to it of false representations by Mr. MacKnight -who had not bothered even to file a response-, thus causing Dr. Cordero to withdraw the motion**

93. There must be no doubt that the court intends to maximize Dr. Cordero's transactional cost of prosecuting this case: On June 5 Mr. MacKnight submitted representations to the court concerning Dr. Cordero's conduct at the inspection. Whereas Mr. MacKnight did not attend, Dr. Cordero did and he knows those representations to be objectively false. After the

appropriate request for Mr. MacKnight to correct them and the lapse of the safe haven period under Rule 9011 F.R.Bkr.P., Dr. Cordero moved for sanctions on July 20. Mr. MacKnight must have received from the court such an unambiguous signal that he need not be afraid of the court imposing any sanctions requested by Dr. Cordero that again he did not even bother to oppose the motion.

94. Instead, the court had Case Administrator Karen Tacy call Dr. Cordero near noon on Thursday, July 31, to let him know that it had denied his request to appear by phone and that if he did not appear in person, it would deny the motion; otherwise, he could contact all the parties to try to obtain their consent to its postponement until the hearing in October.
95. The court waited until only 6 days before the hearing's return date of August 6 to let him know. Moreover, it knows because Dr. Cordero has brought it to its attention that Mr. MacKnight has ignored the immense majority of his letters and phone calls, and has even challenged the validity of Mr. Pfuntner's written agreement to the May 19 inspection. Dr. Cordero could not risk being left waiting by Mr. MacKnight only to play into his hands given the foreseeable consequences. He withdrew the motion.
96. To appear in person would have cost Dr. Cordero an enormous amount of money, for he would have had to buy flight and hotel tickets at the highest, spot price and cut to pieces two weekdays on very short notice. And what for? To be in court at 9:30 a.m. for a 15 to 20 minutes hearing. Would an objective person who knew about the court's indifference to the submission of falsehood to it have expected the court to give more importance to imposing sanctions for the sake of the court's integrity than to denying them to make Dr. Cordero's trip for naught in order to keep wearing him down financially and emotionally?

**F. Bankruptcy and district court officers to whom Dr. Cordero sent originals of his Redesignation of Items in the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals, thereby creating the risk of the appeal being thrown out for non-compliance with an appeal requirement**

97. Dr. Cordero knew that to perfect his appeal to the Court of Appeals he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so surprisingly prevented him from

refiling his notice of appeal to the district court (paras. 16 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted in January 2003 was back in bankruptcy court; hence, he was supposed to send his Redesignation and Statement to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.

98. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a cover letter to District Clerk Rodney Early.

99. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of the notice of appeal to the Court of Appeals, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as Cordero v. Palmer. Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?

100. The district court transferred the record on May 19 to the Court of Appeals. The latter, in turn, acknowledged the filing of the appeal by letter to Dr. Cordero. When he received it on May 24, imagine his shock when he found out that the Court's docket showed no entry for his Redesignation and Statement! Worse still, he checked the bankruptcy and the district courts' dockets and neither had entered it or even the letter to Clerk Early! Dr. Cordero scrambled to send a copy of his Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28.

101. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandysh, that they just did not know how to handle a Redesignation and Statement, is simply untenable. Dr. Cordero's appeal cannot be the first one ever from those courts to this Court; those officers must know that they are supposed to record



every event in their cases by entering each in their dockets; and ‘certify and send the Redesignation and Statement to the circuit clerk,’ as required under Rule 6(b)(2)(B). Actually, it was a ridiculous excuse!

102. No reasonable person can believe that these omissions in both courts were merely coincidental accidents. They furthered the same objective of preventing Dr. Cordero from appealing. The officers must have known that the failure to submit the Redesignation and Statement would have been imputed to Dr. Cordero and could have caused the Court to strike his appeal. But there is more.

**1. Court officers also failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero’s appeal to the Court of Appeals**

103. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal’s timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero’s appeal to the Court and, if so, whether they were intentional.

104. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding Pfunter v. Gordon et al did not carry an entry for the district court’s March 27 denial “in all respects” of Dr. Cordero’s motion for reconsideration in Cordero v. Gordon. By contrast, it did carry such an entry for the district court’s denial, also of March 27, of Dr. Cordero’s motion for reconsideration in Cordero v. Palmer.

105. Also on May 19, the district court certified the record on appeal to the Court of Appeals, but it failed to send to the Court copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal’s timeliness. The fact is that the Court’s docket for this case as of July 7, 2003, did not have entries for copies of either of the March 27 decisions, although it carried entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero’s notice of appeal to the Court made it clear that the March 27 orders were the main orders from which he was appealing since it is from them that the timeliness of his notice of appeal would be determined.

106. Is this further evidence that bankruptcy and district court officers, in general, enter in their

dockets and send to the Court of Appeals just the notices and papers that they want and, in particular, that their failure to enter and send Dr. Cordero's Redesignation of Items and Statement of Issues was intentionally calculated to adversely affect his appeal? If those court officers dare tamper with the record that they must submit to the Court, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? This evidence justifies the question whether they manipulated the filing date of Dr. Cordero's motion to extend time to file notice of appeal (paras. 16 above) in order to bar his appeal from this court's dismissal of his cross-claims against Trustee Gordon. If so, what did they have to gain therefrom and on whose orders did they do it?

## **II. Recusal is required when to a reasonable person informed of the circumstances the judge's conduct appears to lack impartiality**

107. Section §455(a) of 28 U.S.C. provides for judicial disqualification "in any proceeding in which [the judge's] impartiality **might** reasonably be questioned" (emphasis added; para. 2 above). This is a test based on reason, not on the certainty provided by hard evidence of partiality. A reasonable opinion is all that is required and what affords the test's element of objectivity. Whenever the test is met, recusal of the judge is mandated.
108. As the Supreme Court has put it, "[t]he goal of section 455(a) is to avoid even the appearance of partiality...to a reasonable person...even though no actual partiality exists because the judge...is pure in heart and incorruptible," *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).
109. The Supreme Court's construction derives from the legislative intent for §455(a), which Congress adopted on the grounds that "Litigants ought not have to face a judge where there is a reasonable question of impartiality," S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355. Thus, Congress provided for recusal when there is "'reasonable fear' that the judge will not be impartial", *id.*
110. Recognizing that public confidence in those that administer justice is the essence of a system of justice, the Court of Appeals for this circuit has adopted this test of objective appearance of bias and prejudice: Whether "an objective, disinterested observer fully informed of

the underlying facts [would] entertain significant doubt that justice would be done absent recusal;" *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).

111. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Thus, the petitioner of recusal need not prove that the judge is aware of his bias or prejudice given that "[s]cienter is not an element of a violation of §455(a)," since the "advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew;" *Liljeberg*, at 859-60. All is needed is that the petitioner be "a reasonable person, [who] knowing all the circumstances, would believe that the judge's impartiality could be questioned;" *In Re: International Business Machines*, 618 F.2d 923, at 929 (2d Cir.1980).

112. The facts stated in Part I (paras. 5 et seq. above) are apt to raise the inference of lack of impartiality and fairness, both of which are critical characteristics of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes. However, the sharing here has been in the bias and prejudice shown by this court, the court reporter, the clerk of court, the district judge, and assistant clerks. The facts bear this out and provide the basis for their impartiality to be questioned. That is more than is required for recusal; for "what matters is not the reality of bias or prejudice but its appearance"; *Liteky v. United States*, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994).

**A. Recusal should be granted because equity demands it in the interest of justice**

113. Even in the absence of actual bias, disqualification of a judge is required to ensure that "justice must satisfy the appearance of justice", *In re Murchison*, 349 U.S. 133, 136 (1955). How much more strongly recusal is required in the presence of evidence of bias!

114. This court has shown disregard for facts, rules, and laws; tolerance for parties' submissions of false and disingenuous statements and disobedience to its orders; and misleading and injurious inconsistency in its positions. Through its disrespect for truth and legality it has breached its duty to maintain the integrity of the judicial process. Instead of promoting legal certainty it has indulged in arbitrariness that has irreparably impaired the trust that a litigant must have in its good judgment and precluded his reliance on its sense of justice. That is what an objective §455 inquiry would reveal if "made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances"; *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1309 (2d Cir. 1988).
115. The bias and prejudice that the court has exuded has permeated the atmosphere that other court officers in both the bankruptcy and the district court have breathed. By failing to exhibit an unwavering commitment to upholding the high ethical standards that should guide the administration of justice, it has fostered a permissive environment. In its performance of administrative tasks, critical for the judicial process to follow its proper course, is vitiated by disregard for the rules and facts as well as lack of candor. This breeds unpredictability and unreliability, which are inimical to due process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden* 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997). Also these court officers have allowed their conduct to give the appearance of bias and prejudice against Dr. Cordero.
116. By contrast, Dr. Cordero can with clean hands protest to being the target of this bias and prejudice. He has no other fault than being in the unfortunate position of having paid storage and insurance fees for almost ten years to store his property and upon searching for it to have found a pack of mendacious characters who handled it negligently, recklessly, and fraudulently and bounced him between themselves until they threw him into this court. Here Dr. Cordero has made his best effort to comply conscientiously and at a high professional level with all his legal obligations and court rules.
117. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done;" *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923). However, what Dr. Cordero has seen is acts and omissions done by the court and court officers that have so consistently worked to his detriment and the others parties' benefit that they cannot reasonably be explained away as a coincidental series of mistakes of incompetence. Rather, to an "objective, disinterested

observer," In re: Certain Underwriter Defendants, In re Initial Public Offering Securities Litigation, 294 F.3d 297 (2d Cir. 2002), those acts and omissions would look like a pattern of intentional and coordinated wrongs targeted on him, a pro se party living hundreds of miles away whom these court and officers have deemed weak enough to treat as expendable. Dr. Cordero should not be subjected to the same abuse at their hands for the many months that the court has already stated it will drag out this case. Equity should not tolerate that to happen. Enough is enough! From now on, "Justice must satisfy the appearance of justice," as the Supreme Court reaffirmed recently in Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

**B. Recusal should be carried out in the interests of judicial economy**

118. The adversarial proceeding should be removed from this court because a wrongful denial of a §455(a) motion to recuse for bias and prejudice is likely to result in the vacatur of any judgment entered by the judge in question and the consequent need to retry the entire case. United States v. Brinkworth, 68 F.3d 633, 639 (2d Cir. 1995). That would cause a considerable waste of judicial resources, particularly in a multiparty case like this, as well as of the parties' effort, time, and money.

**III. To provide for a fair and impartial judicial process, this case should be removed to the District Court for the Northern District of New York, held at Albany**

119. On equitable and judicial economy considerations, this case should be removed to a court that is likely unfamiliar with any of the parties, neutral to their interests, and not under the influence of any of the court officers in question. Only such a court can reasonably be expected to conduct a fair and impartial judicial process, including eventually a trial, for all the parties. Consequently, this adversarial proceeding should be transferred in its entirety to the District Court for the Northern District of New York, held at Albany, which meets these criteria and is fairly equidistant from all the parties.

120. Such removal can be carried out under 28 U.S.C. §1412, which provides as follows:

A district court may transfer a case or proceeding under title 11 to a district court for another district, **in the interest of justice** or for the convenience of the parties; (emphasis added).

**1. To avoid further injury through bias and prejudice, removal should be carried out forthwith, so that this motion must be decided now**

121. Retaining the proceeding in this court would subject Dr. Cordero to further bias and prejudice from the part of the court and its officers. It will amount to intentionally inflicting on him even more emotional distress as well as causing him additional waste of time, effort, and money. Therefore, to avoid this result, the removal must be carried out forthwith. It follows that this motion must be decided now. The court must neither put off deciding it nor cause its postponement until October as it has done with three other motions of Dr. Cordero, which has redounded to his detriment and to the benefit of other parties.
122. Hence, the court should not discriminatorily deny Dr. Cordero's request to appear by phone to argue this motion while it allows the continued use of the speakerphone in its courtroom. Nor should the court require that Dr. Cordero spend hundreds of dollars to travel to Rochester and stay overnight in a hotel there and thus disrupt two days so that he can appear in person at a 20 minutes hearing. That would constitute an additional act of disregard of Rules 1001 F.R.Bkr.P. and 1 F.R.Civ.P. requiring that proceedings be conducted speedily, inexpensively, and justly.

#### **IV. Relief Sought**

123. Dr. Cordero respectfully requests that:

- 1) the Hon. John C. Ninfo, II, recuse himself from this adversarial proceeding, namely, In re Premier Van Lines, Inc., dkt. no. 02-2230;
- 2) this adversarial proceeding be transferred in its entirety to the District Court for the Northern District of New York, held at Albany;
- 3) the court ask the Director of the Administrative Office of the United States Courts and the judicial council of the second circuit to conduct an investigation into the pattern of wrongful acts complained about here and of the court and court officers that so far appear to have participated in it;
- 4) Dr. Cordero be allowed to present his arguments by phone given that requiring that he appear in person at the hearing of this motion would cause him unjustifiable hardship in terms of cost and time;

- 5) the court not cut abruptly the phone communication with Dr. Cordero, but instead allow him to raise his objections for the record and participate in the hearing until it is definitely concluded for all the parties so that Dr. Cordero may be afforded the same opportunity that it affords to the other parties to be heard and hear its comments;
- 6) the court grant Dr. Cordero any other relief that is just and fair.

Dated: August 8, 2003

*Dr. Richard Cordero*

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Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208  
tel. (718) 827-9521

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August 11, 2003

## **STATEMENT OF FACTS**

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York

### **I. The court's failure to move the case along its procedural stages**

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, *Pfuntner v. Trustee Kenneth Gordon, et al.*, dkt. no. 02-2230, which derived from bankruptcy case *In re Premier Van Lines, Inc.*, dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29<sup>1</sup>) and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as December 26, 2002, and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2, 2003. At those hearings Dr. Cordero will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

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<sup>1</sup> This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#. [Not included here, but available upon request.]

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13<sup>th</sup> month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23, 2003, hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

## **II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case**

### **A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon**

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that

he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-48, 49; 109, fnnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

#### **B. The Court Reporter tries to avoid submitting the transcript of the hearing**

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

**C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner**

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. Cordero had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

**D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law**

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

**E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences**

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

**F. Court officers have disregarded even their obligations toward the Court of Appeals**

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

**III. The issues presented**

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

Whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on  
August 11, 2003, and, after being reformatted, on August 27, 2003

*Dr. Richard Cordero*

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**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
MOTION INFORMATION STATEMENT**

**Caption [use short title]**

**Docket Number(s):** 03-5023

In re: Premier Van Lines

**Motion for:** Leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in its order of October 23, 2003, denying Dr. Cordero's request for a jury trial, which Dr. Cordero submitted to and is under consideration by this Court of Appeals

**Statement of relief sought:**

That this Court:

- 1) admit into evidence that court's October 23 decision as an extension of the same nucleus of operative facts evidencing bias against Appellant Dr. Cordero and which were submitted on appeal to this Court together with the substantive issues to which those facts give rise;
- 2) review that decision together with that court's July 15 decision already submitted and decide whether the court's vested interest in not allowing a jury to consider its participation in a pattern of non-coincidental, intentional, and coordinated wrongful activity makes it a party with an interest in the outcome of Dr. Cordero's request for a jury trial and disqualifies it from being impartial in its denial of the request; and
- 3) grant any other proper and just relief.

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

**OPPOSSING PARTY:** Hon. John C. Ninfo, II  
US Court House  
100 State Street  
Rochester, NY 14614  
tel. (585) 263-3148

Court-Judge/Agency appealed from: Hon. John C. Ninfo, II

**Has consent of opposing counsel:**  
**A. been sought?** No respondent known

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Has argument date of appeal been set?** No

**Signature of Moving Petitioner Pro Se:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** October 31, 2003

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**ORDER**

**IT IS HEREBY ORDERED that the motion is GRANTED DENIED.**

**FOR THE COURT:**  
ROSEANN B. MacKECHNIE, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**United States Court of Appeals  
for the Second Circuit**

**In re: Premier Van Lines**

**Case no.: 03-5023**

**MOTION FOR LEAVE TO FILE  
UPDATING SUPPLEMENT  
OF EVIDENCE OF BIAS**

In re PREMIER VAN LINES, INC., Debtor	Bankruptcy case W. Bankruptcy N.Y. Case no: 01-20692, Ninfo
JAMES PFUNTER, Plaintiff	Adversary Proceeding W. Bankruptcy N.Y. Case no: 02-2230, Ninfo
v.	
KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK, Defendants	
RICHARD CORDERO Third party plaintiff	
v.	
DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES, Third party defendants	
RICHARD CORDERO Cross-plaintiff	Appeal W. District N.Y. Case no. 03-CV-6021, Larimer
v.	
KENNETH W. GORDON, Trustee Cross-defendant	
RICHARD CORDERO Third party-plaintiff	Appeal W. District N.Y. Case no. 03-MBK-6001, Larimer
v.	
DAVID PALMER Third party defendant	

1. On October 23, 2003, the U.S. Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, presiding, (hereinafter the bankruptcy court or the court) issued its Decision & Order Finding a Waiver of a Trial by Jury together with a Scheduling Order 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 (below-22 et seq.) Therein it denied Dr. Cordero’s request to hold a trial by jury, after denying at the October 16 hearing his motion of August 8, 2003, to recuse itself due to bias and prejudice and remove the case to the U.S. District Court for the Northern District in Albany for a jury trial (Mandamus Brief=MandBr-38).

2. Dr. Cordero already requested in his Opening Brief (OpBr) of July 9, 2003, and in his Reply Brief (ReBr) of August 25, 2003, to this Court the disqualification of the court due to bias and prejudice against him, a pro se litigant and the only non-local party, and the removal of the entire case to the District Court in Albany for a jury trial. Consequently, the court’s October 23 decision denying Dr. Cordero’s request for a jury trial and the evidence contained therein of the court’s bias against Dr. Cordero pertain to the nucleus of operative facts and substantive issues already submitted for review to this Court. Thus, the request for its introduction and review in the appeal should be considered proper and granted.

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**I. The court’s bias in denying the request for a jury trial springs from its self-interest in preventing that a jury consider issues now on appeal that will color all further proceedings below, and all the more so if the appeal is successful and the issues are remanded**

3. The court has a vested interest in not letting a jury be influenced by:
  - a) whether the court has engaged, and affirmatively recruited other court officers, or created the atmosphere of disrespect for duty and other people’s rights that has led such officers, to participate, in a series of acts of disregard of law, rules, and fact so numerous, precisely targeted on, and detrimental to, Dr. Cordero as to reveal a pattern of non-coincidental, intentional, and coordinated wrongdoing (OpBr-9 et seq.;54 et seq.; cf. MandBr-25,paras.56-58);
  - b) whether the court’s motive in dismissing Dr. Cordero’s cross-claims against Trustee Kenneth Gordon was to prevent discovery of evidence that would reveal its failure to detect or its

knowing tolerance of, the Trustee's negligent and reckless liquidation of Debtor Premier (OpBr-6 et seq.;38 et seq.); and

c) whether the court has been motivated by bias and self-interest in denying twice Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Debtor Premier Van Lines and as such under the court's jurisdiction, and in even taking up the defense of Mr. Palmer sua sponte despite his continued absence from the adversary proceedings (OpBr-8; 48 et seq.):

- 1) the first time, in its Recommendation of February 4, 2003 (A-306), by disregarding the fact that the Clerk of Court Paul Warren had entered default against Mr. Palmer (A-303) and that the application was for a sum certain (A-294), thus fulfilling the requirements of Rule 55 F.R.Civ.P.; and
- 2) the second time, in its decision of July 15, 2003 (MandBr-35), although the court itself had requested Dr. Cordero to resubmit the application, only to refuse to grant it on the ground of improper service of Mr. Palmer, thereby disregarding its own Order to Transmit Record to the District Court of February 4, 2003 (A-304), where in its own Findings it stated that it had reviewed not only Dr. Cordero's Complaint against Mr. Palmer, but also his Affidavit of Service on Mr. Palmer and concluded that Dr. Cordero "has duly and timely requested entry of judgment by default".

## **II. The blatant bias of the court, which makes any argument so long as it is to Dr. Cordero's detriment, and its sheer inconsistency, which shows its incapacity to keep track of its own previous decisions, are demonstrated once more in its October 23 decision and July 15 order.**

4. The court's bias and inconsistency render its pronouncements on the substantive issue of the request for a jury trial suspect. This is particularly so because it has allowed self-interest to determine its exercise of the ample margin of discretion that it has to grant a jury trial under Rule 39(b) F.R.Civ.P. –made applicable by Rule 9015(a) F.R.Bkr.P.-, which provides thus:

...notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

5. The court's bias and inconsistency and its self-interest in denying the jury trial request warrant

this Court's review de novo of the October 23 decision as well as the July 15 order, referred to therein by the court itself and already submitted to this Court (MandBr-32). The review should encompass not only their text, but also their context, for the totality of circumstances will enable this Court to check the statements in those decisions against the facts and convince itself of the court's disqualifying flaws. In turn, their ascertainment will provide further indication of the prejudicial and erratic way in which the court would proceed if this Court were to allow it to continue with this adversary proceeding, let alone if it were to let its denial of the jury trial request to stand.

**A. The court's contrary-to-fact and misleading statement that trial begun**

6. The October 23 decision opens with a misleading statement that is contrary to the facts. It states that:

WHEREAS, on October 16, 2003 the Court began the trial and related hearings in the Adversary Proceeding, as set forth in its July 15, 2003 Order, supplemented by an August 14, 2003 letter (the "October 16 Hearings"); and

7. The fact is that neither the court's July 15 order nor its August 14 letter (MandBr-32,79) have any reference whatsoever to a trial or a date to begin a trial, let alone that the trial would begin on October 16. The July 15 order only makes reference to 'discrete discrete hearings' that not only would begin on October 16 and could be extended into October 17, but that could also be continued on November 14 (MandBr-37). However, Rule 7016 of the WDNY Local Bankruptcy Rules makes the distinction between pre-trial motions and discovery and "(6) the time when the case will be ready for trial", and requires that "an order will be entered by the Bankruptcy Court setting the time within which all pre-trial motions and discovery are to be completed". The July 15 order does not set such time. On the contrary, it acknowledges that even discovery is still to be commenced.
8. Hence, the court's pretense that "trial" begun on October 16 should not deter this Court from removing this case to the U.S. District Court in Albany, as requested by Dr. Cordero. Far from wasting any judicial resources by so doing, this Court would be saving them by removing the case from a court with a vested interest in dragging it out until wearing down Dr. Cordero -the only non-local party, whom the July 15 order requires to travel from New York City to Rochester for every hearing- to an impartial court competent enough to provide adequate case management in compliance with its obligation under Rule 1001 F.R.Bkr.P. and Rule 1

F.R.Civ.P. to ensure 'just, speedy, and inexpensive' resolution of every action.

**B. The court's implicit acknowledgment that it has proceeded without regard to the Rules of Procedure**

9. The court's disregard for the law, rules, and facts is a constant in its conduct and provides one of the principal grounds for Dr. Cordero to challenge on appeal its decisions. Now the October 23 decision acknowledges unwittingly such disregard, for there the court writes (below-24):

WHEREAS, Cordero has insisted that in connection with the remaining matters in this Adversary Proceeding the parties comply with the provisions of Rule 26(f) of the Rules of Civil Procedure ("Rule 26"), requiring that the parties have a conference and issue a report to the Court, so that the Court can then issue a scheduling order in accordance with Rule 16(b) of the Federal Rules of Civil Procedure ("Rule 16").

10. UNBELIVABLE! The court complies with the Rules of Procedure only because Dr. Cordero insists on it; otherwise, it would just handle "matters" its own home-grown way. Yet, what Rules 16 and 26 provide is not an optional, alternative way of going about discovery. Far from it, their provisions states what the court and the parties "shall" do as well as the periods and deadlines within which they must proceed. But the court ignores that, which explains why it could state at the October 16 hearing that it did not know what it was supposed to do under those rules and then asked Dr. Cordero to explain them to the court! No wonder it has mismanaged this case for fourteen months, so that it has:

- 1) failed to require even initial disclosure under Rule 26(a);
- 2) failed to order the parties to hold a Rule 26(f) conference;
- 3) failed to demand a Rule 26(f) report;
- 4) failed to hold a Rule 16(b) scheduling conference;
- 5) failed to issue a Rule 16(b) scheduling order.

**C. Instead of the Rules of Procedure and the law, the court applies the law of close personal relationships with the local parties, which leads it to be biased against the only non-local party, Dr. Cordero**

11. If this Court remanded this case to the court, the latter would not apply anymore than it has up to now the laws and rules of Congress or the case law of the courts hierarchically above it. Rather, it would apply the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power, whereby the person

with greater power is inte-ested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation.

12. Frequency of contact is only available to the local parties; the court’s website – [www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)- shows its extent. It offers access to court’s records through Pacer, which in turns allows queries under a person’s name and the capacity of the person’s appearance. This is what a series of queries shows:

**Table 1. Number of Cases of the Local Parties Before the 3-Judge Bankruptcy Court**

NAME	# OF CASES AND CAPACITY IN WHICH APPEARING SINCE					
	since	trustee	since	attorney	since	party
Kenneth W. Gordon	04/12/00	3,092	09/25/89	127	12/22/94	75
Kathleen D.Schmitt	09/30/02	9				
David D. MacKnight			04/07/82	479	05/20/91	6
Michael J. Beyma			01/30/91	13	12/27/02	1
Karl S. Essler			04/08/91	6		
Raymond C. Stilwell			12/29/88	248		

13. These numbers are impressive and all the more so when one realizes that there are only three judges in the Bankruptcy Court for the Western District of NY. The importance for these locals to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that the court’s Chief Judge is none other than the Hon. John C. Ninfo, II. Thus, the locals have a most powerful incentive not to ‘rock the boat’ by antagonizing the key judge and the one before whom they have to appear all the time. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo’s calendar includes the following entries:

**Table 2. Entries on Judge Ninfo’s calendar for the morning of Wednesday, October 15, 2003**

NAME	# of APPEARANCES	NAME	# of APPEARANCES
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

14. It is not only these locals who appear before Judge Ninfo or the other two judges, but also all the other members of their law firms or offices. There are ways for the court to know of such membership other than by the attorneys stating their appearance for the record. Thus, the court's website states about Judge Ninfo that "At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester, New York." Underberg and Kessler is precisely the firm in which is also a partner Michael Beyma, Esq., attorney for cross-defendant M&T Bank and third-party defendant David Delano, one of the Bank's officers in charge of Debtor Premier's account.

**D. The court's and locals' disregard for the prohibition on ex-parte contacts to the detriment of non-local Dr. Cordero**

15. So frequently do these people appear before Judge Ninfo that acquaintanceship, if not friendship, develops among them. Among people who disregard the law, rules, and facts, that relationship is likely to trump the express injunction of Rule 9003(a) F.R.Bkr.P.:

Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

16. But do people who have known each other for years, if not decades, and deal with each other all the time really have to respect that rule of Congress, oh! so far away in Washington, D.C., rather than the law of their close personal relationship? The facts can answer this question: At the October 16 hearing, Judge Ninfo, after hearing Dr. Cordero present his motion for recusal and removal (MandBr-38), asked the parties if they thought that he was biased against Dr. Cordero. The three opposing attorneys present, namely, Attorneys Beyma, Essler, and MacKnight, stated, of course, that he was nothing but fair and impartial. Att. MacKnight, however, went further by stating that 'as I told you yesterday, I believe that you have been fair.' The day before the hearing, that was an ex-parte contact!

17. Who initiated it? Was it Att. MacKnight to reassure the judge that he was satisfied with how things were going? Or was it the court to assure itself of the answer before asking in open court the question about its impartiality? Either way, the court should not have allowed a contact expressly prohibited by the Rules of Procedure. Yet, it has engaged in, and thereby encouraged, them.

18. Thus, on March 25 or 26, 2003, Att. MacKnight contacted the court ex-parte because Mr. Pfunter wanted to get the inspection at his warehouse over with. Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfunter to agree mutually (A-372) The facts show that the court indeed thereby reversed its own oral order issued at the pre-trial conference of January 10, 2003, whereby Dr. Cordero would submit dates for his trip to Rochester and inspection -which he did by letter of January 29 (A-365)- and within two days of its receipt the court would determine the most suitable date for all the parties and inform thereof Dr. Cordero. But neither the court nor Att. MacKnight or Mr. Pfunter ever replied to the letter.
19. In light of this precedent, Dr. Cordero would have objected to the court reversing itself had it not done so in an ex-parte contact because what did not happen when the court was supposed to play the key role in setting up the date of the inspection, would not happen when the court was not to play any role at all. That proved true, as shown below (para. 22 et seq.).

**E. The court has carved a fiefdom out of the territory of the circuit, wherein it enforces its law of relationship by distributing to its local vassals unfavorable and unfavorable decisions, which they accept in fearful silence together with protection from the attacks of the non-local**

20. The court and the locals also applied the law of close relationships at the June 25 hearing. On that occasion, it announced that it was going to hold hearings in October and November and then monthly hearings for the following seven to eight months. Yet, none of the locals protested such an unheard-of dragging out of an already 9-month old case that had so failed to make any progress that the first hearing would begin by examining the Plaintiff's complaint (MandBr-37).
21. Such counter-expectation passivity gives rise to the reasonable inference that the locals know very well that if they challenge the court on a decision that does not go their way on a case now, when they appear on another case 15 or 40 minutes later, or tomorrow or next week, the court can take decisions that could be much worse for them. So the locals abide by, not the rule of vigorously advocating the interests of their clients within the full scope of the law, but rather the rule of submissive dependency in the knowledge that if they take unfavorable decisions without objecting, the lord of the fiefdom will reward them next time with a favorable decision



and thus even out their fortunes in court. Thereby everybody can take it easy and nobody has to rake their brains or waste time doing legal research or writing briefs at a professional level, if at all, whereby all enjoy peace of mind in their relative positions without upsetting relationships with appeals.

22. The facts warrant this analysis: At the May 21 hearing, Dr. Cordero reported on the May 19 inspection and asked for sanctions against and compensation from Mr. Pfuntner and Att. MacKnight. The court told Dr. Cordero that to that end he should write a separate motion and that in asking him to do so the court was trying to help him. Dr. Cordero relied on the court's word and wrote his motion of June 6 (A-510). To prove therein compensable work and its value, he included an itemized list more than two pages long by way of a bill as well as a statement of rates and what is more, he provided more than 125 pages of documents to support the bill. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions too were warranted.
23. Yet, local MacKnight did not even bother to write an answer to it. Nor did he care to answer Dr. Cordero's July 21 motion for sanctions for having submitted false representations to the court (A-500). What is more, at the June 23 hearing to argue the June 6 motion, Att. MacKnight did not even have to open his mouth whether to protest it or deny any of the claims! He dutifully relied on his relationship with the court. The latter took up his defense from the beginning and not only refused to order any compensation, but did not impose on Att. MacKnight or Mr. Pfuntner any non-economic sanction either, if only for the sake of letting them know that they could not disobey two of its orders with impunity.
24. Was it through another ex-parte contact with the court that Att. MacKnight became so assured that he had nothing to be afraid of or even to do? Could anybody reasonably imagine that he would proceed with such hands-down assuredness if he had to face a judge that he did not know in the District Court in Albany who was going to decide whether to sanction him and his client and order compensation from both of them?
25. But even if he tried to file an answer, Att. MacKnight would likely fail simply because of lack of practice due to his habit-forming numerous appearances in a court where relationships push vigorous advocacy and legal research and writing to the bottom. This assumption finds painfully solid support in Trustee Gordon. In his answer in this case, the Trustee could do nothing of a higher professional caliber than to submit to a U.S. Court of Appeals an argument

that runs to fewer than two pages and two lines, wherein he relied improperly on cases which he did not vet for any continued precedential value in light of the subsequent and controlling *Pioneer* case of the Supreme Court case, whose existence the Trustee did not even acknowledge despite its having been discussed in Dr. Cordero's Opening Brief (25,30,35), just as the Trustee did not cite a single case of this Court, but merely recycled 6 cases between 10 and 20 years old, 5 from bankruptcy courts and one from the 5<sup>th</sup> Circuit. The shortness of the Trustee's answer is also due to his omission of what his duty of candor toward this Court required him to state to avoid submitting a misleading argument. Cobbling together such argument also reflects the habit of practicing in a court that tolerates the submission by locals of false and defamatory statements against non-locals.

**F. A biased court that distorts the fact by blaming Dr. Cordero of causing inordinate expense and not settling reveals how it would deal with him if trying the case, let alone doing so without a jury**

26. One of the most outrageously biased statements in the October 23 decision is this:
- ii. Cordero has already caused: (a) the other parties to this Adversary Proceeding to expend an inordinate amount of time and expense [sic] in connection with these non-core issues; and (b) the Court and the Clerk's Office to expend an inordinate amount of time, while he has made not attempt to negotiate a settlement of these issues; (below-32)
27. In this statement, the court intentionally disregards basic facts which it must by now know. To begin with, there would have been no need to file any Adversary Proceeding at the end of September 2002, if Mr. Pfuntner and Att. MacKnight had replied to Dr. Cordero's letter of August 26, 2002, asking for access to Mr. Pfuntner's warehouse to remove his property therefrom (A-15); or if Mr. Pfuntner had agreed thereto when Dr. Cordero took the initiative to call him and spoke with him on the phone twice on September 16, 2002, but Mr. Pfuntner would not even give him information about his property. Nor did either of these locals reply to Dr. Cordero's letters of October 7 and 17 (A-34,68), or in 2003 to those of January 29 (A-365); April 2 (A-374); and April 30 (A-426). To top it off, neither of them attended the May 19 inspection while Dr. Cordero did travel from New York City to Rochester at his expense of time, money, and effort.
28. Nor would there have been any need for a lawsuit if Mr. Palmer, Mr. Delano, and warehouse manager/owner David Dworkin had not lied and misled Dr. Cordero since January 2002, as to

his property's whereabouts; or if Trustee Gordon had done his job of finding Debtor Premier's income-producing assets, such as the storage contract under which Dr. Cordero was paying monthly fees, and informed Dr. Cordero thereabout or had provided him with such information when Dr. Cordero phoned him on May 16, 2002. Far from it, the Trustee refused to provide that information when Dr. Cordero phoned him again on September 19, 2002, and even enjoined him not to call his office again in his letter of September 23, 2002 (A-1). Based on the facts, who has been unwilling to settle?

29. Moreover, it was the court that by letter of April 7 (A-386) and August 14, 2003 (MandBr-79), deemed it perfectly reasonable to require Dr. Cordero to travel from NYC and be in the Rochester courtroom at 9:30 a.m. just so he could argue a motion for some 20 minutes; and then to make the same trip to be in court for the hearings on October 16 and 17, November 14, and then monthly thereafter for seven to eight months. It is the court who has put and has been willing to put non-local Dr. Cordero, with the silent assent of the locals, to inordinate expense!
30. Neither the court nor the locals deemed these requirements unfair to Dr. Cordero, yet the court, ever protective of its relationship with its locals, states further that:

iii. it would be unfair to the other parties to burden them with the additional time and costs associated with litigating these issues in a trial by jury where: (a) the issues are not complex... (below-32)

31. If the issues were not complex, why did the court need monthly hearings for nine to ten months, and justified them upon their announcement at the June 25 hearing by alleging that there were numerous and complex issues involved, or as it put it in its letter of April 7 (A-386) "the complexity of the legal issues that you have now raised", or in its July 15 order (MandBr-36) to "ensure that the Court can effectively manage the numerous issues that have been raised". So when the court wants to justify wearing Dr. Cordero down economically and emotionally the issues are complex, but to deny him a jury trial, the issues are not complex. How inconsistent and biased! No doubt, the court will say anything so long as it is to Dr. Cordero's detriment.

### **III. To remand to a court so blatantly biased and inconsistent would deny Dr. Cordero due process as would upholding the court's denial of his constitutional right to a jury trial**

32. The right to a jury trial is so essential that the Seventh Amendment to the Constitution assures

its availability whenever the minimal threshold of \$20.00 in controversy is exceeded; *GTFM, LLC v. TKN Sales, Inc.*, 257 F.3d 235, 239-40 (2d Cir. 2001). In fact, the Supreme Court considers that it "is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 501 (1959) (internal quotation and citation omitted). Consequently, there is a strong policy in favor jury trials; *id.* at 500, so that casual waivers of the constitutionally protected right to a jury trial are not to be presumed, *Garcia-Ayala v. Lederle Parenterals, Inc.*, 212 F.3d 638, 645 (1st Cir. 2000). On the contrary, because it is so fundamental, courts will presume against waiver of the right to a jury trial, *Indiana Lubermens Mutual Ins. Co. v. Timberland Pallet and Lumber Co., Inc.*, 195 F.3d 368, 374 (8<sup>th</sup> Cir 1999) This is all the more pertinent in the case of a pro se litigant, so that it has been held that even participation in a bench trial by a pro se party is not a waiver, *Jennings v. McCormick*, 154 F.3d 542, 545 (5<sup>th</sup> Cir 1998).

33. That standard is particularly applicable in the instant case, where Dr. Cordero is a pro se defendant. As such, when dragged into this case, he implicitly trusted the court to conduct fair and impartial proceedings only to be utterly baffled and bitterly disappointed by the cumulative evidence of the court's bias against him and toward the locals. That betrayed trust cannot be said –least of all by that court- to amount to a waiver of his right to jury trial. Under those circumstances, it is not because of the absence of strong and compelling reasons to the contrary that a jury trial may be denied, but it is for the presence of such reasons that the request to exercise this fundamental constitutional right should be granted, *Green Construction Co. v. Kansas Power & Light Co.*, 1 F.3d 1005 (10<sup>th</sup> Cir. 1993).
34. There are also practical reasons for granting it. Thus, the trial has not only not begun, but also not even a date has been set for it. Far from it, the court's October 23 decision has suspended proceedings until all appeals to this Court and the Supreme Court have been completed (below-24). The court has imposed the obligation on Dr. Cordero that within 95 days thereafter he be the one to initiate a Rule 26(f) conference and then prepare and submit an order to begin discovery! There is no trial in sight. This belies the court pretext that the parties, meaning the locals, would be burdened by its granting a jury trial. The only burden to the locals and the court would come from losing control of the proceedings to a fair and impartial jury, not to mention the burden of having to justify their conduct before another court that did show due

regard for the law, rules, and facts.

#### **IV. Relief sought**

35. Dr. Cordero respectfully reiterates the relief requested in the Motion Information Statement and in harmony therewith requests that this Court:

- a) review the court's decisions of October 23 and July 15, 2003;
- b) hold the court's denial of Dr. Cordero's jury trial request to be null and void as inopportune since the request is under consideration in the appeal to this Court and because it is tainted by the court's bias and self-interest;
- c) disqualify the court for bias and remove the case to a court unrelated to it and the parties, unfamiliar with the case, and capable of adjudicating it fairly and impartially in a jury trial, such as the District Court in Albany (NDNY);
- d) investigate whether the relationship between the court and the locals has impaired the administration of justice and wronged Dr. Cordero;
- e) grant Dr. Cordero any other relief that is just and proper.

Respectfully submitted on

November 3, 2003

*Dr. Richard Cordero*

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BLANK

March 19, 2004

**STATEMENT OF FACTS**

**Setting forth a COMPLAINT UNDER 28 U.S.C. §351 ABOUT**

**The Hon. John M. Walker, Jr., Chief Judge**

**of the Court of Appeals for the Second Circuit**

**addressed** under Rule 18(e) of the Rules of the Judicial Council  
of the Second Circuit Governing Complaints against Judicial Officers

**to the Circuit Judge eligible to become the next chief judge of the circuit**

On August 11, 2003, Dr. Richard Cordero filed a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. The wrongful and biased acts included Judge Ninfo's and other court officers' failure to move the case along its procedural stages. The instances of failure were specifically identified with cites to the FRCivP. They have not been cured and the bias has not abated yet (5, *infra*)<sup>1</sup>.

Far from it, those failures have been compounded by the failure of the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, to take action upon the complaint. Indeed, six months after the submission of the complaint, which as requested (11, *infra*) was reformatted and resubmitted on August 27, 2003 (6, 3, *infra*), the Chief Judge had still failed to discharge his statutory duty under §351(c)(3) to "**expeditiously**" review the complaint and notify the complainant, Dr. Cordero, "by written order stating his reasons" why he was dismissing it. He had also failed to comply with §351(c)(4), which provides that, in the absence of dismissal, the chief judge "shall **promptly**...(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under the paragraph". (emphasis added)

Consequently, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint (1, *infra*). To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4 (4, *infra*). One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty.

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, *Pfuntner v. Gordon et al*, docket no. 02-2230, which was brought and is pending before Judge Ninfo. The facts underlying this

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<sup>1</sup> Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, *infra*), a copy of the document is there and here too.

evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe \$98,092 to 18 credit card issuers and a mortgage of \$77,084, but despite all that borrowed money their equity in their house is only \$21,415 and the value of their declared tangible personal property is only \$9,945, although their household income in 2002 was \$91,655 and in 2003 \$108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, *infra*). The business of the meeting includes “the examination of the debtor under oath...”, pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, *infra*). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give him a copy of his written objections.



Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called 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 until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman's conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice...

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, *infra*). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the territory of the Second Circuit and which they defend by engaging in non-coincidental, intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there—who would that be?- to find out what “the local practice” is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of “the local practice” so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant’s presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he “shall **promptly**...(C) provide written notice to...**the judge** or magistrate whose conduct is the subject of the complaint of the action taken”. (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that “the chief judge will **promptly** appoint a special committee...to investigate the complaint and make recommendations to the judicial council”. (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge’s failure to act were proved correct, it would establish that he “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero’s February 2 status inquiry letter.

Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous waste of effort<sup>2</sup>, time<sup>3</sup>, and money<sup>4</sup>, and inflicting upon him tremendous emotional distress<sup>5</sup> for

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<sup>2</sup> **effort**: Mandamus Brief=MandBr-55.2; ■59.5; █ =documents separator-E-26.2, ■33.5; █ A-694.6.

<sup>3</sup> **time**: MandBr-60.6; ■ 68.6; █ E-29.1, ■=page numbers separator-34.6, ■47.6; █ A-695.E.

a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality<sup>6</sup> and dismiss the facts<sup>7</sup> in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo<sup>8</sup>, Judge Larimer<sup>9</sup>, court personnel<sup>10</sup>, trustees<sup>11</sup>, and local attorneys and their clients<sup>12</sup>, an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take 'prompt and expeditious action' by taking action belatedly. His failure is a consummated wrong and his 'prejudicial conduct' has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero's experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI's interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.

March 19, 2004

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<sup>4</sup> **money**: MandBr-8.C; █ E-37.E; █ A-695.E.

<sup>5</sup> **emotional distress**: MandBr-56.3; █61.E; █ E-28.3, █36.7; █ A-690.3, █695.7.

<sup>6</sup> **disregard for legality**: Opening Brief=OpBr-9.2; █21.9 MandBr-7.B; █25.A; MandBr-12.E; █17.G-23.J; █ E-17.B, █25.1; █ E-30.2, █41.2; █ A-684.B, █775.B; █ 6.I.

<sup>7</sup> **disregard for facts**: OpBr-10.2; █13.5; MandBr-51.2; █53.4; █65.4; █ E-13.3, █20.2, █22.4.

<sup>8</sup> **J. Ninfo**: OpBr-11.3; █ A-771.I, █786.III.

<sup>9</sup> **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; █53.D; █ E-23.C; █ A-687.C.

<sup>10</sup> **court personnel**: OpBr-11.4; █15.6; █54.D; MandBr-14.1; █25.K-26.L; █69.F; █ E-14.4, █18.1, █49.F; █ A-703.F.

<sup>11</sup> **trustees**: OpBr-9.1; █38.B.; █ E-9; █ A-679.A

<sup>12</sup> **local attorneys and clients**: OpBr-18.8; █48.C; MandBr-53.3; █57.D; █65.3; █ E-21.3, █29.D, █31.4, █42.3; █ A-691.D.

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13  
Case no: 04-20280

NOTICE OF MOTION  
AND SUPPORTING BRIEF  
FOR DOCKETING and ISSUE,  
REMOVAL, REFERRAL,  
EXAMINATION, AND OTHER RELIEF

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Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, NY, 14614, at the next two hearings scheduled in this case for August 23 and 25, 2004, or as soon thereafter as he can be heard, to request the docketing and issue of his proposed order of July 19, 2004, for document production by the Debtors; the docketing of his July 21, 2004; the removal of Trustee George Reiber and Att. James Weidman from this case; the referral of the case to the U.S. Attorney and the FBI; the examination of the Debtors, Trustee Reiber, and Att. Weidman under FRBkrP Rule 2004; and for other relief on the factual and legal grounds stated below.

I, Dr. Richard Cordero, Creditor in this case, state under penalty of perjury the following:

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**I. At a hearing on July 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero’s letter of protest of July 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received**

1. Trustee George Reiber filed a motion of June 15, 2004, to dismiss this case and I filed a statement of July 9, 2004, to oppose it. My statement contained a detailed request for the issue of an order for production of documents by the Debtors and their attorney, Christopher Werner, Esq. The request specified which documents were to be produced as well as when, how, and by whom.

2. At the hearing of Trustee Reiber's motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.
3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format "page # of 5". I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.
4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER<sup>1</sup> already contained the description of the hearing on July 19, which included the statement in capital letters:

Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.
6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

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<sup>1</sup> PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

07/20/2004	<u>53</u>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

7. By contrast, the entry for Att. Werner’s objection of July 19, 2004, to my claim as creditor of his clients reads thus.

07/22/2004	<u>51</u>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <u>1</u> Proposed Order # <u>2</u> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
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8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

**II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the DeLanos that Judge Ninfo requested Dr. Cordero to submit**

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have



pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.

14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:

a. The most egregious instance of failure to docket concerns case 02-2230, *Pfuntner v. Gordon et al*, where Debtor David DeLano is a defendant and the bank *loan* officer who made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829 Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

b. Even a paper concerning me but filed by another person has been withheld without docketing: The transcript that I first requested from Court Reporter Mary Dianetti on January 8, 2003, and that in violation of 28 U.S.C. §753(b) she did not deliver directly to me, was filed by her only on March 12, 2003, in violation of FRBkrP Rule 8007(a), and was not entered in docket 02-2230 until March 28, 2003, in violation of FRBkrP Rule 8007(b). Much worse yet, it was not mailed to me until March 26! Who withheld it from me, with whose authorization, and for what purpose?

c. Moreover, the dates of docketing have been altered: I timely mailed a notice of appeal

from your dismissal of my claims against Trustee Kenneth Gordon in case 02-2230, Pfunter v. Gordon et al, on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and I timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that my motion had been timely filed on January 29, you surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! So you denied my motion. You did not want to consider the fact that Trustee Gordon had checked the docket and the filing date of my notice of appeal and had claimed with your approval in disregard of FRBkrP Rules 8001, 8002, and 9006(e) and (f) that my notice, though timely mailed, had been untimely filed. Likewise, Trustee Gordon checked the filing date of my motion to extend for the same purpose of escaping through a technicality accountability for his recklessness and negligence as a trustee. He would hardly have made a mistake in such a critical matter. For your part, you would not investigate the discrepancy. Shedding light on why you would protect him so, PACER replied on page <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl> to a query on June 26, 2004, of Trustee Gordon as trustee thus: "This person is a party in 3,383 cases". More revealing yet, in all but one of those 3,383 cases you, Judge Ninfo, have been the judge. You and Trustee Gordon go back a long way. When it came time for you to choose between protecting him and ascertaining the facts, I did not stand a chance. No wonder now the docket appears as if I had untimely filed my motion to extend on January 30, 2003.

- d. What is more, docketed papers have been withheld: To perfect my appeal to the Court of Appeals in case 02-2230, I had to comply with F.R.A.P Rule 6(b)(2)(B)(i) by submitting my Redesignation of Items on the Record and Statement of Issues on Appeal. Suspicious of another docket manipulation, I sent originals of that critical paper to both your Court and the District Court on May 5, 2003...only to be utterly shocked upon finding out on May 24 that although the District Court had transferred the record on May 19, to the Court of Appeals, the latter's docket for my appeal, no. 03-5023, showed no entry for my Redesignation and Statement. Worse still, I checked the dockets of both the Bankruptcy and the District Court and neither had entered it! The absence of this paper from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my Redesignation and

Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

- e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.
- f. Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:
  - 1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY
  - 2) Objection of March 29, 2004, to a Claim of Exemptions
  - 3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

However, as of April 13, docket 04-20280 read like this in pertinent part:

04/08/2004	<u>19</u>	Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # <u>1</u> Appendix)(Tacy, K.) (Entered: 04/08/2004)
04/09/2004	<u>20</u>	Deficiency Notice (RE: related document(s) <u>19</u> Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timelessness of an objection to a claim of exemptions and for a written statements on and of Local Practice, filed by Interested Party Richard Cordero) (Finucane, P.) (Entered: 04/09/2004)

These entries have many mistakes and reflected poorly on me as a filer...or as an “Interested Party” although I am a creditor listed as such in Schedule F of the DeLanos’ petition and in the Court’s Register of Creditors. Was somebody in the Court already prejudging my status after having informally gotten wind of Att. Werner’s intention to challenge it in future? I had to write to Clerk of Court Warren on April 13 to point out to him that:

- 4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:...; otherwise, the title used in 1) above, could be used.
- 5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.
- 6) For its part, entry 20 contains jarring mistakes:
  - a) it is not “timeless”, but rather “timeliness”;
  - b) it is not “exemptions”, but rather “exemptions”;
  - c) it is not “a written statements”, but rather “a written statement”.

I wrote to Mr. Warren: “I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents

that I filed.” Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

- 7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano’s petition even cursorily;
- 8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;
- 9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;
- 10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,
- 11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under “local practice” and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance...*mindboggling statements indeed!*
- 12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:
  - a) how “local practice” can invalidate federal law,
  - b) how a non-local finds out reliably what “local practice” is, and

c) why I should waste any more time, effort, and money doing legal research that will be trumped by whatever “local practice” is said to be.

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.
16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk.

17. Also inscribed in that pattern is the failure to docket my letter faxed on July 22, which is compounded by the pretense that it was never received, though acknowledged by a clerk to be in chambers and its transmission is recorded on my telephone bill.

**III. Judge Ninfo’s requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the DeLanos that he requested of Dr. Cordero on July 19, 2004**

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber’s motion to dismiss the DeLanos’ petition; whether your knowledge was actual or constructive is indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: “Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.” But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not

issue it, actually you would not even transmit it to the clerks for docketing!

19. This is not the first time either that you ask me to prepare and submit a document that you never intended to act upon. Here are the most blatant instances:

- a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano's attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep your word it all redounded to my detriment.
- b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.
- c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a

separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.

20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore “local practice” (see para. 14.f.11) and 12)) and challenge your rulings on appeal.
21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, “the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004”, why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!
22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?



**IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of Attorney for the DeLanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the DeLanos of financial documents that in all likelihood will reveal bankruptcy fraud**

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.
24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).
25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:
  - a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;
  - b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;
  - c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;
  - d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and
  - e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.

26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim...but is there any point in doing so?
27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).
28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake!<sup>2</sup>

**V. Since Judge Ninfo has failed to order production by the DeLanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud**

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In

---

<sup>2</sup> For other instances of your bias against me and toward the local parties and the description of other acts of disregard of the law, the rules, and the facts that form part of a pattern of non-coincidental, intentional, and coordinated wrongdoing to my detriment, see in docket 02-2230, entry 111, my motion of August 8, 2003, for you to remove that case to a presumably impartial court, such as the U.S. Bankruptcy Court in Albany, and recuse yourself from that case.

addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:

- a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.
- b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.
- c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.
- d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded \$5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to “1990 and prior credit card purchases”, reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.
- e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their’ “unreasonable delay” in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.
- f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them...yet he has \$3,909 *open* cases, according to PACER. Was there never a case in such

a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?

g. Whether such tremendous workload caused him to operate by dismissing cases that required investigation, or his failure to give petitions even a cursory review allowed him to rubberstamp such a huge number of cases, the fact is that he failed to detect the glaring indicia that something was wrong with the DeLanos' petition, such as these:

- 1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.
- 2) While a bank officer would be expected to carry the bank's credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention 'sticking' their employer with a bankruptcy debt.
- 3) Mr. DeLano and his working wife declared earnings of \$291,470 in only the three years from 2001-2003.
- 4) Nevertheless, they declared having only \$535.50 in cash or in bank accounts...with M&T and in credit, of course;
- 5) two cars worth together merely \$6,500;
- 6) equity in their house of only \$21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe \$78,084;
- 7) household goods worth only \$2,910...that's all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years...unbelievable!
- 8) Yet, they have accumulated \$98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,...

9) Wait a moment! Where did their \$291,470 go?

30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos' earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.
31. But if Trustee Reiber did review the DeLanos' documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.
32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?
33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

## **VI. Relief requested**

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:
  - a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket's electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;
  - b. issue that order, modified by the remark that insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;
  - c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;

- d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;
- e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:
  - 1) Mr. Lawrence A. Friedman, Director
  - 2) Donald F. Walton, Acting General Counsel
  - 3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight  
Executive Office of the United States Trustees  
20 Massachusetts Ave., N.W., Room 8000F  
Washington, D.C. 20530
- f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;
- g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:
  - 1) the Debtors under 11 U.S.C. §341; and
  - 2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);
- h. enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;
- i. allow me to present my arguments by phone at the two upcoming hearings; not cut off the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the

next scheduled public event;

- j. reply to my motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

August 14, 2004

*Dr. Richard Cordero*

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208  
tel. (718) 827-9521

Today is Sun, 1 Aug 2004



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## Online Activity Statement for all your SmartTouch<sup>SM</sup> calls and purchases

Account: **718-827-9521**  
 Statement Period: **Jul1, 2004 - Aug1, 2004**

### Important Numbers

If you have any questions about the long distance service provided by Verizon Long Distance, please call 1-888-599-0107.  
 Thank you for using SmartTouch from Verizon.

New for SmartTouch customers! Make your account even smarter with our new Rapid Recharge feature. We'll automatically "recharge" your account for you from your check card or credit card account .  
 International calls that terminate to wireless phones may incur [additional charges](#)

### Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
<b>Ending Balance</b>	<b>\$14.32cr</b>

### Purchases Activity

no.	date	Description	amount
1.	07/19/2004	SmartTouch Purchases	20.00cr

**Total Purchase Activity** **\$20.00cr**

### Direct Dialed Calls

#### In-State Calls: 718-827-9521

no	date	time	place	number	min.	amount
2.	07/06/2004	15:14 PM	ROCHESTER NY	585-263-5706	23.0	1.84
3.	07/10/2004	12:53 PM	ROCHESTER NY	585-427-7804	9.0	0.72
4.	07/10/2004	13:02 PM	ROCHESTER NY	585-232-3528	9.0	0.72
5.	07/10/2004	13:12 PM	ROCHESTER NY	585-263-5862	9.0	0.72
6.	07/15/2004	11:54 AM	ROCHESTER NY	585-613-4200	6.0	0.48
7.	07/19/2004	14:25 PM	BUFFALO NY	716-841-4506	1.0	0.08
8.	07/19/2004	15:39 PM	ROCHESTER NY	585-613-4281	1.0	0.08
9.	07/20/2004	09:41 AM	ROCHESTER NY	585-613-4200	2.0	0.16
10.	07/20/2004	09:46 AM	ROCHESTER NY	585-613-4299	5.0	0.40
11.	07/20/2004	10:06 AM	ROCHESTER NY	585-427-7804	5.0	0.40
12.	07/20/2004	10:10 AM	ROCHESTER NY	585-263-5862	5.0	0.40
13.	07/20/2004	10:15 AM	ROCHESTER NY	585-232-3528	5.0	0.40
14.	07/20/2004	13:15 PM	ROCHESTER NY	585-613-4200	3.0	0.24
15.	07/21/2004	07:46 AM	BUFFALO NY	716-841-1207	13.0	1.04
16.	07/21/2004	09:47 AM	BUFFALO NY	716-841-6813	3.0	0.24
17.	07/21/2004	11:55 AM	ROCHESTER NY	585-546-1980	56.0	4.48
18.	07/21/2004	16:14 PM	ROCHESTER NY	585-613-4200	5.0	0.40
19.	07/22/2004	08:41 AM	ROCHESTER NY	585-613-4299	2.0	0.16
20.	07/22/2004	11:25 AM	BUFFALO NY	716-	4.0	0.32
21.	07/26/2004	12:02 PM	ROCHESTER NY	585-613-4200	8.0	0.64



**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
MOTION INFORMATION STATEMENT**

**Docket Number(s):** 03-5023 **In re:** Premier Van Lines

**Motion:** to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

**Statement of relief sought:**

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

**MOVING PARTY:** Dr. Richard Cordero  
Petitioner Pro Se  
59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521

**OPPOSSING PARTY:** See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

See 1. above

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** September 9, 2004

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**ORDER**

**IT IS HEREBY ORDERED that** the motion is GRANTED DENIED.

**FOR THE COURT:**

ROSEANN B. MacKECHNIE, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**United States Court of Appeals  
for the Second Circuit**

MOTION TO QUASH  
a bankruptcy court's order  
to sever a claim from  
the case on appeal in this Court  
to try it in another bankruptcy case

In re PREMIER VAN LINES, INC.,  
Debtor

Case no. 03-5023

---

JAMES PFUNTER,

Plaintiff

Adversary Proceeding

Case no. 02-2230

-v-

KENNETH W. GORDON, as Trustee in Bankruptcy  
for Premier Van Lines, Inc., RICHARD CORDERO,  
ROCHESTER AMERICANS HOCKEY CLUB, INC.,  
and M&T BANK,

Defendants

---

RICHARD CORDERO

Third party plaintiff

-v-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO,  
JEFFERSON HENRIETTA ASSOCIATES,

Third party defendants

---

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.
2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfunter v. Gordon et al, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens

the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole Pfuntner case, moot; and makes a mockery of the appellate process.

3. Indeed, Judge Ninfo is reopening now Pfuntner v. Gordon et al. to sever from it Dr. Cordero's claim against Mr. DeLano and have Dr. Cordero try it in another case, that is, Mr. and Mrs. DeLano's bankruptcy case, dkt. no. 04-20280. The foregone conclusion is that the Judge will grant the DeLanos' motion to disallow that claim, which arose from the Pfuntner case, and thus eliminate Dr. Cordero from the bankruptcy case. Judge Ninfo and the DeLanos want to do this now, after treating Dr. Cordero as a creditor for six months, because he is the only creditor that analyzed the DeLanos' January 26 petition and other documents and showed in his July 9 statement evidence of fraud. Consider these few elements, cf. longer list at Exhibit E-page 88 §IV:

a) Mr. DeLano has been for 15 years and still is a bank *loan* officer and his wife, a Xerox machines specialist, yet they cannot account for \$291,470 earned in just the last three years!...but declared in their petition only \$535 in hand and on account; and household goods worth merely \$2,910 at the end of two lifetimes of work!, while they owe \$98,092 on 18 credit cards, but made a \$10,000 loan to their son, undated and described as "uncollectible". Does one need to be a lending industry insider, like Mr. DeLano, to recognize that these numbers do not make sense or rather to know how and with whom to pull it off?

4. Evidence that the Order's purpose is to eliminate Dr. Cordero and protect the DeLanos is that Judge Ninfo suspended all proceedings in the DeLano case until the motion to disallow Dr. Cordero's claim has been finally determined at an evidentiary hearing in 2005, or beyond in case of appeals! (E-155¶2) If the Judge did not suspend the DeLano case, **1)** Dr. Cordero would move for Judge Ninfo to force the DeLanos to comply with his pro-forma July 26 order of document production, which he issued at Dr. Cordero's instigation but they disobeyed with impunity (E-95, 105, 107,109); **2)** move to force the DeLanos to comply with his discovery requests, such as production of bank and debit card account statements that can lead to the whereabouts of the concealed assets and thus prove bankruptcy fraud by the DeLanos and others, requests that the DeLanos are likely to respect even less than they did the Judge's order; and **3)** move again for examination of the DeLanos and others under FRBkrP Rule 2004. To ensure that no such action by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted

by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!

5. By not allowing the DeLano case from moving forward concurrently with the motion to disallow, Judge Ninfo excuses the Trustee from resubmitting for confirmation the DeLanos' debt repayment plan so that Dr. Cordero cannot oppose it by introducing any additional evidence of the DeLanos' bankruptcy fraud that he may discover. By so preventing concurrent progress of the case, Judge Ninfo harms all the 21 creditors, who have an interest in repayment beginning immediately, as well as the public at large, who necessarily bears the cost of fraud and wants it uncovered. Hence, Judge Ninfo has issued his Order with disregard for the law and appellate process, in bad faith, and contrary to the interest of the creditors and the public.

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**I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process**

6. The case on appeal in this Court originates in the Adversary Proceeding *Pfuntner v. Gordon et al.*, all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousemen, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.
7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank.

8. It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?

9. The situation would not be better at all if Dr. Cordero were found in the severed proceedings to have a claim against Mr. DeLano in the Pfuntner case on appeal here. When the Court remanded the case for trial, the other parties would try to escape liability by pointing to that finding. Either way, whatever justice could have been achieved through the appellate process would have been intentionally thwarted in anticipation by distorting through piecemeal litigation the dynamics among multiple parties and claims within the same series of transactions.

## **II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. DeLano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim**

10. This is how the Bankruptcy Code, at 11 U.S.C., defines a "creditor":

### §101. Definitions

(10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;...

(15) "entity" includes person...

11. In turn, it defines "claim" thus:

(5) "claim" means (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;<sup>1</sup>

12. These definitions easily encompass Dr. Cordero's claim against Mr. DeLano. Moreover, FRBkrP Rule 3001(a) provides thus:

#### (a) Proof of Claim

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

13. Dr. Cordero's proof of claim of May 15 was so formally correct that it was filed by the clerk of court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the benefit provided under FRBkrP Rule 3001(f):

#### (f) Evidentiary effect

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

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<sup>1</sup> This definition of a claim was adopted in *United States v. Connery*, 867 F.2d 929, 934 (*reh'g denied*)(6th Cir. 1989), *appeal after remand* 911 F.2d 734 (1990).

14. Dr. Cordero's claim is now legally entitled to the presumption of validity. Hence, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in their January 26 petition (E-3 Schedule F). It follows that to overcome that presumption they had to invoke legal grounds on which to mount a challenge to its validity. However, just as Judge Ninfo disregards law and rules so much that he did not cite any to support his Order, so Att. Werner.

**A. Mr. DeLano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection on July 19, 2004**

15. This is all Att. Werner could come up with in his July 19 Objection to a Claim (E-101):

Claimant sets forth no legal basis substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liability exists as against M & T Bank. No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever.

16. To avoid confusion, it should be noted that neither M&T Bank, nor Mr. DeLano, nor Dr. Cordero is a party to "Premier Van Lines (01-20692)". They are parties to the Adversary Proceeding. Thus, its docket no. 02-2230, is the one relevant because that is the case pending before this Court under docket no. 03-5023. But Att. Werner's citation works as an unintended reminder to this Court that it has jurisdiction to decide this motion because the Proceeding on appeal is being disrupted by arbitrary severance of a claim in it to be dragged into the DeLano case.

17. Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero's claim against him, namely, the third party claim of Mr. DeLano's negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano's M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer's clients held in such containers, such as Dr. Cordero's, which ended up lost or damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCivP Rule 8(a) to give "a short and plain statement of the claim". So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.
19. It was only after Dr. Cordero's July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). However, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).
20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims 'to have been in this business for 28 years', must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).
21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

**B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim**

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail



of 1) the \$291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; 2) titles to ownership interests in real estate and vehicular property; and 3) their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero's insistence the Judge issued on July 26 (E-107, 103).

23. In their desperation, Att. Werner denied Mr. DeLano's liability to Dr. Cordero and even that of his employer, M&T Bank, which is not even a creditor in the DeLano case and is not represented by Att. Werner or his law firm (E-130§III). However, an attorney's opinion on his client's lack of liability does not constitute evidence of anything and rebuts no legal presumption, and all the more so a lay man-like opinion unsupported by any legal authority (E-138§I).

24. Then Att. Werner spuriously alleged that Dr. Cordero did not set forth any claim against Mrs. DeLano. Yet he filled out Schedule F (E-3), which requires the debtor to mark each claim thus:

If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

25. A bankruptcy claim is perfectly sufficient if only against one of the joint debtors! Att. Werner must have known that. Hence, this allegation was spurious and made in bad faith (E-131§IV).

26. With a denial of knowledge belied by the facts, an irrelevant opinion on non-liability, and a spurious allegation Att. Werner cannot do what the claim objection form in capital letters required him to do (E-101):

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR  
OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f)

27. Case law has interpreted this requirement thus:

The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity. *In re Babcock & Wilcox Co.*, 2002 U.S. Dist. LEXIS 15742, at 6 (E.D.La. 2002).

28. The objector's evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim. *In re Wells*, 51 B.R. 563 (D.Colo. 1985); *Matter of Unimet Corp.*, 74 B.R. 156 (Bankr. N.D. Ohio 1987). See also Collier on Bankruptcy, 15 ed. revd., vol. 9, ¶3001.09[2]. Denial of liability as an employee is not evidence or proof of anything.

**C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount**

29. Dr. Cordero stated a legally sufficient claim against Mr. DeLano in a complaint that satisfied the notice pleading requirements of the FRCivP. The claim also satisfied the Bankruptcy Code, for it requires only that notice essentially of the claim's existence and amount be given. In fact, the Proof of Claim Form B10 provides in 9. Supporting Documents "...If the documents are voluminous, attach a summary." That is precisely what Dr. Cordero did when he mailed his claim against Mr. DeLano on May 15 with three pages out of the 31 pages of the complaint, including the caption page, which was labeled (E-77):

Summary of document supporting Dr. Richard Cordero's proof of claim against the DeLanos in case 04-20280 in this court

30. That only notice of the claim must be given follows from the fact that even the debtor, the trustee, a codebtor, or a surety can file the claim if the creditor fails to do so timely. None of them have to give notice of how the claim arose and what its legal basis is. Even a contingent and disputed claim is a valid claim under 11 U.S.C. §101(5); (¶11, supra). Judge Ninfo had no justification to pierce, as it were, the presumption of validity of Dr. Cordero's claim against Mr. DeLano in the case on appeal here and drag the claim out and into the DeLano case so that, as Att. Werner put it (¶15), Dr. Cordero 'substantiate an obligation of Debtors' to him. By doing so the Judge showed again his bias against Dr. Cordero and toward the local parties (E-118§IV).

**D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing**

31. Section 502(b) of Title 11 provides that if a claim is objected to, the judge:

...shall determine the amount of such claim...and shall allow such claim in such amount...

32. The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim, whose proof "shall constitute prima facie evidence of the validity and amount of the claim". This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other

words, drowning in debt. It is his challenge that is suspect.

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim “because such claim is contingent or unmaturred”. It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim’s contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.
34. If the judge cannot determine the claim’s amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

(c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case...shall be estimated.
35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value “would unduly delay the administration of the case”. The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim’s value when liquidating the claim “would unduly delay the closing of the estate”.
36. But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss “for unreasonable delay” by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero’s claim because Judge Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*
37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) “to ensure that the case is handled expeditiously and economically” and under §1325(a)(3), to ascertain whether the DeLanos’ ‘plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law’. These are non-discretionary

obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public's interest in bankruptcies free of fraud, which trumps a debtor's private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition's good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos' petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero's request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909<sup>2</sup> *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)
39. Intent can be inferred from a person's conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

**III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thereby denying him access to judicial process and requiring this Court to step in**

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any

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<sup>2</sup> As reported by PACER at [https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L\\_916\\_0-1](https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1) on 4/2/04.

assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

41. Yet, Judge Ninfo knows that the DeLanos are all but certain to fail to produce documents to Dr. Cordero because they already failed to do so pursuant to the Judge's own order of July 26, a failure complained about by Dr. Cordero at the August 25 hearing without being contradicted by Att. Werner. Likewise, the DeLanos so much failed to produce documents at the requests (E-73,82) of Trustee Reiber that on June 15 he moved to dismiss. Moreover, the DeLanos already ignored Dr. Cordero's direct requests for documents of March 30 and May 23 (E-64¶80b, 83). Through denial of judicial assistance, the mission to conduct discovery on the claim against Mr. DeLano is made an impossible one: Judge Ninfo has set up Dr. Cordero to fail!

#### **IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero**

42. Contrary to Judge Ninfo's statements, the issues that Dr. Cordero pursues in the DeLano case are not "collateral and tangential" (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the \$291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero's property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bankruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).
43. If Judge Ninfo 'is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property' (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September 2002, is barely past the notice pleading stage

given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

...[to] address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward....

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!
45. By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

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...
46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero's property could also have been stolen or damaged.
47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.
48. While Judge Ninfo blames Dr. Cordero for 'not taking possession and securing his property' (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and protracting the resolution of the case enormously.
49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano...(E-151)
50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion

to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

51. By contrast, Judge Ninfo put stock on the fact that “DeLano, through his attorney, has adamantly denied: (1) any knowledge...and (2) any...liability if there has been any loss or damage” to Dr. Cordero’s property (E-150¶2). Did Dr. Cordero have to assert “adamantly” the evidence of such loss or damage for the Judge not to cast doubt on it with his formulation “if there in fact has been any loss or damage”?; id.

52. While Dr. Cordero’s are “collateral and tangential issues” (E-153), the Judge considers that:

whether the Debtors are honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to the Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of \$15,000.00...(E-153-154)

53. Is this the way an impartial arbiter talks before having the benefit of the discovery that he is ordering Dr. Cordero to begin to undertake and who has allowed the DeLanos to conceal information by disobeying his July 26 document production order? Why does Judge Ninfo deem it “much more important” to make 21 creditors bear the loss of 4/5 of the \$185,462 in liabilities of Mr. DeLano (E-3 Summary of Schedules) than to hold him, a bank loan officer for 15 years, to a higher standard of financial responsibility because of his superior knowledge? Why does Judge Ninfo deny Dr. Cordero the protection to which he is entitled under the Code? Indeed, §1325(b)(1) entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor’s repayment plan; and §1330(a) entitles any party in interest, even one who is not a creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

54. Moreover, Judge Ninfo has already prejudged a key issue in controversy:

...the Court determined that:...(2) the purpose of filing the Claim Objection was not to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (E-154-155)

55. How does Judge Ninfo know that the Debtors believe anything “honestly” since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case “for unreasonable delay” in producing

documents; 3) they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and 4) the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero's claim now?

56. Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.
57. Do Judge Ninfo's statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero's position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

#### **V. A mechanism for many bankruptcy cases to generate money, lots of it**

58. The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, the confirmation of a plan generates a stream of payments from which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of the statements made in the petition would only be compensated -if at all, for there is no specific provision therefor- to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)
59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another \$1,000 will generate a percentage fee for the trustee of \$100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an



unlawful fee of, let's say, \$300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves \$700. Even if the debtor has to pay \$600 to make available money to get other officers to go along with his plan, he still comes ahead \$400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than \$1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; 2) approved the DeLanos' petition without ever requesting a single supporting document; 3) chose to dismiss the case rather than subpoena the documents; and 4) has refused to trace the earnings of the DeLanos'.
61. There is something fundamentally suspicious when a bankruptcy judge 1) protects bankruptcy petitioners from having to account for \$291,470; 2) allows them to disobey his document production order with impunity; 3) prejudices in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

## VI. Relief requested

62. Therefore, Dr. Cordero respectfully requests that this Court:
- a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;
  - b) Refer the Premier, the Pfunter v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:
    - (1) Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and
    - (2) Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;
    - (3) David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;
  - c) Disqualify Judge Ninfo from the Premier, Pfunter, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an

impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

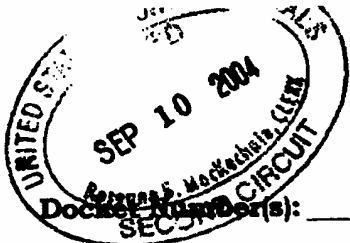
d) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on,  
September 9, 2004

*Dr. Richard Cordero*

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Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208  
tel. (718)827-9521



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
MOTION INFORMATION STATEMENT

ORIGINAL

Doc. No. (s): 03-5023

In re: Premier Van Lines

**Motion:** to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

**Statement of relief sought:**

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WBNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

**MOVING PARTY:** Dr. Richard Cordero  
Petitioner Pro Se  
59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521

**OPPOSING PARTY:** See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

See 1. above

**Is oral argument requested?** Yes

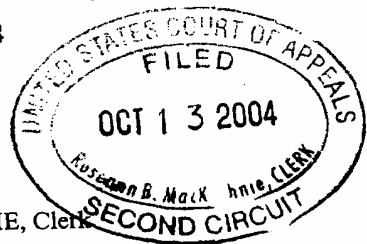
**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:**  
Dr. Richard Cordero

**Has service been effected?** Yes; proof is attached

**Date:** September 9, 2004

**ORDER**



Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges\**

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:  
ROSEANN B. MACKECHNIE, Clerk

by Arthur M. Heller  
Arthur M. Heller, Motions Staff Attorney

OCT 13 2004

\* Hon. John M. Walker, Jr., Chief Judge, has recused himself from further consideration of this case. In accordance with Local Rule 0.14(b), the instant motion has been decided by the two remaining panel members.

BLANK

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

KENNETH W. GORDON, AS TRUSTEE IN  
BANKRUPTCY FOR PREMIER VAN LINES, INC.,  
RICHARD CORDERO, ROCHESTER AMERICANS  
HOCKEY CLUB, INC. AND M&T BANK,

Defendants.

RICHARD CORDERO,

Third Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO AND JEFFERSON HENRIETTA  
ASSOCIATES,

Third Party Defendants

Chapter 7  
Case No: 01-20692

AP No.: 02-2230

**ORDER TO  
DISMISS CROSS-CLAIM  
AGAINST TRUSTEE IN  
AN ADVERSARY  
PROCEEDING**

TAKE NOTICE OF THE ENTRY  
OF THIS ORDER ON 12/30/02  
PAUL R. WARREN, CLERK  
U.S. BANKRUPTCY COURT

BY: [Signature]  
Deputy Clerk

DATE: 12/30/02

The Chapter 7 Trustee, Kenneth W. Gordon, having moved this Court by Notice of Motion dated December 5, 2002 for an Order dismissing cross-claims against the trustee and having submitted to the Court his affirmation dated December 5, 2002 in support of the motion and upon hearing the Chapter 7 Trustee, Kenneth W. Gordon, in support of the Trustee's Motion and Dr. Richard Cordero, having submitted his Affirmation with attached exhibits dated December 10, 2002 in opposition to the Trustee's motion and upon hearing Dr. Cordero in opposition to the motion and the Court having reviewed that all papers and proceedings had herein, and after due deliberation it is hereby

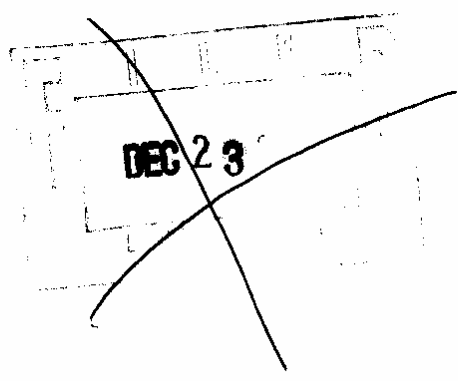
**ORDERED**, that the Trustee's Motion to Dismiss Cross-Claims Against the Trustee is granted and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed.

SO ORDERED THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 200\_\_.  
12/23/02



HONORABLE JOHN C. NINFO, II  
U.S. BANKRUPTCY JUDGE

DEC 23



DUCKETED

# UNITED STATES BANKRUPTCY COURT

## Western District of New York

In Re:

APPLICATION FOR ENTRY  
OF DEFAULT

PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

Debtor

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

Third-party Plaintiff,

v.

David Palmer  
1829 Middle Road  
Rush, New York 14543  
Raymond Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod & Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883,  
tel. (585) 248-3800

Third-party Defendant

1. On November 22, 2002, a copy of the summons and complaint was served on David Palmer, the above named Defendant, and the certificate of service of process was filed in this Court on the same date.
2. Defendant, David Palmer, has failed to plead or otherwise defend in this action, and the time to plead or otherwise defend expired on December 16, 2002.  
 Defendant has appeared in this action.  
 Defendant has not appeared in the Adversary proceeding No. 02-2230, and the time to appear has expired.
3. The Defendant is not an infant or incompetent person.
4. Debtor  is  is NOT the Defendant. If debtor is Defendant, a default judgment motion was properly brought and served in accordance with Rule 55 and Fed.R.Bankr.P. Rule 7055.
5. It is requested that the Clerk enter default of the Defendant pursuant to Bankruptcy Rule 7055 and Rule 55(a) of the F.R.C.P.
6. I, Dr. Richard Cordero, third-party plaintiff appearing pro se, declare under penalty of perjury that the foregoing is true and correct.

Executed: December 26, 2002 |

Dr. Richard Cordero

### CLERK'S CERTIFICATE OF DEFAULT

The default of the Defendant, David Palmer, is hereby entered according to law.

Dated: February 4, 2003

Paul R. Warren  
PAUL R. WARREN, Clerk of Court

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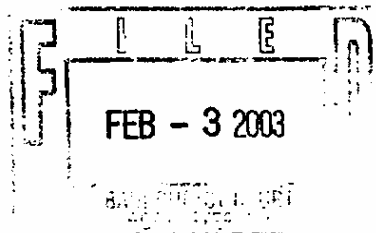
**Dr. Richard Cordero**

Ph.D., University of Cambridge, Eng 1  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-8521; CorderoRic@yahoo.com

January 30, 2003

Hon. Judge John C. Ninfo, II  
United States Bankruptcy Court  
1400 United States Courthouse  
100 State Street  
Rochester, NY 14614



Re: Premier Van Lines, bankruptcy case no. 01-20692; Adversary proceedings case no. 02-2230

Dear Judge Ninfo,

Over a month ago, on December 26, I filed all the forms necessary to take a default judgment against Mr. David Palmer. Upon finding out that no recommendation for the entry of such judgment has been forwarded to the District Court, I called the Bankruptcy Court. There I was informed that you consider the issue of damages premature until I go to Rochester to inspect my property.

I fail to see the connection between the default judgment and such visit. I filed for default judgment because Mr. Palmer did not care to respond to my complaint. Thus, his failure to comply with the legal requirement, stated in the summons, of answering the complaint under pain of being subjected to default judgment for the amount sued for gives rise to my right to such judgment. Why should the court protect the interest of a party such as Mr. Palmer who has shown so much contempt for the court and for legal requirements?

This is not even the first time that Mr. Palmer shows contempt. To begin with, he showed contempt for his clients, such as me, to whom he gave no notice that his company, Premier Van Lines, was in bankruptcy. He even concealed from me, during our telephone conversations, that his company was in liquidation. What is more, he affirmed that my property was safely in storage at the Jefferson Henrietta warehouse, just as he affirmed so to his own lawyer, who wrote that to me. But, as you know, my property was not even there. Yet, he had been billing me for its storage as well as for its insurance; I paid those bills from him; and he took the money. For a person that has shown no consideration for others or for the court for that matter, why should the court be concerned about sparing him the payment of default judgment? It is Mr. Palmer's turn to pay.

Indeed, there is evidence that Mr. Palmer would not even care to see default judgment entered against him. As I indicated in my December 26 letter to you: "I was told by M&T Bank and its attorneys at Underberg & Kessler, that M&T Bank -a co-defendant in this adversarial proceeding and lienholder of Mr. Palmer's company, the Debtor in the bankruptcy case- had obtained a judgment against Mr. Palmer that they could not enforce because unable to find him. This tallies with Mr. Stilwell's refusal to put me in direct contact with Mr. Palmer."

If Mr. Palmer can come up with a reason why default judgment should not be entered against him, he should take the trouble to go to District Court and argue his case himself. By contrast, I have made a lot of sacrifice to comply with all legal requirements, spending an enormous amount of time writing the pleadings and finding and completing all the default judgment forms. Of the two of us, I should be the beneficiary of the court's consideration. Therefore, I respectfully request that the court forward my application to the District Court; otherwise, that it state in writing why it rules against doing so.

Yours sincerely,

*Dr. Richard Cordero*

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**UNITED STATES BANKRUPTCY COURT**  
**Western District of New York**

In Re:

**ORDER TO TRANSMIT RECORD  
TO DISTRICT COURT**

\_\_\_\_\_  
PREMIER VAN LINES, INC

Bankruptcy Case No. 01-20692

\_\_\_\_\_  
Debtor

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Adversary Proceeding No. 02-2230

\_\_\_\_\_  
Third-party Plaintiff,

v.

David Palmer  
1829 Middle Road  
Rush, New York 14543  
Raymond Stilwell, Esq.  
Adair, Kaul, Murphy, Axelrod & Santoro, LLP  
300 Linden Oaks, Suite 220  
Rochester, NY 14625-2883,  
tel. (585) 248-3800

\_\_\_\_\_  
Third-party Defendant

**ORDER TO TRANSMIT RECORD IN NON-CORE PROCEEDING TO DISTRICT  
COURT, COMBINED WITH FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
RECOMMENDATION REGARDING PLAINTIFF'S REQUEST FOR ENTRY  
OF DEFAULT JUDGMENT**

The Clerk of Bankruptcy Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984)

**TO THE DISTRICT COURT:**

Having examined the record in this Adversary Proceeding and having found it to be a non-core proceeding, the Bankruptcy Court is without authority to enter a final or dispositive order or judgment. (See, §157(c), Title 28 United States Code). Plaintiff has requested entry of default judgment against David Palmer, the above named Defendant.

No hearing was necessary.

A hearing was necessary, which hearing was held on \_\_\_\_\_

at \_\_\_\_\_, on notice to \_\_\_\_\_

at which hearing there appeared \_\_\_\_\_

\_\_\_\_\_, who was heard.

FINDINGS

This Court now finds that the Third-party Complaint was filed by the Plaintiff on November 22, 2002, that an affidavit of service was filed on the same date attesting to service of the Summons and a copy of the Complaint; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of judgment by default, by application or affidavit filed in this Court on December 26, 2002, and that the Clerk certified and entered the Fact of Default on 2/4/2003.

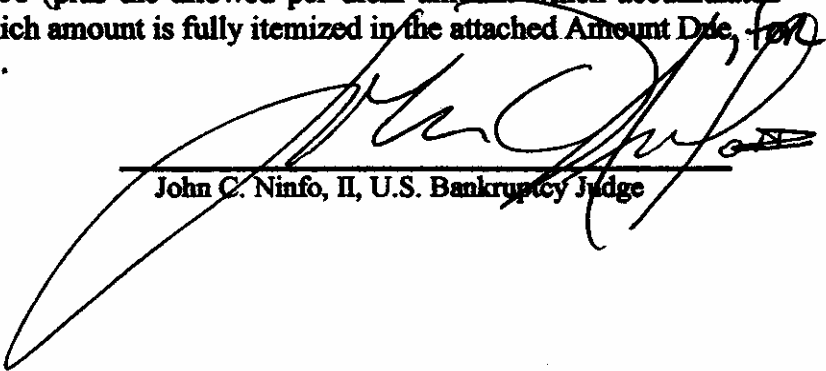
CONCLUSIONS

The Plaintiff is <sup>NOT</sup> entitled under applicable law to entry of judgment by default.

RECOMMENDATION

Wherefore, it is <sup>NOT</sup> recommended that the District Court award default judgment to the Plaintiff in the amount of \$24,032.08 (plus the allowed per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Amount Due, <sup>for</sup> The Attached REASONS.

Date: 2/4/03

  
\_\_\_\_\_  
John C. Ninfo, II, U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**  
IN RE:

---

**PREMIER VAN LINES, INC.,**

CASE NO. 01-20692

**Debtor.**

---

**RICHARD CORDERO,**

**Third-Party Plaintiff,**

**vs.**

A.P. NO. 02-2230

**DAVID PALMER,**

**Third-party Defendant.**

---

**ATTACHMENT TO RECOMMENDATION OF THE  
BANKRUPTCY COURT THE DEFAULT JUDGMENT  
NOT BE ENTERED BY THE DISTRICT COURT**

1. In 1993 the Third-party Plaintiff, Richard Cordero ("Cordero"), stored various items of personal property with a storage company (the "Cordero Property");
2. Premier Van Lines, Inc. ("Premier"), of which David Palmer was a principal, was a successor storage company of the Cordero Property;
3. In 2001, Premier filed a Chapter 11 case, which was subsequently converted to a Chapter 7 case;
4. On September 27, 2002, an Adversary Proceeding was commenced by James Pfunter to have the Court determine proper ownership and responsibilities for various storage containers previously stored by Premier, of which James Pfunter was the successor storage entity;
5. At least one of the storage containers now under the control of James Pfunter and located at the Sackett Road warehouse in Avon, New York, bears Cordero's name, and there is at least one other container that is not labeled (the "Avon Containers");
6. As part of the Adversary Proceeding, within the next month the Avon Containers will be opened in the presence of Cordero, at which point 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;

**ATTACHMENT TO RECOMMENDATION (con't)**

7. Cordero has not yet demonstrated that he has incurred the \$14,000.00 in damages requested in the Default Judgment;
8. In addition, Cordero has not yet demonstrated that moving, storage and insurance fees previously paid, are recoverable, especially since a portion of the moving, storage and insurance fees were paid prior to when Premier became responsible for the storage of the Cordero Property;
9. Therefore, since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Court's opinion, the entry of the Default Judgment would be premature;
10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers, but Cordero, pursuant to his attached January 30, 2003 letter, as a pro se litigant, has respectfully requested that the Court forward his Default Judgment Application to the District Court.

**DATED: February 4, 2003**



**HON. JOHN C. NINES, II  
CHIEF U.S. BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK  
IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

BANKRUPTCY FOR PREMIER VAN LINES, INC.,  
RICHARD CORDERO, ROCHESTER AMERICANS  
HOCKEY CLUB, INC. AND M&T BANK,

Defendants.

RICHARD CORDERO,

Third Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO AND JEFFERSON HENRIETTA  
ASSOCIATES,

Third Party Defendants

Chapter 7  
Case No: 04-20692

AP No.: 02-2230

**ORDER DENYING  
CORDERO'S MOTION  
TO EXTEND TIME TO  
FILE NOTICE OF APPEAL**

TAKE NOTICE OF THE ENTRY  
OF THIS ORDER ON 2/18/03  
PAUL R. WARREN, CLERK  
U.S. BANKRUPTCY COURT

BY: *Mark S. Tery*  
Deputy Clerk

DATE: 2/18/03

Richard Cordero, having moved this Court by Notice of Motion dated January 27, 2003 for an extension of time under Bankruptcy Rule 8002(c)(2) to file his Notice of Appeal of this Court's Order dismissing his cross-claims against the Trustee, and Richard Cordero having submitted in support thereof his affirmation dated January 27, 2003, and the Trustee having submitted in opposition to the motion a Memorandum of Law dated February 5, 2003, and this matter having come on before the Court on February 12, 2003, and Richard Cordero having appeared in support telephonically and Kenneth W. Gordon having appeared in opposition, and the Court having reviewed all of the papers and proceeding had herein the Court hereby:

**FINDINGS OF FACT AND CONCLUSION OF LAW**

1. Finds and determines that the last date to file the Notice of Appeal of the Order dismissing Cordero's crossclaims against the Trustee was January 9, 2003;
2. Finds and determines that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on January 13, 2003, and thereby was not timely filed;
3. Finds and determines that the Notice of Appeal was placed in the U.S. mail by Richard Cordero on January 9, 2003;
4. Finds and determines that the provisions of Bankruptcy Rules 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a);
5. Finds and determines that the last date for Richard Cordero to file a motion seeking an extension under Bankruptcy Rule 8002(c)(2) of his time to file his Notice of Appeal was January 29, 2003;
6. Finds and determines that the instant motion by Richard Cordero seeking an extension under Bankruptcy Rule 8002(c)(2) of his time to file his Notice of Appeal was not filed with the Bankruptcy Court Clerk until January 30, 2003 and was therefor not timely filed.

*jm*  
7. *A motion to dismiss the appeal is pending in the District Court*  
**IT IS HEREBY ORDERED**, based on the above findings of fact and conclusions of law, that

Richard Cordero's motion, seeking an extension under Bankruptcy Rule 8002(c)(2) of his time to file his Notice of Appeal of this Court's Order dismissing his cross-claims against the Trustee, is hereby denied.

Dated: February 18, 2003

**RECEIVED**

FEB 18 2003

**BANKRUPTCY COURT  
ROCHESTER, NY**

*[Signature]*  
Hon. John C. Ninfo, II  
Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK  
IN RE:

PREMIER VAN LINES, INC,

Debtor

JAMES PFUNTER,

Plaintiff,

vs.

KENNETH W. GORDON, AS TRUSTEE IN  
BANKRUPTCY FOR PREMIER VAN LINES, INC.,  
RICHARD CORDERO, ROCHESTER AMERICANS  
HOCKEY CLUB, INC. AND M&T BANK,

Defendants.

RICHARD CORDERO,

Third Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO AND JEFFERSON HENRIETTA  
ASSOCIATES,

Third Party Defendants

Chapter 7  
Case No: 01-20692

AP No.: 02-2230

**ORDER DENYING  
CORDERO'S MOTION  
FOR RELIEF FROM ORDER  
DENYING MOTION TO  
EXTEND TIME TO  
FILE NOTICE OF APPEAL**

TAKE NOTICE OF THE ENTRY  
OF THIS ORDER ON 4/7/03  
PAUL R. WARREN, CLERK  
U.S. BANKRUPTCY COURT  
BY: *Paul R. Warren*  
Deputy Clerk  
DATE: 4/7/03

Richard Cordero, having moved this Court by an Amended Notice of Motion dated March 6, 2003 for an Order pursuant to Federal Rules of Bankruptcy Procedure 9024 for relief from the Order entered on February 18, 2003, denying the motion for extension of time for filing a notice to appeal from the order of dismissal of his cross-claims against Kenneth W. Gordon, Trustee in the above-referenced adversary proceeding; and Richard Cordero having submitted in support thereof his affirmation dated February 26, 2003, and the Trustee having submitted in opposition to the motion a letter dated March 3, 2003 referring the Court to his Memorandum of Law dated February 5, 2003, and this matter having come on before the Court on March 26, 2003, and

Richard Cordero having appeared in support telephonically and Deborah K. Schaal having appeared in opposition on behalf of Kenneth W. Gordon; and the Court having reviewed all of the papers and proceeding had herein, the Court, in reliance upon its findings of fact and conclusion of law incorporated into its Order entered on February 18, 2003, and upon the further

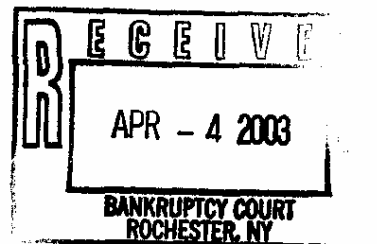
**FINDINGS OF FACT AND CONCLUSION OF LAW**

1. Finds and determines that the Trustee's apparent mistaken statement in his Memorandum of Law regarding the date that Richard Cordero's motion was filed is irrelevant under Rule 9006 ;
2. Finds and determines that the Order of District Court dated March 2, 2003 is the law of the case establishing that Richard Cordero's appeal was not timely filed.

**IT IS HEREBY ORDERED**, based on the above findings of fact and conclusions of law, that Richard Cordero's motion for relief from the Order dated February 18, 2003 denying his motion for extension of time for filing a notice to appeal is hereby denied.

Dated: April 4, 2003

  
HONORABLE JOHN C. NINFO, II  
U.S. BANKRUPTCY COURT JUDGE





UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,

Third-party Defendants.

---

**ORDER**

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner") commenced an adversary proceeding against Kenneth W. Gordon, Esq., as trustee ("Gordon"), Richard Cordero ("Cordero"), Rochester Americans Hockey Club, Inc. ("Rochester Hockey") and M&T Bank ("M&T") (the "Adversary Proceeding"); and

**WHEREAS**, the Adversary Proceeding sought to have the Court determine: (1) the rights of the various parties, if any, in property (the "Stored Property") which Premier Van Lines, Inc. (the "Debtor") had stored, pursuant to a lease (the "Lease") with Pfuntner at his property at 2140 Sacket Road, Avon, New York ("Sacket Road"); (2) that Pfuntner had no liability, or that he should otherwise be indemnified for any adverse claims to the Stored Property; (3) that the unpaid monthly rental due under the Lease, or reasonable storage charges for the Stored Property, be paid by the Debtor to Pfuntner as Chapter 11 and 7 administrative expenses; (4) that the Court vacate the automatic stay so as to permit Pfuntner to: (a) evict the Debtor and those claiming under the Debtor from Sacket Road in New York State Court; (b) remove the goods left at Sacket Road by the third parties; and (c) collect from those responsible such fair use and occupancy fees as may be determined by a New York State Court; and (5) various other requests for relief; and

**WHEREAS**, in this non-core proceeding, in November 2002, Cordero filed an Answer and Counterclaim, and Crossclaims against David Palmer ("Palmer"), the principal shareholder of the Debtor, Gordon, Pfuntner, David Dworkin ("Dworkin"), the owner or manager of the Jefferson-Henrietta Warehouse formerly utilized by the Debtor, and David Delano ("Delano"), an officer of M&T Bank, which held a security interest in the personal property assets of the Debtor; and

**WHEREAS**, on December 23, 2002, this Court granted Gordon's Motion to Dismiss Cordero's Crossclaims against him, which was appealed to and affirmed by the United States District Court for the Western District of New York (the "District Court"), and is now

on appeal to the United States Court of Appeals for the Second Circuit; and

**WHEREAS**, on February 4, 2003, for various reasons, including that Cordero had failed to provide satisfactory evidence that would demonstrate that he had incurred damages of \$14,000.00, the Bankruptcy Court recommended to the District Court in this non-core matter that the default judgment requested by Cordero not be entered against Palmer; and

**WHEREAS**, in March 2003, the District Court determined that it was not appropriate to enter a default judgment in favor of Cordero and against Palmer, and referred Cordero's request for a default judgment back to the Bankruptcy Court for a determination of damages; and

**WHEREAS**, a trip by Cordero to Sacket Road did not result in: (1) a satisfactory inspection of all of the property stored by the Debtor at Sacket Road, including the property of Cordero that was at one time stored with the Debtor; (2) the ability of Cordero to fully determine whether there was any damage to his stored property, and, if there was, whether any of the various entities that had stored his property for him over approximately the last ten years might be responsible for any such damage, and if so, which entities; (3) Cordero's ability to remove his stored property; and (4) this matter being satisfactorily resolved by all of the interested parties; and

**WHEREAS**, as a result of: (1) Pfuntner and his representatives having failed to take the necessary steps for Cordero to accomplish at least the first three of the items set forth in the preceding paragraph; and (2) the Court advising Cordero that it would

entertain a motion for reasonable reimbursement in connection with his trip to Sacket Road, in June 2003, Cordero filed a motion for sanctions and compensation to be paid by Pfuntner and his attorney (the "Sanction Motion"); and

**WHEREAS**, the Sanction Motion included: (1) a request for compensation for Cordero at the rate of \$250.00 per hour for the hours he spent on various matters involved in the Adversary Proceeding, including preparing and researching the Sanction Motion; and (2) the reimbursement of undocumented travel expenses, for a total request of \$36,075.00; and

**WHEREAS**, in connection with the Sanction Motion, Cordero's only justification for requesting compensation for his time at \$250.00 per hour is that Pfuntner advised him that this was the amount he paid his attorney, however, there is no proof of that in the record, and there is no other justification in the record for compensating a *pro se* litigant at that rate, so that the compensation issue and the undocumented expenses will be the subject of inquiry at the upcoming hearings; and

**WHEREAS**, the Court, in recently reviewing Cordero's renewed motion for a default judgment against Palmer, has focused on the Affidavit of Service of the Crossclaim, which does not indicate that Palmer was properly personally served by mail in accordance with the Federal Rules of Civil Procedure, so that this service issue will be the subject of inquiry at the upcoming hearings; and

**WHEREAS**, although the Court has allowed Cordero to appear by telephone in connection with a number of pretrial proceedings and motions in this Adversary Proceeding, in the Court's opinion few of

those telephone appearances have resulted in an accurate and comprehensive record; and


**WHEREAS**, the Court believes that setting this Adversary Proceeding down for discrete hearing dates in October and November, when the Court will not have any other matters before it and Cordero can appear in person, will: (1) afford the interested parties a sufficient amount of time to meet and negotiate to determine whether this matter, which should be able to be settled, can be settled without the need for further hearings and proceedings; (2) complete any discovery which they believe may be required; (3) afford Cordero, who has represented himself *pro se* in this Adversary Proceeding, the opportunity to consult with an attorney: (a) to discuss substantive legal, factual and other relevant matters involved in the Adversary Proceeding; and (b) to advise him how to properly prepare and present evidence at the upcoming hearings should Cordero continue to elect not to be represented by counsel; (4) afford the parties sufficient time to finally complete an inspection of the Stored Property at Sacket Road, and attempt to assess: (a) the ownership of the Property; (b) any damages to the Property; and (c) whether any parties to the Adversary Proceeding are responsible for any such damage; and (5) afford the Court the opportunity to focus more fully on this non-core Adversary Proceeding so that at the discreet hearings it can make the necessary findings, conclusions and rulings, based upon a full and complete record, that will finalize the matter; and, therefore,

For the above reasons, and in order to: (1) ensure that there is a full and complete record created in this Adversary Proceeding; and (2) ensure that the Court can effectively manage the numerous issues that have been raised and assist the parties in concluding

the matter, this matter, and all related hearings, motions and proceedings, are set down for a discrete hearing at 9:30 a.m. in the Rochester Courtroom on October 16, 2003, at which time the Court will address the matters chronologically as they have appeared in connection with this Adversary Proceeding, beginning with Pfuntner's Complaint and proceeding forward, and if necessary, continue the hearing at any available times on October 17, 2003, a Chapter 13 day for the Court, and if necessary for further hearings on November 14, 2003 at 9:30 a.m. in the Rochester Courtroom.

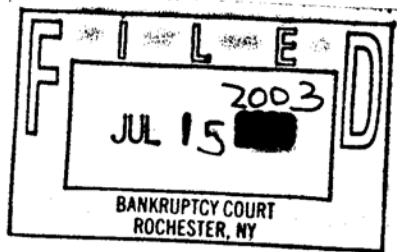
SO ORDERED.

DATED: July 15, 2003



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



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,

Third-party Defendants.

---

**ORDER DISPOSING OF CAUSES OF  
ACTION**

WHEREAS, on September 27, 2002, James Pfuntner ("Pfuntner"), as plaintiff, filed an Interpleader Complaint to determine certain rights in property and for other relief, a copy of which is attached, (the "Complaint"); and

**Order Disposing of Causes of Action (con't)**

**WHEREAS**, on October 16, 2003, after the Court overruled the objection of Richard Cordero ("Cordero"), a defendant and third-party plaintiff, to the holding of any hearings on the claims set forth in the Complaint; and

**WHEREAS**, after having heard Cordero, David D. MacKnight, Esq., on behalf of James Pfuntner, Karl S. Essler, Esq., on behalf of David Dworkin and Jefferson Henrietta Associates, and Michael J. Beyma, Esq., on behalf of M&T Bank and David Delano, and after due deliberation, it is hereby

**ORDERED**, that:

1. In connection with the claims set forth in Paragraph 31 of the Complaint, the Court determines that the property set forth at Paragraph 8 (the "Property") of the Complaint, which is or has been stored by Premier Van Lines, Inc. (the "Debtor") at 2140 Sacket Road, Avon, New York ("Sacket Road"), is owned by the Debtor, except for the contents of any property stored for customers in the storage boxes or containers, including two (2) containers which are identified with Cordero's name, because:

A. the Chapter 7 Trustee, Kenneth W. Gordon (the "Trustee"), pursuant to a September 26, 2002 Notice, abandoned any interest in the Property, as confirmed by his October 9, 2002 Answer to the Complaint; and

B. M&T Bank ("M&T"), which had a perfected security interest in the Property, in its Answer to the Adversary Proceeding filed on November 6, 2002, released and abandoned any security

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**Order Disposing of Causes of Action (con't)**

interest it had in the Property and indicated that it claimed no interest in the Property;

2. The Court determined that any property contained within the two storage containers marked with the name of the defendant and third-party plaintiff, Cordero, is owned by Cordero;

3. In connection with the fair use and occupancy claims set forth in Paragraphs 32 and 35 of the Complaint, Pfuntner has waived any right to fair use and occupancy charges from the Debtor, Cordero or any other defendant in connection with the Property;

4. In connection with the claims set forth in Paragraphs 33 and 34 of the Complaint, Pfuntner has waived any right to an allowance of an administrative claim for unpaid storage charges due from the Debtor, either in the Chapter 11 or Chapter 7 case;

5. In connection with the remaining claim set forth in Paragraph 35 of the Complaint, the Court finds that there is no stay under Section 362, or any stay is hereby terminated with regard to eviction actions against:

A. the Debtor, because the Trustee abandoned the estate's interest in all of the Property and Pfuntner has otherwise met his burden under Section 362(d) to show that there is cause for any stay under Section 362 to be terminated, however, the Court finds that there is no stay; and

B. Cordero, since there is no stay under Section 362 or otherwise in the bankruptcy case which would prevent the eviction of Cordero and/or his stored property located at Sacket Road in a proper State Court proceeding;

6. In connection with the claim set forth in Paragraph 36 of the Complaint, Pfuntner has confirmed that the Trustee has abandoned the estate's interest in any of the Property;

7. In connection with the claim set forth at Paragraph 37 of the Complaint, Pfuntner has confirmed that in his opinion the

Order Disposing of Causes of Action (con't)

Trustee has made every reasonable effort to identify the owners of any property stored by the Debtor at Sacket Road;

8. In connection with the claim set forth at Paragraph 38 of the Complaint, with respect to whether Pfuntner has any lien on any of the Property or its contents stored by customers, including Cordero, Pfuntner has withdrawn that claim;

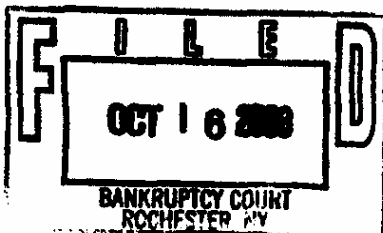
9. In connection with the claim set forth at Paragraph 39 of the Complaint, Pfuntner has withdrawn any claim with respect to the stored vehicle;

10. In connection with the claim set forth at Paragraph 32 of the Complaint, that the Court determine and decree that Pfuntner is discharged from any and all liability to Cordero, that claim shall be tried in connection with the trial of Cordero's counterclaims, cross-claims, third-party claims and related motions and proceedings in this Adversary Proceeding, however, in the interest of judicial economy, nothing in this Order shall prevent the State Court from hearing this claim and, if appropriate, granting this requested relief to Pfuntner in connection with the aforesaid eviction proceedings;

11. In connection with the claim set forth at Paragraph 32 of the Complaint for Pfuntner to recover reasonable attorney's fees and other expenses, that claim shall be tried in connection with the trial of Cordero's counterclaims, cross-claims, third-party claims and related motions and proceedings in this Adversary Proceeding.

SO ORDERED.

DATED: October 16, 2003



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

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

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RICHARD CORDERO,

Third-Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,

Third-party Defendants.

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**ORDER DENYING RECUSAL AND REMOVAL**  
**MOTIONS and OBJECTION OF RICHARD CORDERO**  
**TO PROCEEDING WITH ANY HEARINGS AND A**  
**TRIAL ON OCTOBER 16, 2003**

WHEREAS, on August 11, 2003, Richard Cordero ("Cordero") filed a Notice of Motion and a Motion for the Honorable John C. Ninfo, II to recuse himself from this Adversary Proceeding pursuant to 28

Order denying Recusal and Removal Motions (con't)

U.S.C. § 455(a) (the "Recusal Motion") and to remove this Adversary Proceeding to the District Court for the Northern District of New York pursuant to 28 U.S.C. § 1412 (the "Removal Motion"); and

**WHEREAS**, the Recusal and Removal Motions having been heard by the Court on October 16, 2003; and

**WHEREAS**, Cordero also objected at the hearing (the "Objection") to the Court proceeding with any hearings or a trial as directed by its July 15, 2003 Order, a copy of which is attached;

**WHEREAS**, after hearing Cordero, David D. MacKnight, Esq., on behalf of James Pfuntner, Karl S. Essler, Esq., on behalf of David Dworkin and Jefferson Henrietta Associates, and Michael J. Beyma, Esq., on behalf of M&T Bank and David Delano, and after due deliberation, it is hereby

**ORDERED**, that the Recusal and Removal Motions are both in all respects denied and the Objection is in all respects overruled for the reasons placed on the record by the Court at the October 16, 2003 hearing, which are as set forth on the attached written decision but as they may have been slightly modified when read into the record.

**SO ORDERED.**

**DATED: October 16, 2003**

  
HON. JOHN C. NINFO, II

**CORDERO ORAL DECISION**

**OCTOBER 16, 2003**

The motions of Dr. Richard Cordero pursuant to 28 U.S.C. § 455(a) for me to recuse myself from this Adversary Proceeding and pursuant to 28 U.S.C. § 1412 to remove the Adversary Proceeding to the District Court for the Northern District of New York are both denied for the following reasons:

1. With regard to the recusal motion, I do not believe that any reasonable person, fully familiar with the facts and circumstances of this Adversary Proceeding, and the related pleadings, proceedings and correspondences, including any statements and decisions made by me, would or could question my impartiality or believe that I was biased against or prejudiced towards Dr. Cordero. Although Dr. Cordero may believe that I am biased against him, based upon various decisions and statements I have made in connection with this Adversary Proceeding, whether orally or in writing, I do not believe that a reasonable person would conclude that any of them demonstrate any actual bias, prejudice or impartiality, or even the appearance of such.

2. With regard to the dismissal of Dr. Cordero's counterclaims against the Chapter 7 Trustee of Premier Van Lines, Kenneth W. Gordon:

A. I properly referred Dr. Cordero's written complaint concerning Trustee Gordon's administration of the Debtor's estate to the Office of the United States Trustee which, I informed Dr. Cordero, has been charged by Congress with the administration of the bankruptcy system and specifically the oversight of panel trustees. It is the Court's role only to decide controversies in connection with the administration of an estate, not to oversee its administration. As I have stated, Congress has given that responsibility to the Office of the United States Trustee.

B. In a report made back to the Court by Kathleen Schmitt of the Office of the U.S. Trustee, she indicated after reviewing the matter that there was no improper administration of

the Debtor's estate. As I have acknowledged to Dr. Cordero in the past, a different Chapter 7 trustee may have voluntarily gone more out of his way and been more proactive than Mr. Gordon was in attempting to locate and assist Dr. Cordero in getting his stored property back, if Dr. Cordero had fully cooperated with him. However, Mr. Gordon's failure to be so voluntarily proactive does not constitute improper administration, as confirmed by the Office of the U.S. Trustee. In deciding the Motion to Dismiss Dr. Cordero's Counterclaim against Mr. Gordon, my review of the pleadings presented and the opinion of Ms. Schmitt resulted in my granting the Motion to Dismiss to the extent that it alleged improper administration.

C. Furthermore, after reading the correspondence in question, and considering all of the facts and circumstances presented, I did not find that anything contained in Mr. Gordon's correspondence to Dr. Cordero was defamatory as a matter of fact or law, and I granted the Motion to Dismiss to that it alleged defamatory statements.

D. Dr. Cordero failed to file a timely Notice of Appeal of the Court's decision to grant Mr. Gordon's Motion to Dismiss Dr. Cordero's Counterclaims, and also failed to timely file a Motion to Extend the Time to File an Appeal of that decision. Those are simple and undisputable facts as confirmed by the Court's docket and an examination of the receipts by the Clerk's Office of the relevant pleadings.

E. It is irrelevant that Mr. Gordon incorrectly assumed that any of Dr. Cordero's pleadings in connection with the Appeal were timely filed based upon when he received a copy or when they were dated. Trustee Gordon later admitted that he never actually checked the Court's records to determine when any of the relevant pleadings were filed, but simply assumed that one or more was timely filed. His incorrect assertion with regard to the those pleadings could not cure the fact that they were not timely filed.

F. This Court's denial of Dr. Cordero's Motion to Extend the Time to File a Notice of Appeal of the decision to dismiss his counterclaims against Mr. Gordon has been affirmed by the District Court and is now on appeal to the United States Court of Appeals for the Second Circuit.

G. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

3. With respect to my recommendation to the District Court that a Default Judgement not be entered against David Palmer, a third-party defendant in one of Dr. Cordero's counterclaims in the Adversary Proceeding, and my subsequent concern regarding improper service:

A. Dr. Cordero's counterclaim against David Palmer is a non-core proceeding, so that I can only make recommendations for any disposition to the District Court.

B. Dr. Cordero at Paragraph 3 of his Recusal Motion admits that he never served David Palmer, but only served "David Stilwell, Esq." (the attorney's name is actually Raymond Stilwell), who he alleges was Palmer's attorney of record. To this Court's knowledge, Mr. Stilwell never agreed to accept service for Mr. Palmer in this Adversary Proceeding, and he never made a general appearance for Mr. Palmer. Mr. Stilwell represented the corporate debtor in the Chapter 11 and 7 cases, not Mr. Palmer. It would have been a conflict of interest for him to have represented both. He may have been the attorney of record for the corporate debtor but he was not the attorney of record for Mr. Palmer. (See Attorney Stilwell's February 11, 2003 letter)

C. In the initial stages of this Adversary Proceeding, I believed that once there was a full and complete inspection of the property stored at Mr. Pfuntnier's Avon warehouse that most, if not all, of the issues in controversy would be resolved, or could easily be decided at trial,

and that the inspection would demonstrate whether there was any damage or loss to Dr. Cordero's stored property.

D. When Dr. Cordero prior to the inspection of the Avon warehouse stored property applied for a Default Judgment against Palmer, the Court suggested that he wait until the inspection to determine if in fact there was any loss or damage to his property that either Premier Van Lines or Mr. Palmer, individually, might be responsible for.

E. When Dr. Cordero refused to wait to complete the inspection, and insisted that his Default Judgment request be processed, I recommended to the District Court that the Default Judgment not be entered because Dr. Cordero had not demonstrated that there was any actual damage or loss to his stored property that either Premier Van Lines or David Palmer, individually, was responsible for.

F. District Judge David Larimer agreed with my recommendation.

G. It seems that Dr. Cordero does not understand that just because a party may default, the Court is not required to enter relief against that defaulting party if the plaintiff or moving party has not demonstrated a fundamental right to relief.

H. After the failed inspection of the stored property at the Avon warehouse, when it appeared that this Adversary Proceeding and all related matters would most likely have to be fully litigated, since none of the parties were negotiating or moving towards a settlement, I encouraged Dr. Cordero to refile his Motion for a Default Judgment against David Palmer. This was not as an indication that I would grant the Motion, since the failed inspection of the stored property did not result in the development of sufficient facts, circumstances and evidence to demonstrate a fundamental right to a default judgment, since there was no evidence that David Palmer was individually responsible for any loss or damage, or that there was any real loss or damage, but was an attempt by me to move matters towards decision, or in the case of a the default judgment motion,



a recommendation to the District Court. I felt that in connection with any renewed motion for a default judgment perhaps Dr. Cordero would now first take the steps necessary to determine whether his stored property was lost, stolen or damaged.

I. In connection with Dr. Cordero's renewed Motion for Default Judgment, when it became doubtful that any of the issues in this Adversary Proceeding involving Dr. Cordero were going to be settled, the Court focused on all aspects of the request for a default judgment, and specifically on the issue of proper service. At the return date of the renewed motion, I advised Dr. Cordero that since we were going to have to have a hearing on damages, as directed by Judge Larimer, we would also address the matter of adequate service for purposes of any recommendation to the District Court.

J. Although Dr. Cordero continues to be under the impression that he is able to obtain a default judgment against a party for whatever amount he requests, since what he requests is a sum certain, even without demonstrating a fundamental right to relief, and that he has somehow been ambushed by the issue of service, it is Dr. Cordero who continues to be determined, notwithstanding my recommendation to him that he seek legal counsel, to represent himself in these proceedings, which has resulted in his interpreting many of the above facts, circumstances, decisions and statements as he has.

K. Although some courts would find that improper service, and a resulting lack of jurisdiction, are matters for a motion to dismiss in connection with the enforcement of a default judgment, I believe that I must raise the service issue in connection with any further recommendation I make to the District Court on this non-core issue.

L. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced

towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

4. With regard to the failed inspection at the Avon warehouse:

A. As previously stated, I was of the opinion that once there was a full and complete inspection of the property stored at the Avon warehouse that the parties could easily resolve most, if not all, of the issues in controversy, and that the Court could then conduct whatever hearings would be necessary to decide any remaining issues or make its recommendation to the District Court on non-core matters.

B. It was never my intention to become involved in the actual inspection, but only to attempt to facilitate an inspection, since it did not appear that the parties were fully cooperating with each other, nor were they attempting to negotiate a resolution of the issues presented.

C. Admittedly and unfortunately, many of the concerns that Dr. Cordero had expressed prior to traveling to Rochester to make the inspection came true because of what appeared to be a lack of attention paid to the details of the inspection by Mr. Pfuntner and/or his attorney, Mr. MacKnight. It was for that reason that I indicated to Dr. Cordero that he should bring a sanction motion to allow the Court, after it heard all of the facts and circumstances of why the inspection process broke down, to consider whether Pfuntner should be required to compensate Dr. Cordero to some degree for the costs and expenses he incurred in connection with the failed inspection.

D. Dr. Cordero's Motion for Sanctions asking for in excess of \$30,000.00 was inappropriate in that it did not even provide details and receipts as to any actual out-of-pocket expenses, and it requested compensation at \$250.00 an hour for his time in preparing the motion, without any showing that the time spent was reasonable or necessary. Had Dr. Cordero retained an

attorney, he would have known that a 100 page plus motion was not reasonable or necessary, especially if he expected to be compensated for it.

E. As inappropriate as the request was, I did not deny it outright, but indicated that the matter would be set down for a hearing at which the Court would hear evidence with respect to:

i. Mr. Pfuntner's and Mr. MacKnight's reasons for not taking the necessary steps to insure that the inspection could and would be fully completed; and

ii. Any actual out-of-pocket expenses and other damages that Dr. Cordero may have suffered in connection with the failed inspection.

F. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

5. With regard to the scheduling of discrete hearing dates for the trial of this Adversary Proceeding and any and all related motions and other proceedings:

A. In the wake of the failed inspection of the stored property at the Avon warehouse, when it became more and more clear that the parties were not working towards a resolution of any of the issues in this Adversary Proceeding, nor even cooperating with each other, I determined that it was time to start to have evidentiary hearings and to decide causes of action, motions and related issues, issue by issue, in concentrated blocks of time, so that decisions and recommendations could be made as efficiently as possible. Therefore, I:

i. Set the matters down for discrete hearings, which for Dr. Cordero's information are not secret hearings, but separate hearings where there are no other matters on the Court's docket so that the Court can give its full attention to the matters.

ii. Set the initial hearings and trials down for October and November, in order to afford the parties an opportunity to complete any required discovery, attempt one last time to settle any of the issues presented, and to afford Dr. Cordero time to consult with an attorney and obtain legal representation, if he chose to (Dr. Cordero has chosen not be represented by counsel, notwithstanding the Court's recommendation.)

iii. Indicated to Dr. Cordero that I would not allow him to appear telephonically. Although the Court often allows attorneys and litigants to appear telephonically, it is usually in connection with fairly routine motions and arguments or as follow-ups where the attorney or party resides out-of-town but has previously appeared in connection with the matter, or where there is also local counsel for the party that the attorney appearing telephonically represents. It has been my experience that all of Dr. Cordero's motions are relatively complex because of the extent of his arguments, and that it is difficult for me and the court reporter to hear Dr. Cordero telephonically, because he does have an accent and he tends not to listen to and talks over the Court. I believe that anyone who had been in Court and listened to Dr. Cordero appearing by telephone would agree that it was ineffective, and could fully understand why his presence for any further hearings would be required.

B. Because practice in Bankruptcy Court in Rochester has, like in most bankruptcy courts have, become regional, we generally start our hearings and trials at 9:30 a.m., rather than at an earlier time as many courts do. By starting at 9:30 a.m., attorneys from the Southern Tier, Buffalo and Syracuse can easily travel to Court that morning, and even attorneys from other cities such as New York, Boston and Washington can get early flights from those cities and be in Court by 9:30.

C. In my opinion, none of the above facts, circumstances, decisions, events or statements would result in a reasonable person concluding that I was biased against or prejudiced

towards Dr. Cordero, or would be other than impartial in hearing and addressing further issues in this Adversary Proceeding.

D. With respect to Dr. Cordero's allegations that I advised him that he had provide proof beyond a reasonable doubt to meet his burden on any of his motions or counterclaims, that is simply untrue. I advised him that he needed to present evidence to meet his burden of proof and in explaining that concept used criminal cases as an example of burden of proof since from television and the newspapers most individuals are familiar with criminal trials and a prosecutor's burden. Again, Dr. Cordero has elected not to be represented by counsel which has resulted in more than one of his misunderstandings. His misunderstandings do not result in bias, prejudice or impartiality or the appearance of such.

6. With regard to Dr. Cordero's allegations that any of the acts of any of the clerks of the Bankruptcy or District Court in the Western District of New York, Rochester Division, or Judge Larimer or myself or the Court's contract reporter, indicate a pattern of non-coincidental, intentional and coordinated acts from which a reasonable person can infer that they are biased against and prejudiced towards Dr. Cordero, I disagree wholeheartedly. I believe, as I have stated above, that any reasonable person fully familiar with all of the facts, circumstances, events, proceedings, statements, correspondence and decisions made by the clerks and judicial officers of this district in connection with this Adversary Proceeding do not indicate any bias, prejudice or impartiality towards Dr. Cordero, but indicate that all of such clerks and judicial officers and reporters have proceeded properly and in a reasonable manner.

7. With respect to the Motion for Removal to the District Court for the Northern District of New York, such removal would not be in the best interests of or serve the convenience of the parties, would not serve the interest of judicial economy, or otherwise be in the interests of justice. What would be in the best interests of the parties is for this Court to begin its hearings and trials of

the various issues presented in this Adversary Proceeding so that it can decide the core issues and make any necessary recommendations for the determination of the non-core issues by the District Court, which is what we will begin to do after a short recess, at least as to the Plaintiff's claims in the Adversary Proceeding. In connection with these hearings and trial, I am overruling Dr. Cordero's objections to the hearings and trial, except we will discuss his demand for a jury trial in connection with his counterclaims and cross-claims after we try the Plaintiff's claim. I have explained the concept of discrete hearings; the Court's July 15, 2003 Order scheduled the hearings and trial for October so that Dr. Cordero could do any discovery he felt was necessary and appropriate; I have explained that Dr. Cordero would not have a burden of proof of beyond a reasonable doubt in connection with any of his counterclaims; and there is no basis to not have the Court's contract reporter perform her duties in connection with today's hearings and trial.

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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IN RE:

PREMIER VAN LINES, INC.,

Debtor.

CASE NO. 01-20692

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JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

DECISION & ORDER  
FINDING A WAIVER  
OF A TRIAL BY JURY

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RICHARD CORDERO,

Third-Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,

Third-party Defendants.

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**BACKGROUND**

On October 16, 2003, the Court began the trial and related hearings in this Adversary Proceeding, as set forth in its July 15, 2003 Order, supplemented by an August 14, 2003 letter (the "October 16 Hearings").

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At the October 16 Hearings, Richard Cordero ("Cordero") asserted that he had a right to a trial by jury of the non-core claims: (1) of the Plaintiff, James Pfuntner ("Pfuntner"), against him; and (2) he had set forth in his cross-claims, counterclaims and third-party claims against Pfuntner, David Palmer ("Palmer"), David Dworkin ("Dworkin"), David Delano ("Delano") and Jefferson Henrietta Associates ("Associates") (collectively, the "Cordero Claims").

During the October 16 Hearing, I advised the parties, including Cordero, that I believed that Cordero may have waived any such right to a trial by jury, because he had failed to comply with the provisions of Rule 38(b) of the Federal Rules of Civil Procedure ("Rule 38"), as made applicable by Rule 9015 of the Rules of Bankruptcy Procedure. I further advised the parties that they should be prepared to argue Cordero's right to a trial by jury and possible waiver after a lunch recess.

At oral argument, Cordero: (1) acknowledged that he had not included a demand for a trial by jury in his November 6, 2002 Answer to Pfuntner's Complaint; (2) acknowledged that he had not included a demand for a trial by jury in his November 18, 2002 third-party complaint and cross-claim or in his November 25, 2002 Amended Answer with Cross-Claim; (3) acknowledged that no other party to the Adversary Proceeding had filed or served a written demand for or consented to a trial by jury of any issue in the Adversary Proceeding; (4) acknowledged that his first written request for a trial by jury was contained in his September 12, 2003 Mandamus Petition to the United States Court of Appeals for the Second Circuit (the "Second Circuit"), which he had renewed in an October 15, 2003 Addendum to his Motion for a Default Judgment



against Palmer filed with this Court; (5) acknowledged that the last responsive pleading filed in connection with the Cordero Claims was the answer of Dworkin filed with the Court on December 30, 2002, but then asserted that, within the meaning and intent of Rule 38(b)(1), since Palmer had defaulted and not answered, and even though Cordero had filed two separate motions for the entry of a default judgment against Palmer, Palmer might at sometime in the future serve an answer, so that the time-frame set forth in Rule 38(b), ten (10) days after the service of the last pleading directed to such issue, had not yet run; (6) asserted that the same ten (10) day time-frame had not yet run because the Bankruptcy Court might require the filing of further pleadings in connection with the Cordero Claims or Pfuntner's remaining claims against him; (7) asserted that, as set forth in Rule 38(a), his right to a trial by jury was inviolate, and, notwithstanding the specific provisions of Rule 38(b) and Rule 38(d), it could not be deemed to be waived; (8) asserted that he had not demanded a trial by jury of any relevant issues prior to September 2003 because it wasn't until that time that he was certain that U.S. Bankruptcy Judge John C. Ninfo, II was biased against him, prejudiced toward him, and unable to be impartial in deciding or making recommendations to the District Court in connection with the issues involving Cordero in the Adversary Proceeding, so he then realized that he needed a trial by jury to insure an impartial result; (9) asserted that the Court should find that his failure to comply with the provisions of Rule 38(b) was harmless error, within the meaning and intent of Rule 9005 of the Rules of Bankruptcy Procedure; and (10) asserted that because his failure to comply with the provisions of Rule 38(b) was the result of excusable neglect, in accordance with Rule

9006 of the Rules of Bankruptcy Procedure, the Court should enlarge the ten (10) day period provided for by Rule 38(b) and allow his demand for a trial by jury to be effective.

At oral argument: (1) the attorney for Delano asserted that there was no excusable neglect that would warrant the Court exercising its discretion to extend the time for Cordero to make a written demand for a trial by jury, and that because Cordero had not removed his stored property from Pfuntner's Avon warehouse in fourteen months, he was not acting in good faith in connection with the Adversary Proceeding; and (2) the attorney for Dworkin and Associates asserted that: (a) Dworkin's December 30, 2002 Answer was the pleading from which the ten (10) day period provided for in Rule 38(b) must be measured, especially in view of the fact that Cordero had consistently asserted that Palmer was in default and could not timely interpose an Answer; and (b) the excusable neglect standard under Rule 9006 was never intended to be applicable to a failure to make a timely demand for a trial by jury, and, in fact, there had been no excusable neglect because Cordero, by his own admission, never intended to demand a trial by jury before the expiration of the time-frame provided for by Rule 38(b).

#### DISCUSSION

I find that Cordero has waived his right to a trial by jury of any issue in connection with the Cordero Claims and in connection with any remaining claims that Pfuntner may have against Cordero, and, further, I otherwise decline to exercise my discretion under Rule 39(b) of the Federal Rules of Civil Procedure ("Rule 39") to

order a trial by jury of any such issues, for the following reasons:

1. as set forth in an Order Disposing of Causes of Action, dated October 16, 2003 and entered on October 17, 2003, a copy of which is attached, the only remaining claims of Pfuntner in the Adversary Proceeding (the "Remaining Pfuntner Claims") are the non-core claims set forth in Paragraph 32 of his Complaint, that:

A. the Court determine and decree that Pfuntner is discharged from any and all liability to Cordero; and

B. Pfuntner, in his Interpleader action, recover reasonable attorney's fees and other expenses from the defendants, including Cordero;

2. in accordance with an October 16, 2003 Order Denying Recusal and Removal Motions and Objection of Cordero to proceeding with a trial and any hearings, a copy of which is attached, the Court has:

A. denied Cordero's Recusal Motion;

B. denied Cordero's Removal Motion, that requested that the Adversary Proceeding be removed to the United States District Court for the Northern District of New York; and

C. overruled his various objections to proceeding with a trial and hearings in this Court;

3. Cordero did not include a request for a trial by jury in any of the Cordero Claims when they were filed and served;

4. the Answer Dworkin filed and served on December 30, 2002 was the last pleading addressed to either Pfuntner's Complaint or the Cordero Claims, and, under Rule 38(b), January 9, 2003, ten (10) days after the service of that Answer, was the last date that Cordero could serve a written demand on the parties for a trial by

jury of any of the issues in the Adversary Proceeding, including those set forth in the Cordero Claims;

5. Cordero did not serve any of the parties or the Court with a written demand for a trial by jury on or before January 9, 2003, so that pursuant to Rule 38(d), he has waived a trial by jury of all issues in the Adversary Proceeding, including those set forth in the Cordero Claims;

6. The right to a trial by jury in civil cases is limited by the requirements and provisions of Rules 38(b) and 38(d);

7. Cordero's failure to comply with the requirements of Rule 38(b) is not a harmless error as contemplated under Rule 9005, and that failure, whether he terms it as an omission or otherwise, does affect the substantial rights of the parties;

8. Cordero's failure to comply with the requirements of Rule 38(b) was not the result of excusable neglect, within the meaning and intent of Rule 9006(b)(2), or any cases that have decided issues of excusable neglect, including *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al.*, 507 U.S. 380 (1993) ("Pioneer"), because:

A. by his own admission, Cordero never intended to demand a trial by jury within the time-frame established by Rule 38(b), he simply changed his mind at a later date when he decided that he then wanted a trial by jury;

B. Because Cordero never intended to request a trial by jury within the time-frame established by Rule 38(b), there was no neglect, since there was no failure through carelessness or because of inadvertence, mistake or miscalculation as required by Rule 9006(b) and *Pioneer*; and

C. there is otherwise no basis for me to exercise my discretion in connection with Rule 9006(b) where:

i. the other parties do not wish a trial by jury;  
ii. Cordero has already caused: (a) the other parties to this Adversary Proceeding to expend an inordinate amount of time and expense in connection with these non-core issues; and (b) the Court and the Clerk's Office to expend an inordinate amount of time, while he has made no attempt to negotiate a settlement of these issues; and

iii. it would be unfair to the other parties to burden them with the additional time and costs associated with litigating these issues in a trial by jury where: (a) the issues are not complex and involve property stored ten years ago with an approximate value then of \$14,000.00, and possibly some minor associated costs and expenses; (b) there is no evidence to date that such property has been either lost or substantially damaged; and (c) there is no evidence to date that any of the Cordero Claims defendants are individually responsible or liable for any possible loss or damage if proved;

9. for the reasons set forth in the preceding subparagraph, I also decline to exercise any discretion under Rule 39(b) to order any of the Remaining Pfuntner Claims or the Cordero Claims to be tried by a jury.

#### CONCLUSION

Cordero has waived a trial by jury of any of the issues remaining in this Adversary Proceeding, including issues set forth in the Cordero Claims. Cordero's requests that the Court extend

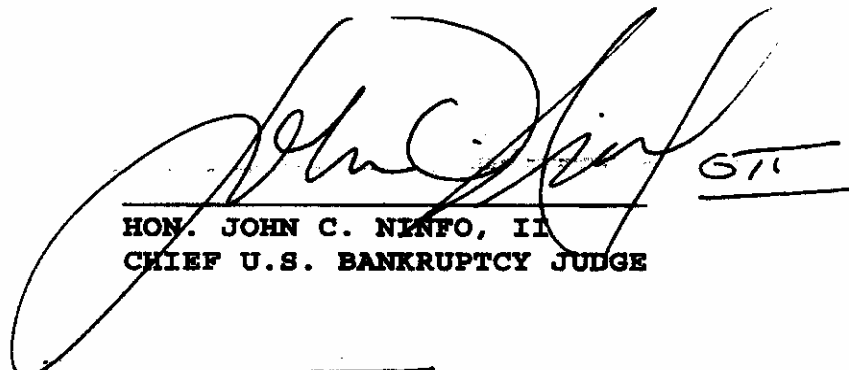
BK. NO. 01-20692  
AP. NO. 02-2230

his time to serve a demand for a trial by jury pursuant to Rule 9006, and to find his failure to be harmless error under Rule 9005, are denied. This Court declines to exercise any discretion under Rule 39 to otherwise order a trial by jury of the remaining issues in this Adversary Proceeding.

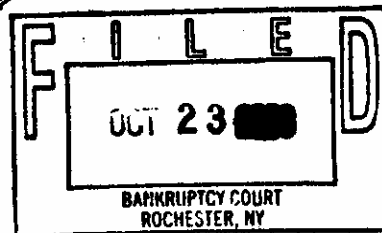
By separate Order, being simultaneously signed with this Decision & Order, a copy of which is attached, the Court has provided for the future prosecution of the remaining issues in this Adversary Proceeding.

SO ORDERED.

DATED: October 23, 2003

 ST

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



IN RE:

PREMIER VAN LINES, INC.,

CASE NO. 01-20692

Debtor.

---

JAMES PFUNTNER,

Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,

Defendants.

---

RICHARD CORDERO,

Third-party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,

Third-party Defendants.

---

**SCHEDULING ORDER 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**

WHEREAS, on October 16, 2003 the Court began the trial and related hearings in this Adversary Proceeding, as set forth in its July 15, 2003 Order, supplemented by an August 14, 2003 letter (the "October 16 Hearings"); and

**WHEREAS**, at the October 16 Hearings the Court signed an Order Denying the Recusal and Removal Motions filed by Richard Cordero ("Cordero") and Overruling his Objections to proceeding with a trial and any hearings, a copy of which is attached; and

**WHEREAS**, on October 16, 2003 the Court also signed an Order Disposing of Causes of Action (the "Pfundner Order"), a copy of which is attached, which resolved all of the claims of James Pfuntner ("Pfundner") with the exception of his claims as set forth in Paragraph 32 of his Complaint that: (1) the Court determine and decree that he was discharged from any and all liability to Cordero; and (2) he recover reasonable attorney's fees and expenses in connection with his interpleader action (collectively, the "Remaining Pfuntner Claims"); and

**WHEREAS**, as a result, the only claims to be determined in this Adversary Proceeding are the non-core: (1) Remaining Pfuntner Claims; (2) counterclaims, cross-claims and third-party claims of Cordero (collectively, the "Cordero Claims"); and (3) any related motions and proceedings in connection with the Remaining Pfuntner Claims and Cordero Claims; and

**WHEREAS**, at the October 16 Hearing Cordero asserted that he had a right to a trial by jury of the Remaining Pfuntner Claims and the Cordero Claims, and the Court heard oral argument regarding Cordero's request for a trial by jury; and

**WHEREAS**, pursuant to the attached October 23, 2003 Decision & Order, this Court has determined that Cordero waived any right to a trial by jury and otherwise has refused to exercise its discretion to order such a trial by jury; and

**WHEREAS**, at the October 16 Hearing, the Court received the input of the parties in connection with a scheduling order to be entered to govern the prosecution of the remaining matters in this Adversary Proceeding, all of which are non-core matters, and all of which will result in this Court making recommendations to the United States District Court for the Western District of New York after conducting the necessary trial and related hearings;



**WHEREAS**, on December 23, 2002, this Court entered an Order granting the motion by Kenneth W. Gordon ("Gordon") to dismiss Cordero's cross-claims and other claims against him, and on February 18, 2003, the Court entered an Order denying Cordero's motion to extend the time to file a notice of appeal in connection with the dismissal of his claims against Gordon, which was appealed by Cordero; and

**WHEREAS**, the Orders dismissing Cordero's claims against Gordon and denying his motion to extend his time to appeal that Order, were ruled upon by the United States District Court for the Western District of New York (the "District Court"), and are now on appeal to the United States Court of Appeals for the Second Circuit (the "Second Circuit"); and

**WHEREAS**, Cordero has insisted that in connection with the remaining matters in this Adversary Proceeding the parties comply with the provisions of Rule 26(f) of the Rules of Civil Procedure ("Rule 26"), requiring that the parties have a conference and issue a report to the Court, so that the Court can then issue a scheduling order in accordance with Rule 16(b) of the Federal Rules of Civil Procedure ("Rule 16").

**NOW, THEREFORE**, it is **ORDERED** that:

1. Within ninety-five (95) days after any and all appeals of the Gordon Orders to the Second Circuit or the United States Supreme Court have been decided, and no orders have been issued within that time by those courts or the District Court that would result in this Court not having jurisdiction over the remaining claims and matters in this Adversary Proceeding, Cordero shall take the necessary steps to initiate the conference contemplated by Rule 26(f), which may be conducted telephonically, and he shall be charged with preparing and submitting to the Court, as required by Rule 26(f), the report of the conference, along with a proposed scheduling order.

2. If the proposed scheduling order has been consented to by all of the parties, the Court will enter the same.

3. In the event that the proposed scheduling order has not been consented to by all of the parties, Cordero shall file it with the Court, as set forth above, and afford any objecting parties ten (10) business days written notice within which they may file written objections to the proposed scheduling order and/or an alternative proposed scheduling order, and thereafter the Court will set a conference to finalize a scheduling order.

4. Nothing in this Order shall prevent any party from conducting voluntary discovery, by interrogatory or deposition.

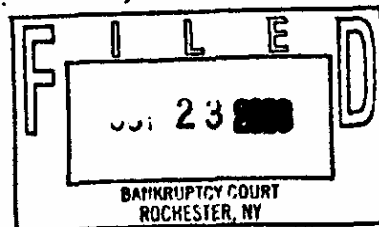
5. Nothing in this Order shall prevent any party from making a motion for summary judgment on any or all of the remaining claims, matters or issues in this Adversary Proceeding.

SO ORDERED.

DATED: October 23, 2003



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



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

---

IN RE:

PREMIER VAN LINES, INC.,  
Debtor.

---

CASE NO. 01-20692

JAMES PFUNTNER,  
Plaintiff,

vs.

A.P. NO. 02-2230

KENNETH W. GORDON, as Trustee,  
RICHARD CORDERO, ROCHESTER  
AMERICANS HOCKEY CLUB, INC.  
and M&T BANK,  
Defendants.

---

RICHARD CORDERO,  
Third-Party Plaintiff,

vs.

DAVID PALMER, DAVID DWORKIN,  
DAVID DELANO, and JEFFERSON  
HENRIETTA ASSOCIATES,  
Third-party Defendants.

---

**ORDER**

The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, a copy of which is attached, is in all respects denied for the following reasons:

As correctly analyzed by the movant, the decision that the Court orally placed on the Court's record on October 16, 2003 is its decision. A copy of the writing that the Court used to place its decision on the record was attached to the October 16, 2003

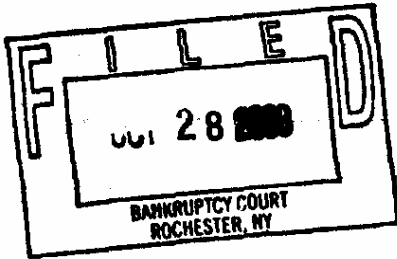
**Order Denying Motion for  
a More Definite Statement**

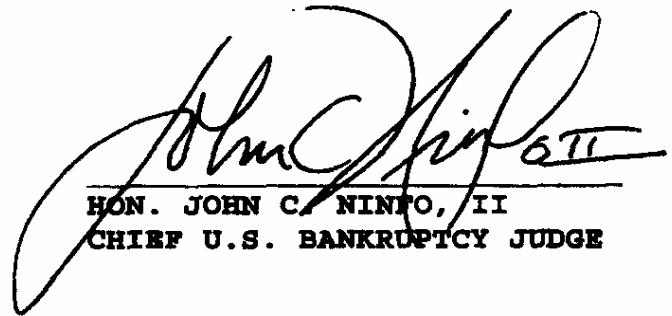
**Page 2**

Order as a courtesy and for the convenience of the parties. It is the Court's experience that when something written is placed on the Court's record, there are times when words are inadvertently added or deleted, tenses are changed, or other minor modifications result. It is not the Court's obligation under the Bankruptcy Code or the Rules of Bankruptcy Procedure to supply the parties with a transcript of a decision placed on the Court's record.

**SO ORDERED.**

**DATED: October 28, 2003**



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

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

RICHARD CORDERO,

Appellant,

DECISION AND ORDER

v.

03-CV-6021L

KENNETH W. GORDON, ESQ.,

Appellee.

---

Richard Cordero ("Cordero") appeals from an order of United States Bankruptcy Judge John C. Ninfo, II, entered December 30, 2002. Cordero filed a notice of appeal on January 13, 2003.

The Trustee-Appellee moved to dismiss the appeal by Cordero on the grounds that it is untimely, having been filed more than ten days after entry of the order appealed from (Dkt. #2). Appellant, Cordero, submitted a brief in opposition to the motion to dismiss (Dkt. #6).

The motion to dismiss is granted. Rule 8002(a) of the Federal Rules of Bankruptcy Procedure provides that a "notice of appeal shall be filed with the clerk within 10 days of the date of entry of the judgment, order, or decree appealed from." Cordero's notice of appeal was therefore filed three days too late.

There are no other provisions in the Bankruptcy Rules that will excuse this untimeliness. Rule 8002(c) provides that "[t]he *bankruptcy* judge may extend the time for filing the notice of appeal" in certain circumstances (emphasis added), but it gives the district court no power to extend the ten-day period of subsection (a). *See In re Bond*, 254 F.3d 669, 675 n. 3 (7<sup>th</sup> Cir. 2001) (even if appellant had requested extension of time from district court, she would have been in

#7

error, since Rule 8002(c) only allows the bankruptcy court to grant extensions of time for filing notice of appeal). In addition, Cordero did not move for an extension in the bankruptcy court within the time for doing so under subsection (c), so that provision could not apply in any event.

Rule 9006, dealing with computation of prescribed time periods, also does not help Cordero. First, although there were four weekend days and one federal holiday (New Year's Day) in the period between the entry of Judge Ninfo's order and the time that Cordero filed his notice of appeal, those days were not excluded from the ten-day period of Rule 8002(a). Rule 9006(a) states that Saturdays, Sundays, and legal holidays are excluded from computation only "[w]hen the period of time prescribed or allowed is less than 8 days." Since Rule 8002(a) sets forth a ten-day period, this provision of Rule 9006(a) is inapplicable.<sup>1</sup> *Williams v. EMC Mortgage Corp.*, 216 F.3d 1295, 1297 (11<sup>th</sup> Cir. 2000).

Rule 9006(b) also provides for enlargement of prescribed time periods in certain circumstances, but it expressly states that "[t]he court may enlarge the time for taking action under Rule[] ... 8002 ... only to the extent and under the conditions stated in [that] rule[]." As stated, Cordero failed to meet the conditions for obtaining an extension of time under Rule 8002.

Subsection (f) of Rule 9006 provides for an automatic three-day extension in certain cases, but that provision applies only when a time period begins running from the date of service of an order or judgment. The ten-day period in Rule 8002(a) for appealing an order of the bankruptcy court is not such a period, however, since it begins to run from the time of *entry* of the judgment, *not* service. See *In re Arbuckle*, 988 F.2d 29, 31 (5th Cir. 1993).

Finally, the fact that Cordero may have mailed the notice of appeal before the ten days had

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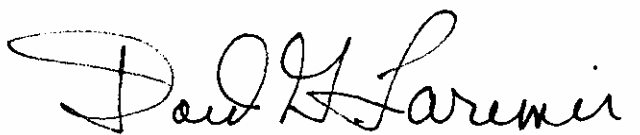
<sup>1</sup>I also note that Rule 9006(a) states that if the last day of a prescribed time period falls on a Saturday, a Sunday, or a legal holiday, "the period runs until the end of the next day which is not one of the aforementioned days." Here, the ten-day period of Rule 8002(a) expired on Tuesday, January 10, which was not a holiday.

expired is inconsequential. “[A] notice of appeal is filed as of the date it is actually received [by the court], not as of the date it is mailed.” *Id.* (quoting *Matter of Robinson*, 640 F.2d 737, 738 (5th Cir. 1981)). Cordero’s notice of appeal was received and filed by the court thirteen days after the entry of the bankruptcy court’s order, and it is therefore untimely.

### CONCLUSION

The Trustee’s motion to dismiss the appeal (Docket #2) is granted, and the appeal is dismissed.

IT IS SO ORDERED.

  
\_\_\_\_\_  
DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 12, 2003.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

RICHARD CORDERO,

Appellant,

v.

KENNETH W. GORDON, ESQ.,

Appellee.

---

FILED

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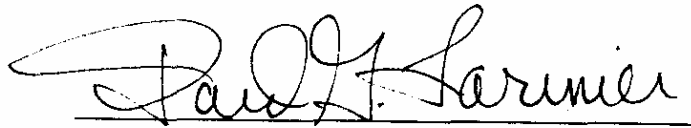
U.S. DISTRICT COURT  
W.D.N.Y. ROCHESTER

DECISION AND ORDER

03-CV-6021L

Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order entered March 12, 2003 (Dkt. #7). The motion is in all respects denied.

IT IS SO ORDERED.



---

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 27, 2003.



01-20692

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

TESTE A TRUE C  
U.S. DISTRICT COURT  
RODNEY C. EARLY, CL

By Mica Gray  
Deputy Clerk

(Original Filed) 3/11/03

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

v.

DAVID PALMER,

Third-Party Defendant.

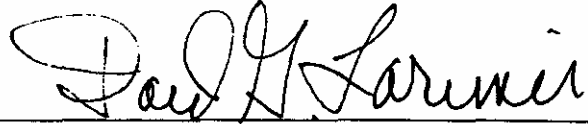
RECEIVED  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
MARCH 11 2003

Judge John C. Ninfo, II, Chief United States Bankruptcy Judge, has transmitted the Bankruptcy Court record to the District Court for a determination in a non-core proceeding. The transfer relates to Cordero's request to enter default judgment. In the transmittal, Bankruptcy Judge Ninfo recommended that the District Court deny entry of default judgment.

I concur in the Bankruptcy Judge's determination that judgment is not appropriate in this case. Even if the adverse party failed to appear or answer, third-party plaintiff must still establish his entitlement to damages since the matter does not involve a sum certain. In other words, it may be necessary for an inquest concerning damages before judgment is appropriate. Furthermore, it

would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer". The signature is written in a cursive style with a large, looping initial "D".

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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March // , 2003.

UNITED STATES DISTRICT court  
WESTERN DISTRICT OF NEW YORK

---

IN RE: PREMIER VAN LLINES, INC.

RICHARD CORDERO,

Plaintiff(s),

- vs -

DAVID PALMER,

6:03-MBK-6001L

Defendant(s),

---

Take notice of an Order filed on 3/11/03, of which is a copy, and entered in the office of the Clerk of the United States District Court, Western District of New York, on 3/12/03 upon the official docket in this case.

Dated: Rochester, New York  
3/12/03

RODNEY C. EARLY, Clerk  
U. S. District Court  
Western District of New York  
282 U. S. Courthouse  
Rochester, New York 14614

TO:  
Richard Cordero  
David Palmer  
Raymond Stilwell, Esq.

David Palmer  
1829 Middle Rd.  
Rush, NY 14543

Raymond Stilwell, Esq.  
Adair, Kaul Murphy...  
300 Linden Oaks Ste. 220  
Rochester, NY 14625

Richard Cordero  
59 Crescent St.  
Brooklyn, NY 11208

MARCH 27 2003 10:36

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

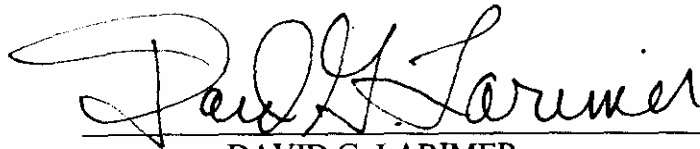
v.

DAVID PALMER,

Third-Party Defendant.

Richard Cordero moves for a rehearing or reconsideration of this Court's Decision and Order entered March 11, 2003 (Dkt. #56). The motion is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
March 27, 2003.

#58

**Dr. Richard Cordero**

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

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

July 19, 2004

Hon. Judge John C. Ninfo, II  
United States Bankruptcy Court  
1220 US Court House  
100 State Street  
Rochester, NY 14614

faxed to (585)613-3299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Please find herewith a proposal for an order to issue upon your decisions at the hearing today of Trustee George Reiber's motion to dismiss the DeLano case. The order is in substance and even its wording practically the same as the relief that I requested in my statement of July 9 in opposition to the motion, except that in compliance with your decisions, I have:

1. eliminated the requests that Trustee Reiber be replaced and that a concurrent referral be made of this case to the FBI,
2. changed the dates for document production to those that you chose; and
3. taken account of Att. Werner's statement that he has already issued some subpoenas.

The removal from the order of the requests in 1. above, is done to abide by your decision and does not mean that I have renounced to those requests. On the contrary, as I stated at the hearing, Trustee Reiber has an insurmountable conflict of interests, does not and cannot represent the creditors' interests, and has shown to be unwilling and unable to conduct an investigation of the DeLanos, let alone an effective one. If he cannot exercise the minimum degree of proper care and due diligence to make copies of documents without missing pages, how can he be reasonably expected to be able to analyze them internally, much less by comparing them with all other documents available, and detect inconsistencies, draw logical inferences, and reach sound conclusions therefrom? Hence, not to replace him will doom whatever currently passes for his investigation to an exercise in futility. Only an independent party, such as the FBI, can conduct an investigation with a reasonable expectation of getting to the bottom of what is going on in this case and its broader context.

Nor is there any need to wait for the production of the requested documents to find out the whereabouts of the DeLanos' earnings of over \$291,000 in the last three years, not to mention in the past 15. Wherever that money went, it did not make it into a disclosure in the petition. The absence of that money there, except for the ridiculous trace of two cars worth \$6,500, household goods worth \$2,910, and cash in accounts or in hand of \$535.50, has given rise to the reasonable suspicion of concealment of assets. Not even the appearance of those earnings by a sleight of hand will dispel the suspicion. It is too late for that: The wrong was committed.

Therefore, I will reiterate those requests at an appropriate procedural event in the future. At present, I respectfully submit that the order should issue as is, for the parties had ten days since I faxed my Statement to them on July 10, to study it there and then to raise any objections at the hearing today to its presentation in the form of an order. Consequently, having had but missed that opportunity to object to it, they must be deemed to have consented to all its terms just as they are deemed to be able to prove their statements in court.

Sincerely,

*Dr. Richard Cordero*

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

In re: David G. DeLano and Mary Ann DeLano

Chapter 13  
Case no: 04-20280

**Order**  
**For Production of Documents**

Having heard on Monday, July 19, 2004, the motion raised by Chapter 13 Trustee George Reiber on June 15, 2004, to dismiss the above-captioned case, the Court orders the production of documents by the Debtors –the DeLanos–, their Attorney –Christopher Werner, Esq. – and the Trustee, and their submission to the Court, the Trustee, and Creditor Dr. Richard Cordero, by 4:30 p.m. on Wednesday, August 11, 2004, unless otherwise stated hereinafter, as follows:

a) All the pages of the **Equifax’ credit reports** of April 26, 2004, for Mr. DeLano and of May 8, 2004, for Ms. DeLano, submitted incomplete on June 14, 2004, by Att. Werner to Trustee Reiber and by the latter to Dr. Cordero;

(1) deadline for submission: by 4:30 p.m. on Wednesday, July 21, 2004.

b) **Financial documents** relating to transactions between the DeLanos and institutions:

(1) **types of documents:**

(a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements’ parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

(b) monthly bank statements of all their bank accounts, with all their parts and without redaction;

(c) [see ¶a) above]

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(f) all materials, including the cover letter(s), sent by MBNA together with the two sets that it produced of copies of statements for the last three years of accounts 5329-0315-0992-1928 and 4313-0228-5801-9530, which sets of copies Att. Werner referred to in his letter to Trustee Reiber of July 12, and in paragraph 5 of his Statement to the Court of July 13, 2004, and which materials Dr. Cordero requested at the hearing without objection from Att. Werner;

(2) **period of coverage:** from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) **status of account:** whether open or closed;

(4) **holder of account or interest:** whether in both or either of the DeLanos’ names, or

entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them;

(5) **deadline for submission:**

(a) the deadline applies to the documents themselves for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

(b) for documents **not in their possession:**

i) the deadline applies to **copies of:**

(A) subpoenas already issued, as stated by Att. Werner at the hearing, as well as those to be issued, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶(b)(1) above and that could not be produced pursuant to ¶(b)(5)(a) above, and

(B) each signature confirmation slip<sup>1</sup> affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;

ii) the deadline applies to an affidavit by the DeLanos and Att. Werner attesting to their compliance with the order in ¶(b)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued, whether they were mailed or hand delivered; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number; the signature of the recipient, and the postmark.

c) All financial documents relating to the **loan to their son** referred to in Schedule B of the DeLanos' bankruptcy petition of January 26, 2004, including but not limited to:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment to the DeLanos after the entity processed their withdrawal request;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

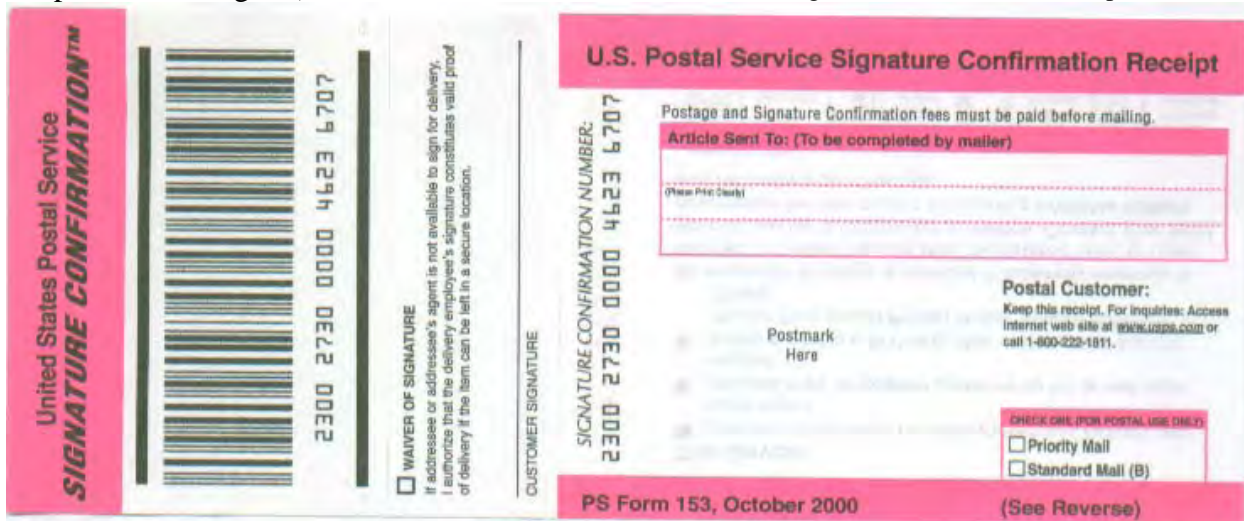
(5) An affidavit by the DeLanos attesting to the following:

- (a) disbursement of the loan to their son,
- (b) amount of the loan,
- (c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,
- (d) date of payment,
- (e) intended purpose of the loan and the actual use of the funds lent,
- (f) date and amount of any repayment installment,
- (g) outstanding balance, and
- (h) current arrangement for repayment;
- (6) affidavit by their son attesting to:
  - (a) his receipt of a loan from the DeLanos; and
  - (b) the information as in ¶(c)(5)(b)-(h) above;
- (7) dateline for submission:
  - (a) the documents themselves for all such documents in the DeLanos' possession;
  - (b) the DeLanos' affidavit; and
  - (c) as provided for in ¶(b)(5)(b) above, for documents not in their possession;
- d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED  
THIS DAY OF \_\_\_\_\_

\_\_\_\_\_  
HONORABLE JOHN C. NINFO, II  
U.S. BANKRUPTCY JUDGE

<sup>1</sup> Sample U.S.P.S. signature confirmation slip, with receipt on the right (the dark areas on the fax are pink in the original)  
↓ U.S. Postal Service Signature Confirmation Receipt ↓



↑                    ↑ bar code and tracking number ↑                    ↑ PS Form 153, October 2000 ↑  
↑ United States Postal Service *Signature Confirmation*™



**Dr. Richard Cordero**

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

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

July 21, 2004

Hon. Judge John C. Ninfo, II  
1220 US Court House  
100 State Street  
Rochester, NY 14614

faxed to (585)613-4299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Yesterday I faxed to you the proposed order for document production. It was discussed at the hearing the day before and implements your decision on that occasion. Indeed, after I requested that you grant my request for such order as described in my July 9 Statement Opposing the Motion to Dismiss, you stated that the Court does not prepare orders, but rather issues them on proposal from a party, whereupon I proposed to reformat the text of my requested order into a proposed order. Having already had the opportunity to read that text, you decided that I could do so and gave me your fax number to enable you to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents today.

While neither the order has issued nor my proposal has been docketed, a letter by Att. Werner, delivered via messenger to the Court and protesting the breath of my proposal, has already been docketed. As I indicated in the letter accompanying the proposed order, Att. Werner had ten days since I faxed my Statement to him on July 10 to learn the breath of my requested order, yet he failed to object to your decision that I convert it into a proposed order and fax it to you. If, as he stated on Monday, he has been in this business for 28 years, then he must know his obligation to raise timely objections. Now it is too late for him to do so.

Nor can he pretend that your recapitulation of what we had to do constituted the total expression of his and the DeLanos' obligation. Your recapitulation was that I would submit the proposed order, that he and Trustee Reiber would submit the missing pages of the credit reports by today, and that the DeLanos would produce other documents by August 11. Its only reasonable purpose was precisely to act as such: as a summary of your decisions and our obligations. Att. Werner cannot distort your intention by casting out the part concerning the order, whose details he already knew, and retaining the part relating to his obligation expressed in the general terms of a recapitulation. If the latter two parts of the decision stated all that Att. Werner and the DeLanos had to do, I trust that you would not have allowed that I waste my time and effort once more in preparing and submitting a document that you were not going to act upon at all.

Nor can Att. Werner presume that you would content yourself with simply asking him to do what is expected of any lawyer, that is, submit complete documents, and of one acting in good faith, which here meant to comply with the Trustee's April and May requests by submitting all the credit card statements for the last three years, rather than pretend that by submitting a single and incomplete statement between 8 and 11 months old for each card he could truthfully "believe that we have complied in all respects to [sic] the Trustee's requests", as he stated to the Court in his July 13 Statement. The issue of the petition's good faith has been properly raised. Thus the proposed order aims to establish the nature of the expenditures and the whereabouts of the assets through pertinent documents, not just those that suit them. Hence, if the Court wants to be taken seriously by them and to justify my reliance on its word, it should issue the order as proposed.

Sincerely,

*Dr. Richard Cordero*

BLANK

IN RE:

DAVID G. DeLANO and  
MARY ANN DeLANO,

CASE NO. 04-20280  
Chapter 13

Debtors.

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## ORDER

On July 19, 2004 the Court conducted a hearing on the Chapter 13 Trustee's Motion to Dismiss the Debtors' case, as well as on the Statement in Opposition filed by Richard Cordero on July 12, 2004; and

**WHEREAS**, at the July 19, 2004 hearing, the Court required the Debtors and their attorney, Christopher K. Werner, Esq. ("Attorney Werner"), to do certain things, as more fully set forth in the Case Docket Report highlighted as follows:

Hearing Continued (RE: related document(s) 42 Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 8/23/2004 at 03:30 PM Rochester Courtroom for 42, **The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04. The debtors are to give Mr. Werner any pages of the Equifax report that they have and that he does not have. By the close of business on 7/21/04, Mr. Werner is to send complete copies of the Equifax report to the Trustee and Dr. Cordero. By 8/11/04, the Debtors are to have ordered their credit reports from Equifax, Trans Union and Experian. Within two days of their receipt, copies are to be provided to the Trustee and Dr. Cordero. The Court will adj. Dr. Cordero's request to remove Mr. Reiber as Trustee to 8/23/04. Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee. Appearing in opposition: Christopher Werner, Atty. for Debtors; Dr. Richard Cordero (By phone). (Parkhurst, L.) (Entered: 07/20/2004); and**

DeLano Order

Page Two

**WHEREAS**, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached; and

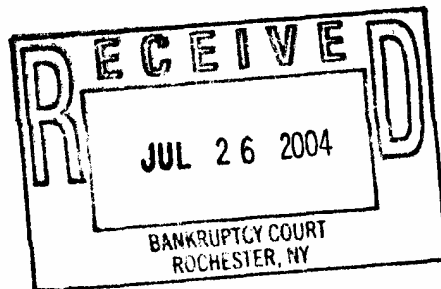
**WHEREAS**, the Court has reviewed this matter and believes that the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004.

It is therefore, **ORDERED**, that the Debtors and Attorney Werner comply with the highlighted Case Docket Report provisions, and Richard Cordero's request to remove the Chapter 13 Trustee, and other matters in the Chapter 13 case are adjourned to August 23, 2004.

**SO ORDERED.**

**DATED: July 26, 2004**

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



IN RE:

DAVID G. DeLANO and  
MARY ANN DeLANO,

CASE NO. 04-20280  
Chapter 13

Debtors.

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**INTERLOCUTORY ORDER**

**WHEREAS**, on January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case"); and

**WHEREAS**, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692 (the "Premier Case"); and

**WHEREAS**, prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

**WHEREAS**, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

**WHEREAS**, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

**WHEREAS**, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

**WHEREAS**, on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

**WHEREAS**, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

**WHEREAS**, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

**WHEREAS**, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

**WHEREAS**, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

**WHEREAS**, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

**WHEREAS**, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

**WHEREAS**, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

**WHEREAS**, at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) the Claim Objection on its face is compelling, because the Cordero Claim and its attachments



set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of \$15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

**WHEREAS**, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

**WHEREAS**, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED**, that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

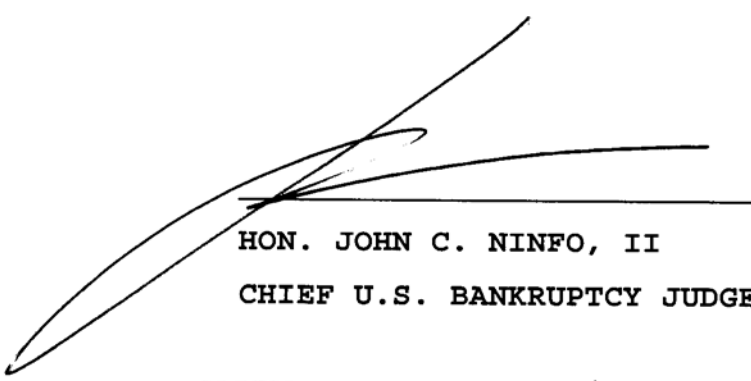
2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004



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



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

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**IN RE:**

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

**CASE NO. 04-20280  
Chapter 13**

**Debtors.**

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**INTERLOCUTORY ORDER**

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

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

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

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

It is therefore **ORDERED**, that:

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

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

3. The request for relief in Paragraph 30.b. of the Cordero Discovery Motion is denied because DeLano has indicated in the Response that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding. Therefore, there is no need for an extension of the discovery deadline set forth in the August 30, 2004 Interlocutory Order; and

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

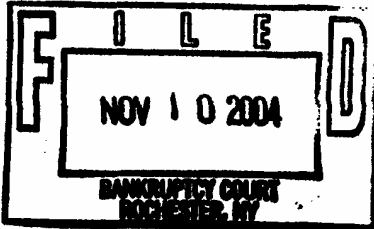
5. The request for relief in Paragraph 30.d. of the Cordero Discovery Motion is denied for the reasons set forth in the August 30, 2004 Interlocutory Order; and

**Page 2**

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

SO ORDERED.

DATED: November 10, 2004



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

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

**In re:**

**DAVID G. DeLANO  
MARY ANN DeLANO**

**CASE NO. 04-20280  
Chapter 13**

Debtor(s)

**ORDER**

**BEFORE HON. JOHN C. NINFO, II:**

The above matter having been scheduled for the Evidentiary Hearing Calendar for an objection to the claim of Dr. Richard Cordero on December 15, 2004 and the following attorney(s) having appeared:

Christopher K. Werner, Attorney for the Debtors  
Dr. Richard Cordero, Pro Se  
James W. Weidman of counsel to George M. Reiber, Trustee

it is **ORDERED** that:

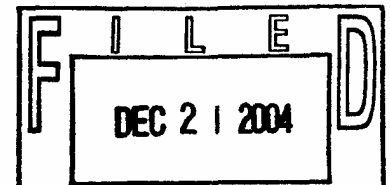
1. This case is scheduled for an Evidentiary Hearing on March 1, 2005 at 1:30 p.m.
2. This case is adjourned to the Evidentiary Hearing Calendar on \_\_\_\_\_.
3. A pre-hearing memorandum shall be filed and served by the parties on or before \_\_\_\_\_.
4. Stipulations shall be submitted by the parties on or before \_\_\_\_\_.
5. OTHER: \_\_\_\_\_.

**IF A PARTY FAILS TO APPEAR, THE COURT RESERVES THE RIGHT TO ISSUE AN ORDER OF CONTEMPT AND APPROPRIATE SANCTIONS.**

**BY THE COURT,**

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

**Dated: December 21 2004  
Rochester, New York**





**U.S. Bankruptcy Court  
Western District of New York (Rochester)  
Adversary Proceeding #: 2-02-02230-JCN**

*Assigned to:* Hon. John C. Ninfo II

*Related BK Case:* 01-20692

*Related BK Title:* Premier Van Lines, Inc., a Corporation *Date Filed:* 09/27/02

*Demand:* \$20000

*Nature of Suit:* 456

**Plaintiff**

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**James Pfuntner**

represented by **David D. MacKnight**

Lacy, Katzen etal

130 East Main St.

Rochester, NY 14604

(585) 454-5650

Email: dmacknight@lacykatzen.com

*LEAD ATTORNEY*

V.

**Defendant**

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**Kenneth W. Gordon, As Trustee**

represented by **Kenneth W. Gordon**

100 Meridian Centre Blvd.

Gordon & Schaal

Suite 120

100 Meridian Centre Blvd.

Rochester, NY 14618 ( )

Suite 120

Rochester, NY 14618

(585) 244-1070

Email: kengor@rochester.rr.com

*LEAD ATTORNEY*

**Richard Cordero**

**Rochester Americans Hockey Club,  
Inc.**

**M & T Bank**

represented by **Michael J. Beyma**

Underberg & Kessler

1800 Lincoln First Tower

Rochester, NY 14604

(585) 258-2890  
Email: mbeyma@underberg-  
kessler.com  
*LEAD ATTORNEY*

**3rd Party Plaintiff**  
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**Richard Cordero**  
59 Crescent Street  
Brooklyn, NY 11208

V.

**3rd Pty Defendant**  
-----

**David J. Palmer**  
SSN: xxx-xx-2753

**David Dworkin**

represented by **Karl S. Essler**  
Fix, Spindelman, Brovitz, Turk,  
Himelein  
500 Crossroads Building  
2 State Street  
Rochester, NY 14614  
(585) 232-1660  
*LEAD ATTORNEY*

**Jefferson Henrietta Associates**

represented by **Karl S. Essler**  
(See above for address)  
*LEAD ATTORNEY*

**David Delano**

represented by **Michael J. Beyma**  
(See above for address)  
*LEAD ATTORNEY*

**U.S. Trustee**  
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**U.S. Trustee's Office,**  
100 State St., Room 6090  
Rochester, NY 14614  
(585) 263-5812  
*TERMINATED: 09/30/2004*

<b>Filing Date</b>	<b>#</b>	<b>Docket Text</b>
09/27/2002	1	Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (KST) (Entered: 09/27/2002)
10/01/2002	2	Filing fee paid; Receipt No.: 22052838 [2-1] re: adversary proceeding. (KST) (Entered: 10/03/2002)
10/03/2002	3	Summons issued. [3-1] Answer due: 11/4/02 for M & T Bank, for Rochester Americans Hockey Club, Inc., for Richard Cordero, for Kenneth W. Gordon (KST) (Entered: 10/03/2002)
10/08/2002	4	Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [4-1] Clerk's Note: Defendant, M&T Bank was not served, per D. MacKnight's office, will serve and send in an Affidavit of Service. (KST) (Entered: 10/09/2002)
10/09/2002	5	Answer filed on behalf of Kenneth W. Gordon [5-1] by Kenneth W. Gordon, Esq. (KST) (Entered: 10/09/2002)
10/15/2002	6	Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [6-1]served on: M & T Bank, attn: David DeLano, Assistant Vice President. (PCF) (Entered: 10/16/2002)
10/17/2002	7	Letter [7-1]from Dr. Richard Cordero, advising that he has not yet been served in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/23/2002)
10/25/2002	8	Waiver of Service of Summons and Petition for Clarification of Richard Cordero, Pro Se [8-1] (KST) (Entered: 11/05/2002)
11/01/2002	9	Clerk's Note: Richard Cordero called to inquire when his answer was due; he was advised that the date certain is 11/4/02; he said that he will mail out his answer. Further on 10/31/02, Mr. Cordero was advised that an extension of time for the answer would need to be stipulated to, or a motion may be brought, but an extension of time to answer cannot be done ex-parte. 9-1] (KST) (Entered: 11/05/2002)
11/06/2002	10	Answer filed on behalf of Richard Cordero, Defendant. Filed by R.

		Cordero, pro se defendant. [10-1] by , Esq. (KST) (Entered: 11/06/2002)
11/06/2002	11	Answer filed on behalf of M & T Bank [11-1] by Michael J. Beyma, Esq. (KST) (Entered: 11/06/2002)
11/12/2002	12	Plaintiff's Reply to Richard Cordero's Counterclaim, filed by David MacKnight, Atty. [12-1] (KST) (Entered: 11/12/2002)
11/12/2002	13	Affidavit of Mailing re: Reply filed by D. MacKnight, Atty. [12-1] [13-1] (KST) (Entered: 11/12/2002)
11/18/2002		Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (KST) (Entered: 11/21/2002)
11/19/2002	14	Third Party Summons issued. [14-1] Answer due: 12/19/02 for David Delano, for Jefferson Henrietta Associates, for David Dworking, for David J. Palmer (KST) (Entered: 11/21/2002)
11/25/2002	17	Affidavit of Mailing re: [17-1]third party complaint and summons. Served on essential parties. (KST) (Entered: 12/09/2002)
11/25/2002	18	Amended Answerwith cross-claims filed by Richard Cordero, Pro Se Defendant. [18-1] (KST) (Entered: 12/09/2002)
12/02/2002	19	Copy of Appeal filed with the U.S. Trustee's office by Richard Cordero, Pro Se Defendant. [19-1] (KST) (Entered: 12/09/2002)
12/05/2002	15	Notice of Motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] Hearing date and time: 9:30 12/18/02 at Rochester Courtroom Filed by: Kenneth Gordon, Esq. Affidavit of service: filed (PCF) (Entered: 12/06/2002)
12/06/2002	16	Letter [16-1]dated 12/5/02 from David MacKnight, Esq. to the Court that it might be helpful that the Trustee provide a listing from the debtors records of whose property debtor placed in the Henrietta location and whose property debtor placed in the Avon property. SEE LETTER FOR MORE DETAILS. (PCF) (Entered: 12/06/2002)
12/09/2002	20	Letter [20-1] to Plaintiff's attorney to expedite prosecution of AP; matter will be set on trial calendar for 9:00 1/22/03 Deadline to file documents: 12/19/02 ; (KST) (Entered: 12/09/2002)

12/10/2002	21	Letter [21-1]from K. Gordon, Tr., re:records of stored property by debtor. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 12/11/2002)
12/12/2002	22	Memorandum of Law in opposition, filed by Dr. Richard Cordero, Defendant, and Third Party Plaintiff(Pro Se) [22-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] . (KST) (Entered: 12/12/2002)
12/13/2002	23	Letter [23-1]from Amber Barney, Atty.,advising that Underberg & Kessler will not be representing David Dworkin a party in this action, but are requesting an extension of time to answer from Dr. Cordero. (KST) (Entered: 12/16/2002)
12/17/2002	24	Answer filed on behalf of M&T Bank David Delano, Third Party Defendant [24-1] by Michael J. Beyma, Esq. (KST) (Entered: 12/18/2002)
12/17/2002	26	Letter [26-1]from K. Gordon to Dr. Cordero, advising that he does not consent to an adj. in this matter. (KST) (Entered: 12/18/2002)
12/18/2002	25	Notice of Pre-trial Conference: [25-1] 10:00 1/10/03 at Rochester - Judge's Chambers; sent to David MacKnight, Atty; Kenneth Gordon, Tr.; Michael Beyma, Atty; Richard Cordero, Pro Se; Raymond Stilwell, Atty., and U.S. Trustee. (KST) (Entered: 12/18/2002)
12/18/2002	27	Minutes [27-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding - granted. The Court finds that Mr. Gordon's letters were not defamatory and that he was not negligent. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Kenneth Gordon, Trustee/Defendant; and in opposition: Dr. Richard Cordero, Pro Se Third Party Plaintiff (by telephone). (KST) (Entered: 12/19/2002)
12/19/2002	28	Copy of Letter from Dr. Cordero to Underberg and Kessler, conditionally granting extension of time to file answer to 12/31/02, on behalf of David Dworkin and Jefferson Henrietta Associates, third party defendants, subject to certain conditions required by Dr. Cordero. [28-1] (KST) (Entered: 12/20/2002)
12/23/2002	29	Letter [29-1]from Raymond Stilwell, Atty., advising that he is unable to attend the 1/10/03 pretrial as he has a conflict. Mr. Stilwell further advises that his appearance may not be necessary. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 12/24/2002)
12/23/2002	30	Order [30-1] granting motion for dismissal of cross-claim against trustee

		in an adversary proceeding, and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed. [15-1]Notice of Entry Issued To: Kenneth Gordon, Atty; Dr. Richard Cordero, Defendant/Third Party Plaintiff; and U.S. Trustee. (KST) (Entered: 12/30/2002)
12/26/2002	51	Affidavit of Mailing re: [51-1]Default Judgment in a Non-Core Matter. Filed by Dr. Richard Cordero. (KST) (Entered: 02/04/2003)
12/30/2002	31	Answer filed on behalf of David Dworkin, Jefferson Henrietta Associates [31-1] by Karl S. Essler, Esq. (KST) (Entered: 12/30/2002)
12/30/2002	32	Letter [32-1]from Dr. Cordero, requesting that he appear by telephone for the 1/10/03 pretrial(submitted the pre-trial option form). (KST) (Entered: 12/30/2002)
12/30/2002	33	Letter [33-1] from Michael Beyma, Atty., advising that he does not have an objection to Dr. Cordero appearing by telephone for the 1/10/03 pretrial. (KST) (Entered: 12/30/2002)
01/02/2003	34	Clerk's Note: Advised R. Stilwell, Atty., that his appearance will not be necessary at the 1/10/03 Pretrial. [34-1] (KST) (Entered: 01/02/2003)
01/02/2003	35	Affidavit of Mailing re: [35-1]filed by Dr. Richard Cordero, Defendant/Third Party Plaintiff, re: pt option form and application to enter a default judgment against David Palmer. (KST) (Entered: 01/03/2003)
01/03/2003	36	Order [36-1], that Dr. Richard Cordero, Defendant and Third Party Plaintiff may appear by telephone for the 1/10/03 pretrial (KST) (Entered: 01/06/2003)
01/06/2003	37	Pre-Trial option form Order of 1/3/03 was mailed to Dr. Richard Cordero, Defendant; Michael Beyma, Esq. Kenneth Gordon, Esq.; David MacKnight, Esq., and delivered to the U.S. Trustee. [37-1] (KST) (Entered: 01/06/2003)
01/06/2003	38	Copy of Letter [38-1]from K. Gordon, Tr., to Dr. Cordero, Defendant/Third Party Defendant, advising that he has no objection to Dr. Cordero appearing by telephone re: the pretrial. (KST) (Entered: 01/06/2003)
01/13/2003	39	Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (KST) (Entered: 01/13/2003)
01/13/2003	40	Civil Cover Sheet filed. [40-1] (KST) (Entered: 01/13/2003)

01/14/2003	41	Letter [41-1]to Dr. Richard Cordero, Defendant/Third Party Plaintiff, advising him that his designation of items on appeal are due on or before 1/27/03. Copy of letter served on essential parties. (KST) (Entered: 01/14/2003)
01/15/2003	42	Notice of Appeal and Certified copy transmitted to District Court. Civil Case #03-cv-6021L [42-1] (KST) (Entered: 01/17/2003)
01/27/2003	43	Appellant's designation by Richard Cordero of Contents for Inclusion in Record on Appeal. (KST) (Entered: 01/29/2003)
01/27/2003	54	Letter [54-1]from Dr. Richard Cordero, re: transcript of hearing of 12/18/02. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/05/2003)
01/29/2003	44	Affidavit of Mailing re: appellant designation [43-1] by Richard Cordero [44-1] (KST) (Entered: 01/29/2003)
01/30/2003	47	Notice of Motion to extend time to of time to file Notice of Appeal [47-1] Hearing date and time: 9:30 2/12/03 at Rochester Courtroom Filed by: Richard Cordero, Defendant Affidavit of service: not filed (KST) (Entered: 02/03/2003)
01/31/2003	45	Letter [45-1]from Dr. Cordero re: his available travel dates to come to Rochester to inspect his property in storage. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 01/31/2003)
02/03/2003	46	Letter [46-1]from Dr. Richard Cordero, Defendant, Third Party Plaintiff, re: entry of a default judgment. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/03/2003)
02/03/2003	48	Letter [48-1]from K. Gordon, Tr., advising that he will not be attending the inspection of Dr. Cordero's personal property in storage in Avon, NY. (KST) (Entered: 02/03/2003)
02/04/2003	49	Clerk's Certificate of Default [49-1] (KST) (Entered: 02/04/2003)
02/04/2003	50	Affidavit of Dr. Richard Cordero [50-1] re:Non-Military Service. (KST) (Entered: 02/04/2003)
02/04/2003	52	Order [52-1], to Transmit Record to District Court, re: non-core default judgment, with attachment to Recommendation of th eBankruptcy Court The Default Judgment Not Be Entered By the District Court (KST) (Entered: 02/04/2003)

02/04/2003	53	Letter [53-1]to District Court enclosing the required Documents re: Non Core Default Application for Default. Clerk's Note: Proposed original order submitted to District Court. (KST) (Entered: 02/04/2003)
02/06/2003	55	Memorandum of Law [55-1] re: motion to extend time to of time to file Notice of Appeal [47-1] . (KST) (Entered: 02/06/2003)
02/12/2003	56	Minutes [56-1] re: motion to extend time to of time to file Notice of Appeal - denied; This motion was not filed timely as required by Rule 8002(a). Appearances: Dr. Richard Cordero, Defendant/Third Party Plaintiff(appeared by telephone); in opposition: Kenneth Gordon, Tr., Defendant. Mr. Gordon will submit Order. NOTICE OF ENTRY TO BE ISSUED. (KST) (Entered: 02/14/2003)
02/12/2003	58	Letter [58-1]from Raymond Stilwell, Atty., re: various issues in this matter, and that he does not represent David Palmer in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/19/2003)
02/18/2003	57	Order [57-1] denying motion to extend time to file Notice of Appeal [47-1]that the Notice of Appeal was filed in the Bankruptcy Court Clerk's Office on 1/13/03; and thereby not timely filed; that the provisions of Bankruptcy Rule 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a); that the last date for Richard Coredero, Defendant and Third Party Plaintiff, to file a motion seeking an extension under Bankruptcy Rule 8002(c) of his time to file his Notice of Appeal was 1/29/03; that the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03; and that a motion to dismiss the appeal is pending in the District Court. NOTICE OF ENTRY ISSUED TO: Dr. Richard Cordero, Third Party Plaintiff; Ken Gordon, Defendant and U.S. Trustee. (KST) (Entered: 02/18/2003)
02/21/2003	59	Letter [59-1]from M. Beyma, Atty., for M&T Bank, advising that M&T Bank has not yet decided whether someone from the bank will attend at the warehouse opening. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/24/2003)
02/27/2003	60	Notice of Motion for relief from order denying motion to extend time to file notice of appeal [60-1] Hearing date and time: 9:30 3/12/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Defendant Affidavit of service: filed. Clerk's Note: Advised Dr. Cordero that 3/12/03 is not a motion date, he will re-notice the motion for 3/19/03 or 3/26/03, and submit an amended affidavit of mail. (KST) (Entered: 03/04/2003)
03/04/2003	61	Letter of Opposition filed by K. Gordon, Defendant [61-1] re: motion for



		relief from order denying motion to extend time to file notice of appeal [60-1] Clerk's Note: Advised Mr. Gordon that the date of 3/12/03 is not a hearing date, and that an amended notice if forthcoming. (KST) (Entered: 03/04/2003)
03/10/2003	62	Amended Notice of Motion, re: the amended date of hearing to 3/26/03 at 9:30 at Rochester Courtroom filed by Dr. Richard Cordero, Defendant [62-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1]Affidavit of Service filed. (KST) (Entered: 03/11/2003)
03/10/2003	63	Letter [63-1]of Dr. Richard Cordero, Defendant, re: default of David Palmer. (KST) (Entered: 03/11/2003)
03/11/2003	65	Copy of Letter [65-1]from Dr. Richard Cordero to Hon. David Larimer, re: default judgment against D. Palmer. (KST) (Entered: 03/13/2003)
03/11/2003	66	Copy of Decision and Order by U.S. District Judge David G. Larimer; concurring in the Bankruptcy Judge's determination that judgment is not appropriate in this case, and that furthermore, it would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose. SEE ORDER FOR FURTHER TERMS AND CONDITIONS. [66-1] (KST) (Entered: 03/13/2003)
03/12/2003	64	Letter [64-1]to Dr. Richard Cordero, sent by Paul Warren, Clerk of the Court, re: the application for the entry of default against David Palmer. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 03/13/2003)
03/13/2003	67	Decision and Order of the Hon. David G. Larimer, U.S. District Judge, re:Notice of Appeal filed on 1/13/03, re: the Decision and Order dated 12/30/02, of the Hon. John C. Ninfo, II, Chief U.S. Bankruptcy Judge. ORDERED THAT the Trustee's motion to dismiss the appeal is granted, and the appeal is dismissed. [67-1] (KST) (Entered: 03/14/2003)
03/26/2003	70	Minutes [70-1] denying motion for relief from order denying motion to extend time to file notice of appeal [60-1]Ms. Schaal to submit order. The Court reserves the right to supplement the order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Defendant and Third Party Plalintiff(by telephone); in opposition: Deborah Schaal of counsel to K. Gordon, Trustee, and David MacKnight, Atty. for James Pfunter. (KST) (Entered: 03/28/2003)
03/26/2003	71	Transcript [71-1] of proceedings held 12/18/03. (KST) (Entered: 03/28/2003)

03/27/2003	68	Copy of Letter [68-1]from David Macknight, Atty., to Dr. Richard Cordero, Defendant, advising of the available inspection dates: 4/23/03, 4/24/03, or 4/25/03, or earlier if Dr. Cordero would like. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 03/27/2003)
03/27/2003	69	Copy of Decision and Order [69-1],executed by David G. Larimer, U.S. District Judge re: Richard Coredero moves for a rehearing or reconsideration of this Court's Decision and Order enter 3/11/03. The motion is in all respects denied. (KST) (Entered: 03/28/2003)
04/02/2003	72	Copy of Letter [72-1]from Dr. Richard Cordero to Court Reporter. (KST) (Entered: 04/02/2003)
04/04/2003	73	Order [73-1] denying Defendant, Third Party Plaintiff, Dr. Richard Cordero's motion for relief from order denying motion to extend time to file notice of appeal [69-2], that based on the findisngs of fact and conclusions of law, that Richard Cordero's motion ofr relief from teh order dated 2/18/03 denying his motion for extension of time for filing a notice to appeal is hereby denied. NOTICE OF ENTRY ISSUED TO Debra Schall, of counsel to Kenneth Gordon, Atty.,Dr. Richard Cordero, Defendant, and David MacKnight, Atty. (KST) (Entered: 04/07/2003)
04/07/2003	74	Notice of entry issued to U.S. Trustee [74-1] re:Order of 4/4/03 . (KST) (Entered: 04/07/2003)
04/07/2003	75	Notice of Motion for Measures relating to trip to Rochester and Inspection of Property [75-1] Hearing date and time: 9:30 4/16/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se, Defendant, and Third Party Plaintiff. Affidavit of service: filed. Clerk's Note: Dr. Cordero is advised by letter that 4/16/03 is not a scheduled date, and to please re-notice his motion for 4/23/03, or for one of the Court's motion dates that accommodates his schedule. (KST) (Entered: 04/08/2003)
04/07/2003	76	Letter [76-1]to Dr. Richard Cordero, advising that due to the complexity of the legal issues that he has now raised and re: notice of motion for measures relating to trip to Rochester, the Court denies Dr. Cordero's request to appear by telephone in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/08/2003)
04/11/2003	77	Notice of Motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Hearing date and time: 9:30 4/23/03 at Rochester Courtroom Filed by: David MacKnight, Atty. Affidavit of service: not filed (KST) (Entered: 04/14/2003)

04/21/2003	78	Brief of Dr. Richard Cordero, Pro Se [78-1] re: motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1]Affidavit of Mailing filed. (KST) (Entered: 04/21/2003)
04/21/2003	79	Letter [79-1]from Mary Dianetti, Bankruptcy Court Reporter, in response to Dr. Cordero's letter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/22/2003)
04/23/2003	81	Minutes [81-1] motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Adj. to 9:30 5/21/03 at Rochester Courtroom. The court directed Dr. Cordero to inspect the goods by 5/21/03. Appearances: David MacKnight, Atty. for J. Pfunter, Plaintiff; in opposition: Dr. Richard Cordero, Defendant, and Third Party Plaintiff(by telephone). (KST) (Entered: 04/29/2003)
04/29/2003	80	Clerk's Note: Appeal filed transmitted to District Court, for purposes of filing in the Second Circuit. [80-1] (KST) (Entered: 04/29/2003)
05/05/2003	82	Copy of Letter [82-1]from Dr. Cordero to James Pfunter, confirming that Dr. Cordero will be arriving in Rochester on May 21, 2003 at 10:45, to inspect his property in Avon. Affidavit of Service filed. (KST) (Entered: 05/05/2003)
05/07/2003	83	Letter [83-1]from Dr. Richard Cordero, Defendant, re: his travel arrangements for the inspection in Avon, NY., on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/07/2003)
05/13/2003	84	Copy of Letter [84-1]from J. Pfunter to Dr. Cordero, confirming that the inspection of the property at Sackett Road will take place on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/13/2003)
05/15/2003	85	Letter [85-1]from Dr. Richard Cordero, Defendant, advising that he will be in Rochester on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/16/2003)
05/19/2003	86	Letter [86-1]from Underberg & Kessler advising that Ms. Mattle will be picking up Dr. Cordero from the Rochester Airport for the inspection of property at 2140 Sackett Road, Avon, NY, and thereafter Ms. Mattle will take Dr. Cordero back to the Rochester Airport. (KST) (Entered: 05/19/2003)

		05/20/2003)
05/21/2003	87	Copy of Notice of appeal that was received and docketed on 5/2/03 at the United States Court of Appeals. [87-1] (PCF) (Entered: 05/23/2003)
05/21/2003	88	MINUTES [88-1] denying motion without prejudice. for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] NOTICE OF ENTRY TO BE ISSUED. Dr. Cordero can make a motion for sanctions and damages and renew his default motion against David Palmer. Appearances by: David MacKnight, atty for James Pfunter. Appearing in Opposition: Dr. Richard Cordero, defendant and Third Pary Plaintiff (by telephone) (PCF) (Entered: 05/27/2003)
06/03/2003	89	Scheduling Order from the U.S. Court of Appeals, Second Circuit, re: dates certain. SEE ORDER FOR FURTHER DETAILS. [89-1] (KST) (Entered: 06/04/2003)
06/09/2003	90	Letter [90-1]from D. Macknight, re: prospective purchaser of the premises, and Dr. Cordero's items. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 06/09/2003)
06/11/2003	91	Notice of Motion for sanctions and compensation for failure to comply with discovery orders. [91-1] Hearing date and time: 9:30 6/25/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se Affidavit of service: filed (KST) (Entered: 06/11/2003)
06/11/2003	<a href="#">107</a>	Ex-Parte Motion for Default Against David Palmer Filed by 3rd Party Plaintiff Richard Cordero (Attachments: # <a href="#">1</a> Appendix) (Tacy, K.) (Entered: 07/31/2003)
06/18/2003	<a href="#">92</a>	Affidavit Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # <a href="#">1</a> Exhibit) (Tacy, K.) (Entered: 06/19/2003)
06/19/2003	<a href="#">93</a>	Notice of Amendment of Brief Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Proposed Order) (Tacy, K.) (Entered: 06/19/2003)
06/19/2003	<a href="#">94</a>	Notice to Admit. Filed by David MacKnight, Atty.(Attachments: # <a href="#">1</a> Exhibit)(Tacy, K.) (Entered: 06/23/2003)
06/23/2003	<a href="#">95</a>	Precautioary Response to the Motion Made by Richard Cordero to Enter a Default Judgment. Filed by D. MacKnight, Atty.Plaintiff James

		Pfuntner . Clerk's Note: The subject Default motion is an ex-parte motion, however it will be addressed at the Court's 6/25/03 9:30 Motion Calendar. (Tacy, K.) (Entered: 06/23/2003)
06/24/2003	<a href="#">96</a>	Letter Filed by Daniel Delaus, Atty . (Tacy, K.) (Entered: 06/24/2003)
06/25/2003	97	Hearing Continued (RE: related document(s)[91] Motion for sanctions and compensation: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom for [91]. The Court advised the parties of the Court's available trial dates for October and November. On the adjourned date, the parties are to advise the Court which of those date they want as trial dates. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants. (Parkhurst, L.) (Entered: 06/26/2003)
06/25/2003	98	Hearing Continued (RE: related document(s) <a href="#">95</a> Ex parte motion to enter default judgment against David Palmer: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom. Although an ex parte motion, the Court addressed it at this motion calendar. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third part Plaintiff. Appearing in opposition: David MacKnight, Atty. for James Pfunter, Plaintiff. (Parkhurst, L.) (Entered: 06/26/2003)
06/25/2003	<a href="#">99</a>	Certificate of Service Filed by Plaintiff James Pfuntner (RE: related document(s) <a href="#">94</a> Notice to Creditors). (Tacy, K.) (Entered: 06/27/2003)
07/02/2003	100	Hearing Continued (RE: related document(s)[91] Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for [91], Trial may continue into 10/17/03 and 11/14/03 will be held open if any matters still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants; Joseph Decoursey, Law Clerk, appeared on behalf of Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant, to provide Mr. Beyma's available Trial dates. (Parkhurst, L.) (Entered: 07/09/2003)
07/02/2003	101	Hearing Continued (RE: related document(s) <a href="#">95</a> Ex parte motion to enter default judgment against David Palmer. Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">95</a> , Trial may continue into

		10/17/03 and 11/14/03 will be held open for any matters that still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Third Party Plaintiff (By telephone) Appearing in opposition: David MacKnight, Atty. for James Pfuntner(Parkhurst, L.) (Entered: 07/09/2003)
07/15/2003	<a href="#">102</a>	Order Re:dates certain. Signed on 7/15/2003 (RE: related document(s)[91] Hearing (Bk Motion) Set, [98] Hearing (Bk Other) Continued, Hearing (Bk Other) Continued). (Tacy, K.) (Entered: 07/15/2003)
07/17/2003	<a href="#">103</a>	BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # <a href="#">102</a> ) (Admin.) (Entered: 07/18/2003)
07/17/2003	<a href="#">104</a>	BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # <a href="#">102</a> ) (Admin.) (Entered: 07/18/2003)
07/23/2003	<a href="#">105</a>	Motion For Sanctions Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # <a href="#">1</a> Exhibit) (Tacy, K.) (Entered: 07/23/2003)
07/23/2003	<a href="#">106</a>	Reply to Request for Admissions. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 07/23/2003)
07/31/2003		Clerk's Note: Pursuant to telephone conversation with Dr. Cordero this date: Advised Dr. Cordero that his motion to appear by telephone on August 6, 2003 at 9:30 is denied, but he can appear in person or obtain consent to adj. this matter to 10/16/03 at 9:30 a.m. Dr. Cordero advised that he will withdraw this motion, and make another motion for 10/16/03 at 9:30 a.m. Advised Dr. Cordero to write a letter to the Court and the parties involved confirming his intent. (RE: related document(s) <a href="#">105</a> Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) (Tacy, K.) (Entered: 07/31/2003)
08/04/2003	<a href="#">108</a>	ReNotice of Motion and Notice of Withdrawal Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 08/06/2003)
08/04/2003	109	Hearing Set (RE: related document(s) <a href="#">108</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">108</a> , (Tacy, K.) (Entered: 08/06/2003)
08/06/2003	110	Hearing Continued (RE: related document(s) <a href="#">105</a> Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero, <a href="#">108</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003

		at 09:30 AM Rochester Courtroom for <a href="#">105</a> and for <a href="#">108</a> , Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff (Parkhurst, L.) (Entered: 08/07/2003)
08/11/2003	<a href="#">111</a>	Motion to Recuse. Filed by Defendant Richard Cordero , 3rd Party Plaintiff (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit) (Tacy, K.) (Entered: 08/11/2003)
08/11/2003	112	Hearing Set (RE: related document(s) <a href="#">111</a> Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 8/20/2003 at 09:30 AM Rochester Courtroom for <a href="#">111</a> , (Tacy, K.) (Entered: 08/11/2003)
08/14/2003	<a href="#">113</a>	Letter to Dr. Richard Cordero, Defendant and Third Party Plaintiff. Copies sent to Kenneth Gordon, Esq., David Palmer, David MacKnight, Atty., Michael Beyma, Atty., Karl Essler, Atty., U.S. Trustee. (RE: related document(s) <a href="#">111</a> Application). (Tacy, K.) (Entered: 08/14/2003)
08/20/2003	114	Hearing Continued (RE: related document(s) <a href="#">111</a> Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">111</a> , Dr. Cordero will renote the motion for 10/16/03. No appearances. (Parkhurst, L.) (Entered: 08/20/2003)
08/21/2003	<a href="#">115</a>	Renote of Motion for Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Tacy, K.) (Entered: 08/29/2003)
08/21/2003	116	Hearing Set (RE: related document(s) <a href="#">115</a> Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for <a href="#">115</a> , (Tacy, K.) (Entered: 08/29/2003)
09/17/2003	<a href="#">117</a>	Copy of Writ of Mandamus. Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 09/18/2003)
09/20/2003	<a href="#">118</a>	BNC Certificate of Mailing. Service Date 09/20/2003. (Related Doc # <a href="#">117</a> ) (Admin.) (Entered: 09/21/2003)
10/07/2003	<a href="#">119</a>	Notice of objections to Hearings and Withdrawal of Motions Except For Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	<a href="#">120</a>	Objection Filed by David Dworkin, Jefferson Henrietta Associates , Notice of Objectons to Hearings and Withdrawal of Motions Except for Recusal and Removal. (Tacy, K.) (Entered: 10/07/2003)

10/07/2003	<a href="#">121</a>	Copy of Letter to the Pro Se Unit for Second Circuit. Filed by Karl Essler, Atty., for David Dworkin , and Jefferson Henrietta Associates . (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	<a href="#">122</a>	Notice of Motion and Motion to Determine Matters Admitted. Filed by David MacKnight, Atty. for Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	123	Hearing Set (RE: related document(s) <a href="#">122</a> Motion filed by Plaintiff James Pfuntner) Hearing to be held on 11/25/2003 at 09:30 AM Rochester Courtroom. <a href="#">122</a> , at the time of the Trial. Clerk's Note: D. MacKnight is to amend the motion papers from 9:00 a.m. to 9:30 a.m. (Tacy, K.) Modified on 11/7/2003. Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (Entered: 10/07/2003)
10/08/2003	<a href="#">124</a>	Amended Motion (related document(s): <a href="#">122</a> to reflect correct time. Motion filed by Plaintiff James Pfuntner) Filed by Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/09/2003)
10/14/2003	<a href="#">125</a>	Reply to Motion to determine Matters Admitted (related document(s): <a href="#">122</a> Motion filed by Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Attachments: # <a href="#">1</a> Certificate of Service) (Finucane, P.) (Entered: 10/14/2003)
10/15/2003	<a href="#">126</a>	Addendum to the Motion for Sanctions and Compensation for Failure to Comply with Discovery Orders. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/15/2003)
10/15/2003	127	Hearing Set (RE: related document(s) <a href="#">124</a> Amended Motion filed by Plaintiff James Pfuntner) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom. This matter will be heard at the Trial. <a href="#">124</a> , (Tacy, K.) (Entered: 10/15/2003)
10/16/2003	<a href="#">128</a>	Hearing Held. RE: Motion for Recusal and Removal; Complaint to Determine Right of Property; third-party plaintiff's request for jury trial. Notice of Entry be issued. (Finucane, P.) (Entered: 10/17/2003)
10/16/2003	<a href="#">129</a>	Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceedng with any Hearings and a Trial on 10/16/03 (Related Doc # <a href="#">111</a> ) Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)
10/16/2003	<a href="#">130</a>	Order Disposing of Causes of Action. Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)



10/17/2003	<a href="#">131</a>	Reply to Motion to determine Matters Admitted. (related document(s): <a href="#">122</a> Motion filed by atty for Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 10/17/2003)
10/17/2003	<a href="#">132</a>	Reply to Atty Essler's Motion letter to the Court. Filed by Defendant Richard Cordero . (Finucane, P.) (Entered: 10/17/2003)
10/19/2003	<a href="#">133</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">129</a> ) (Admin.) (Entered: 10/20/2003)
10/19/2003	<a href="#">134</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">130</a> ) (Admin.) (Entered: 10/20/2003)
10/19/2003	<a href="#">135</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">129</a> ) (Admin.) (Entered: 10/20/2003)
10/19/2003	<a href="#">136</a>	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # <a href="#">130</a> ) (Admin.) (Entered: 10/20/2003)
10/22/2003	<a href="#">139</a>	Amended Reply. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 10/24/2003)
10/23/2003	<a href="#">137</a>	Order Re:Finding A Waiver of A Trial By Jury. Signed on 10/23/2003. (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix) (Tacy, K.) (Entered: 10/23/2003)
10/23/2003	<a href="#">138</a>	Order Re:Scheduling Order in Connection with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Plaintiff, Richard Cordero. Signed on 10/23/2003. (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix) (Tacy, K.) Modified on 10/23/2003 (Tacy, K.). (Entered: 10/23/2003)
10/23/2003		Clerk's Note : The Orders of 10/23/03 were paper mailed to Raymond Stilwell, Atty.,on behalf of David Palmer, Defendant, with a Notice of Entry re: the 2 Orders. (RE: related document(s) <a href="#">137</a> Order <a href="#">138</a> Order (Tacy, K.) (Entered: 10/24/2003)
10/25/2003	<a href="#">140</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">137</a> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<a href="#">141</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">138</a> ) (Admin.) (Entered: 10/26/2003)
10/25/2003	<a href="#">142</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">137</a> ) (Admin.) (Entered: 10/26/2003)

10/25/2003	<a href="#">143</a>	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # <a href="#">138</a> ) (Admin.) (Entered: 10/26/2003)
10/27/2003	<a href="#">144</a>	Motion Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 10/27/2003)
10/28/2003	<a href="#">145</a>	Order Signed on 10/28/2003 (RE: related document(s) <a href="#">144</a> The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, is in all respects denied. (Tacy, K.) (Entered: 10/28/2003)
10/30/2003	<a href="#">146</a>	BNC Certificate of Mailing. Service Date 10/30/2003. (Related Doc # <a href="#">145</a> ) (Admin.) (Entered: 10/31/2003)
11/07/2003	<a href="#">147</a>	Letter filed by Richard Cordero, Defendant Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (RE: related document(s) <a href="#">122</a> (Tacy, K.) (Entered: 11/07/2003)
11/19/2003	<a href="#">148</a>	Letter to United States Court of Appeals for the Second Circuit, enclosing the Court's 10/23/03 Scheduling Order, together with the 10/16/03 Order Denying Recusal and Removal Motions; the 10/16/03 Order Disposing of causes of Action; and the 10/23/03 Decision and Order Finding a Waiver of a Trial by Jury: (Attachments: # <a href="#">1</a> Appendix # <a href="#">2</a> Appendix # <a href="#">3</a> Appendix # <a href="#">4</a> Appendix) (Tacy, K.) (Entered: 11/19/2003)
11/19/2003		Clerk's Note: (RE: related document(s) <a href="#">148</a> Letter: mailed letter to Roseann B. MacKechnie Clerk of Court, U.S. Court of Appeals for the Second Circuit, and to Richard Cordero, Defendant. (Tacy, K.) (Entered: 11/19/2003)
01/30/2004	<a href="#">149</a>	Copy of Summary Order from the USCA, for the Second Circuit. Clerk's Note: This order submitted directly to Chambers. (Tacy, K.) (Entered: 03/12/2004)
04/28/2004	<a href="#">150</a>	Letter Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # <a href="#">1</a> Certificate of Service # <a href="#">2</a> Exhibit # (copy of letter)(3) Exhibit (copy of letter) (Tacy, K.) (Entered: 04/30/2004)
05/04/2004	<a href="#">151</a>	Letter dated 5/4/04 from the Clerk of the Court, Paul R. Warren, Esq. to Dr. Richard Cordero regarding search request. (Finucane, P.) (Entered: 05/05/2004)
05/19/2004	<a href="#">152</a>	Letter dated 5/16/04 Filed by Richard Cordero. (RE: related document(s) <a href="#">151</a> Letter). (Finucane, P.) (Entered: 05/19/2004)

05/20/2004	<a href="#">153</a>	Letter dated 5/20/04 from the Clerk of the Court, Paul R. Warren, Esq. to Dr. Richard Cordero regarding search fee. (RE: related document(s) <a href="#">152</a> Letter). (Finucane, P.) (Entered: 05/20/2004)
05/26/2004	<a href="#">154</a>	Letter Filed by Defendant, Richard Cordero in response to (RE: related document(s) <a href="#">153</a> letter of Paul R. Warren, Clerk of the Court. (Tacy, K.) (Entered: 05/26/2004)
10/20/2004	<a href="#">155</a>	Copy of Letter Filed by Defendant Richard Cordero to George Reiber, Trustee. (Tacy, K.) (Entered: 10/20/2004)
02/24/2005	<a href="#">156</a>	Letter Filed by Karl Essler, Atty for David Dworkin , Jefferson Henrietta Associates, Defendants, re: 3/1/05 Motion . CLERK'S NOTE: please see bankruptcy case #04-20280 for further details. (Tacy, K.) (Entered: 02/24/2005)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/13/2005 18:38:35			
<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2-02-02230-JCN Fil or Ent: Fil Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
<b>Billable Pages:</b>	10	<b>Cost:</b>	0.80

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**U.S. Bankruptcy Court  
Western District of New York (Rochester)  
Bankruptcy Petition #: 2-04-20280-JCN**

Assigned to: John C. Ninfo II  
Chapter 13  
Voluntary  
Asset

Date Filed: 01/27/2004

**David G. DeLano**  
1262 Shoecraft Road  
Webster, NY 14580  
SSN: xxx-xx-3894  
**Debtor**

represented by **Christopher K. Werner**  
Boylan, Brown, Code, Vigdor & Wilson LLP  
2400 Chase Square  
Rochester, NY 14604  
(585) 232-5300  
Email: cwerner@boylanbrown.com

**Mary Ann DeLano**  
1262 Shoecraft Road  
Webster, NY 14580  
SSN: xxx-xx-0517  
**Joint Debtor**

represented by **Christopher K. Werner**  
(See above for address)

**George M. Reiber**  
3136 S. Winton Road, Suite 206  
Rochester, NY 14623  
(585) 427-7225  
**Trustee**

represented by **George M. Reiber1**  
3136 Winton Rd. S.  
Rochester, NY 14623  
(585)427-7225  
Email: trustee13@roch13.com

**U.S. Trustee's Office**  
100 State St.  
Room 6090  
Rochester, NY 14614  
(585) 263-5812  
*TERMINATED: 09/30/2004*  
**U.S. Trustee**

<b>Filing Date</b>	<b>#</b>	<b>Docket Text</b>
01/27/2004	<a href="#">1</a>	Chapter 13 Voluntary Petition, Schedules A-J & Statement of Financial Affairs filed by Christopher K. Werner on behalf of David G. DeLano ,

		Mary Ann DeLano . (Werner, Christopher) (Entered: 01/27/2004)
01/27/2004	<a href="#">2</a>	Chapter 13 Plan Filed by on behalf of David G. DeLano , Mary Ann DeLano (Werner, Christopher) (Entered: 01/27/2004)
01/27/2004	3	Receipt of Chapter 13 Voluntary Petition, All Schedules & Statements (fee)- Case Upload(2-04-20280) [caseupld,1305u] ( 194.00) filing fee. Receipt number 0209B348339, amount \$ 194.00. (U.S. Treasury) (Entered: 01/27/2004)
01/27/2004		Real Estate Scheduled. (Clifford, M) (Entered: 01/28/2004)
02/06/2004	<a href="#">5</a>	Meeting of Creditors 341(a) meeting to be held on 3/8/2004 at 01:00 PM at Rochester UST 341. Proofs of Claims due by 6/7/2004. Confirmation hearing to be held on 3/8/2004 at 03:30 PM at Rochester Courtroom. (Finucane, P.) (Entered: 02/06/2004)
02/06/2004	<a href="#">6</a>	Notice of Appearance and Request for Notice Filed by Creditor Captial One Auto Finance Department . (Finucane, P.) (Entered: 02/09/2004)
02/09/2004	<a href="#">7</a>	Order to Pay Trustee Signed on 2/9/2004. (Finucane, P.) (Entered: 02/09/2004)
02/11/2004	<a href="#">8</a>	Certificate of Service Filed by atty for debtor (RE: related document(s) <a href="#">5</a> Meeting of Creditors Chapter 13). (Finucane, P.) (Entered: 02/11/2004)
02/11/2004	<a href="#">9</a>	BNC Certificate of Mailing. Service Date 02/11/2004. (Related Doc # <a href="#">7</a> ) (Admin.) (Entered: 02/12/2004)
02/26/2004	<a href="#">11</a>	Notice of Appearance and Request for Notice Filed by Creditor MBNA America Bank NA by eCast Settlement Corporation . (Finucane, P.) (Entered: 03/03/2004)
02/26/2004	<a href="#">12</a>	Notice of Appearance and Request for Notice Filed by Creditor as its agent Chase Manhattan Bank USA, NA by eCast Settlement Corp . (Finucane, P.) (Entered: 03/03/2004)
03/01/2004	<a href="#">10</a>	Notice of Appearance and Request for Notice Filed by Creditor MBNA America Bank NA by eCast Settlement Corporation . (Finucane, P.) (Entered: 03/02/2004)
03/08/2004	<a href="#">13</a>	Objection to Confirmation of Plan Filed by Interested Party Dr. Richard Cordero (RE: related document(s) <a href="#">2</a> Chapter 13 Plan Filed by on behalf of David G. DeLano , Mary Ann DeLano (Werner, Christopher)). (Capogreco, C.) (Entered: 03/08/2004)

03/08/2004	<a href="#">14</a>	Meeting of Creditors Continued 341(a) meeting to be held on 4/26/2004 at 01:00 PM at Rochester UST 341. (Finucane, P.) Appearance by Creditor: Dr. Richard Cordero. (Entered: 03/09/2004)
03/08/2004	15	Confirmation Hearing Continued (RE: related document(s) <a href="#">5</a> Confirmation hearing to be held on 4/26/2004 at 03:30 PM at Rochester Courtroom. Appearances: Christopher Werner, Atty. for Debtors; James Weidman of counsel to George Reiber, Trustee. Appearing in opposition: Dr. Richard Cordero(Parkhurst, L.) (Entered: 03/09/2004)
03/09/2004		Declaration of Electronic Filing submitted.. (Finucane, P.) (Entered: 03/09/2004)
03/10/2004	<a href="#">16</a>	Notice of Appearance and Request for Notice Filed by Creditor Fleet Bank (RI) N.A. and its assigns by . (Finucane, P.) (Entered: 03/10/2004)
03/12/2004	<a href="#">17</a>	Notice of Appearance and Request for Notice Filed by Creditor Genesee Regional Bank fka Lyndon Guaranty Bank . (Finucane, P.) (Entered: 03/12/2004)
03/12/2004	<a href="#">18</a>	Letter <i>to conduct an adjourned 341 hearing</i> Filed by Trustee George M. Reiber. (Reiber1, George) (Entered: 03/12/2004)
04/07/2004	<a href="#">24</a>	Notice of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice. Filed by Interested Party Richard Cordero . (Finucane, P.) (Entered: 04/16/2004)
04/07/2004	<a href="#">25</a>	Memorandum of March 30, 2004, Re: The Facts, implications and requests concerning the DeLano Chapter 13 bankruptcy petition, docket No. 04-20280 WDNY Filed by Interested Party Richard Cordero . (Finucane, P.) (Entered: 04/16/2004)
04/07/2004	<a href="#">27</a>	Objection to a Claim of Exemptions Filed by Interested Party Richard Cordero . (Finucane, P.) (Entered: 04/16/2004)
04/08/2004	<a href="#">19</a>	Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # <a href="#">1</a> Appendix)(Tacy, K.)CORRECTIVE ENTRY: THIS ENTRY WILL INCLUDE SEPARATE DOCKET ENTRIES TO CLARIFY THE SEPARATION OF DOCUMENTS THAT WERE FILED. Modified on 4/16/2004 (Finucane, P.). (Entered: 04/08/2004)
04/09/2004	<a href="#">20</a>	Deficiency Notice (RE: related document(s) <a href="#">19</a> Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timeliness of an objection to a claim of

		exemptions and for a written statement on and of Local Practice, filed by Interested Party Richard Cordero) (Finucane, P.) Modified on 4/16/2004 (Finucane, P.). (Entered: 04/09/2004)
04/11/2004	<a href="#">21</a>	BNC Certificate of Mailing. Service Date 04/11/2004. (Related Doc # <a href="#">20</a> ) (Admin.) (Entered: 04/12/2004)
04/13/2004	<a href="#">22</a>	Letter <i>Letter to Mr. Cordero requesting dates for an extended 341 examination.</i> Filed by Trustee George M. Reiber. (Reiber4, George) (Entered: 04/13/2004)
04/15/2004	<a href="#">23</a>	Notice of Appearance and Request for Notice by Barbara Hamilton Filed by Notice of Appearance Creditor eCast Settlement Corporation, assignee of Associates National Bank . (Folwell, T.) (Entered: 04/15/2004)
04/16/2004	<a href="#">26</a>	Opposition to Cordero Objection to Claim of Exemptions Filed by Christopher Werner, Esq. atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (RE: related document(s) <a href="#">19</a> Objection to Confirmation of the Plan). (Finucane, P.) (Entered: 04/16/2004)
04/16/2004	<a href="#">28</a>	Letter to Dr. Cordero from the Court regarding deficiency notice related document(s) <a href="#">20</a> Deficiency Notice - no DDL, ). (Finucane, P.) (Entered: 04/19/2004)
04/16/2004	<a href="#">30</a>	Letter dated 4/13/04 Filed by Interested Party Richard Cordero . (Attachments: # <a href="#">1</a> Certificate of Service # <a href="#">2</a> Letter to Mr. Stickle # <a href="#">3</a> Letter to Dr. Cordero) (Finucane, P.) (Entered: 04/22/2004)
04/19/2004	<a href="#">29</a>	Copy of Letter dated 4/15/04 Filed by Interested Party Richard Cordero to George Reiber, Esq. (RE: related document(s) <a href="#">22</a> Letter). (Finucane, P.) (Entered: 04/19/2004)
04/22/2004	<a href="#">31</a>	Letter <i>re:adjourn 341 hearing to a later date (to be announced)</i> Filed by Trustee George M. Reiber. (Reiber1, George) (Entered: 04/22/2004)
04/26/2004	<a href="#">32</a>	Confirmation Hearing Continued (RE: related document(s) <a href="#">5</a> Confirmation hearing to be held on 6/21/2004 at 03:30 PM at Rochester Courtroom. Appearances: Christopher Werner, Atty. for Debtors; George Reiber, Trustee.(Parkhurst, L.) (Entered: 04/27/2004)
04/26/2004	<a href="#">33</a>	Meeting of Creditors Continued 341(a) meeting to be held on 6/21/2004 at 01:00 PM at Rochester Courtroom. (Finucane, P.) (Entered: 04/28/2004)
04/28/2004	<a href="#">34</a>	Reply to Debtors' Statement in Opposition to Dr. Cordero's Objection to



		a Claim of Exemptions. Filed by Interested Party Richard Cordero . (Finucane, P.) (Entered: 04/28/2004)
04/28/2004	<a href="#">35</a>	Letter dated 4/23/04 to George Reiber, Esq. from Dr. Richard Cordero. Filed by Interested Party Richard Cordero . (Finucane, P.) (Entered: 04/28/2004)
05/18/2004	<a href="#">36</a>	Letter Filed by Trustee George M. Reiber. (Reiber1, George) (Entered: 05/18/2004)
05/18/2004	<a href="#">37</a>	Letter Filed by Trustee George M. Reiber. (Reiber1, George) (Entered: 05/18/2004)
05/19/2004	<a href="#">38</a>	Copy of Letter dated 5/16/04 to George Reiber, Esq. from Dr. Richard Cordero . (Finucane, P.) (Entered: 05/19/2004)
05/26/2004	<a href="#">39</a>	Letter dated 5/23/04 Filed by Dr. Richard Cordero to Ms. Deirdre Martini, UST for the Region 2. (Finucane, P.) (Entered: 05/26/2004)
05/26/2004	<a href="#">40</a>	Letter dated 5/23/04 to Christopher K. Werner, Esq. Filed by Dr. Richard Cordero . (Finucane, P.) (Entered: 05/26/2004)
06/14/2004	<a href="#">41</a>	Copy of Letter dated 6/8/04 Filed by Dr. Richard Cordero to George Reiber, Esq. (Finucane, P.) (Entered: 06/15/2004)
06/15/2004	<a href="#">42</a>	Chapter 13 Trustee's Motion to Dismiss Case <i>FOR UNREASONABLE DELAY</i> . (Reiber, George) (Entered: 06/15/2004)
06/15/2004	<a href="#">43</a>	Letter Filed by Trustee George M. Reiber. (Reiber1, George) (Entered: 06/15/2004)
06/16/2004	44	Hearing Set (RE: related document(s) <a href="#">42</a> Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 7/19/2004 at 03:30 PM Rochester Courtroom for unreasonable delay. <a href="#">42</a> , (Finucane, P.) (Entered: 06/16/2004)
06/21/2004	45	Confirmation Hearing Continued (RE: related document(s) <a href="#">5</a> Confirmation hearing to be held on 8/23/2004 at 03:30 PM at Rochester Courtroom. Appearances: George Reiber, Trustee. (Parkhurst, L.) (Entered: 06/21/2004)
06/23/2004	<a href="#">46</a>	341 Meeting of Creditors Continued. 341(a) meeting to be held on 8/23/2004 at 01:00 PM at Rochester UST 341. (Reiber, George) (Entered: 06/23/2004)

07/12/2004	<a href="#">47</a>	Statement in Opposition to Trustee's Motion to Dismiss the Delano Petition (related document(s): <a href="#">42</a> Chapter 13 Trustee's Motion to Dismiss Case <i>FOR UNREASONABLE DELAY</i> ) Filed by Dr. Richard Cordero (Finucane, P.) (Entered: 07/13/2004)
07/13/2004	<a href="#">48</a>	Objection to (Trustees Motion to Dimiss. related document(s): <a href="#">42</a> Chapter 13 Trustee's Motion to Dismiss Case <i>FOR UNREASONABLE DELAY</i> ) Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Finucane, P.) (Entered: 07/13/2004)
07/19/2004	49	Hearing Continued (RE: related document(s) <a href="#">42</a> Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 8/23/2004 at 03:30 PM Rochester Courtroom for <a href="#">42</a> , The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04. The debtors are to give Mr. Werner any pages of the Equifax report that they have and that he does not have. By the close of business on 7/21/04, Mr. Werner is to send complete copies of the Equifax report to the Trustee and Dr. Cordero. By 8/11/04, the Debtors are to have ordered their credit reports from Equifax, Trans Union and Experian. Within two days of their receipt, copies are to be provided to the Trustee and Dr. Cordero. The Court will adj. Dr. Cordero's request to remove Mr. Reiber as Trustee to 8/23/04. Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee. Appearing in opposition: Christopher Werner, Atty. for Debtors; Dr. Richard Cordero (By phone). (Parkhurst, L.) (Entered: 07/20/2004)
07/20/2004	<a href="#">53</a>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
07/21/2004	<a href="#">50</a>	Letter dated 7/20/04 Filed by Christopher Werner, Esq. atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano to the Court regarding proposed Order that was submitted by Dr. Cordero . (Finucane, P.) Additional attachment(s) added on 7/21/2004 (Finucane, P.). (Entered: 07/21/2004)
07/22/2004	<a href="#">51</a>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <a href="#">1</a> Proposed Order # <a href="#">2</a> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
07/23/2004	52	Hearing Set Pending Opposition. Hearing Set for 11:30 a.m. 8/25/04 at Rochester Courtroom (RE: related document(s) <a href="#">51</a> Motion to Object to Claim(s) filed by Christopher Werner atty for Debtor David G. DeLano, Joint Debtor Mary Ann DeLano) (Finucane, P.) (Entered: 07/23/2004)

07/26/2004	<a href="#">54</a>	Order Regarding Trustee's Motion To Dismiss Case (Related Doc # <a href="#">42</a> ) Signed on 7/26/2004. (Attachments: # <a href="#">1</a> Copy of Letter & Proposed Order from Dr. Richard Cordero# <a href="#">2</a> Copy of letter and Proposed Order from Christopher Werner, Esq.) (Finucane, P.)Copy of Order sent to Dr. Cordero by U.S. mail and by Bankruptcy Noticing Center. (Entered: 07/27/2004)
07/29/2004	<a href="#">55</a>	BNC Certificate of Mailing. (RE: related document(s) <a href="#">54</a> Order on Trustee's Motion to Dismiss Case, ) Service Date 07/29/2004. (Admin.) (Entered: 07/30/2004)
07/29/2004	<a href="#">56</a>	BNC Certificate of Mailing. (RE: related document(s) <a href="#">54</a> Order on Trustee's Motion to Dismiss Case, ) Service Date 07/29/2004. (Admin.) (Entered: 07/30/2004)
08/16/2004	<a href="#">57</a>	Notice of Motion and Supporting Brief For Docketing and Issue, Removal, Referral, Examination, and Other Relief. Filed by Interested Party Richard Cordero (Attachments: # <a href="#">1</a> Certificate of Service # <a href="#">2</a> Exhibit Letter# <a href="#">3</a> Proposed Order # <a href="#">4</a> Exhibit Verizon-Online Activity Statement) (Tacy, K.) Modified on 8/16/2004 to add specific text, re: type of Motion(Tacy, K.). (Entered: 08/16/2004)
08/19/2004	<a href="#">58</a>	Reply in Opposition to Debtors' Objection to claim and Motion to Disallow it (related document(s): <a href="#">51</a> Motion Objecting to Claim No.(s) 19 filed by Debtor David G. DeLano, Joint Debtor Mary Ann DeLano) Filed by Dr. Richard Cordero (Finucane, P.) (Entered: 08/19/2004)
08/20/2004	<a href="#">59</a>	Response to Cordero Reply to Objection to Claim (related document(s): <a href="#">58</a> Objection, filed by Dr. Richard Cordero) Filed by Christopher Werner, Esq. atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Finucane, P.) (Entered: 08/20/2004)
08/23/2004	60	Hearing Held (RE: related document(s) <a href="#">42</a> Chapter 13 Trustee's Motion to Dismiss Case) Motion denied without prejudice. The Court will suspend any and all Court proceedings and involvement in this case until the claim objection, scheduled for 8/25/04, is resolved. Dr. Cordero's motion, dated, 8/14/04, is denied in its entirety without prejudice to renew should the Court determine he has an allowable claim in this case. The Court will prepare and enter an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee.Appearing in opposition: Christopher Werner, Atty. for Debtor; Dr. Richard Cordero, Pro Se.(Parkhurst, L.) (Entered: 08/25/2004)
08/23/2004	61	Confirmation Hearing Held. (RE: related document(s) <a href="#">5</a> The Confirmation Hearing is suspended until the objection to the claim of Dr. Richard Cordero is resolved. Appearances: Christopher Werner,

		Atty. for Debtors; George Reiber, Trustee. Appearing in opposition: Dr. Richard Cordero, Pro Se (By telephone).(Parkhurst, L.) (Entered: 08/25/2004)
08/25/2004	<a href="#">65</a>	Hearing Continued (RE: related document(s) <a href="#">51</a> Motion to Object to Claim(s) filed by Debtor David G. DeLano, Joint Debtor Mary Ann DeLano) Adjourned to the Evidentiary Hearing Calendar to be held on 12/15/2004 at 09:00 AM Rochester Courtroom for <a href="#">51</a> , Discovery is to be completed by 12/15/04. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Christopher Werner, Atty. for Debtors; George Reiber, Trustee. Appearing in opposition: Dr. Richard Cordero, Pro Se (By telephone).(Parkhurst, L.) (Entered: 08/31/2004)
08/30/2004	<a href="#">62</a>	Interlocutory Order Denying Trustee's Motion To Dismiss Case; The Court's involvement in the DeLano case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding and any and all appeals of its final determination are finalized; The Debtors and Cordero shall have until 12/15/04 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and The Claim Objection Proceeding shall be called on the Court's 12/15/04 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability. (Related Doc # <a href="#">42</a> ) Signed on 8/30/2004. (Attachments: # <a href="#">1</a> Proof of Claim filed 5/19/04# <a href="#">2</a> Scheduling Order in connection with the remaining claims of the plaintiff, James Pfuntner, & the Cross-Claims, Counterclaims & Third Party Claims of the Third-Party Plaintiff, Richard Cordero# <a href="#">3</a> Order dated 7/26/04 and attachments# <a href="#">4</a> Objection to Claim Filed 7/22/04) (Finucane, P.) (Entered: 08/30/2004)
08/30/2004	<a href="#">63</a>	Transfer of Claim. (Jackson, R.) (Entered: 08/30/2004)
08/30/2004	<a href="#">64</a>	Transfer of Claim. (Jackson, R.) (Entered: 08/30/2004)
09/01/2004	<a href="#">66</a>	BNC Certificate of Mailing. (RE: related document(s) <a href="#">62</a> Order on Trustee's Motion to Dismiss Case, , , , ) Service Date 09/01/2004. (Admin.) (Entered: 09/02/2004)
09/01/2004	<a href="#">67</a>	BNC Certificate of Mailing. (RE: related document(s) <a href="#">62</a> Order on Trustee's Motion to Dismiss Case, , , , ) Service Date 09/01/2004. (Admin.) (Entered: 09/02/2004)
10/05/2004	<a href="#">68</a>	Letter dated 10/1/04 Filed by Trustee George M. Reiber . (Finucane, P.) (Entered: 10/05/2004)

10/06/2004	<a href="#">69</a>	Letter dated 9/29/04 to Christopher K. Werner, Esq. Filed by Dr. Richard Cordero . (Finucane, P.) (Entered: 10/08/2004)
10/06/2004	<a href="#">70</a>	Letter dated 9/22/04 to George M. Reiber, Esq. Filed by Dr. Richard Cordero . (Finucane, P.) (Entered: 10/08/2004)
10/20/2004	<a href="#">71</a>	Letter dated 10/12/04 Filed by Dr. Richard Cordero to George M. Reiber, Esq. (Finucane, P.) (Entered: 10/20/2004)
10/25/2004	<a href="#">72</a>	Letter dated 10/21/04 to Kathleen Dunivin Schmitt, Esq.(UST) Filed by Dr Richard Cordero . (Finucane, P.) (Entered: 10/26/2004)
10/25/2004	<a href="#">73</a>	Letter dated 10/20/04 to George M. Reiber, Esq. Filed by Dr. Richard Cordero . (Finucane, P.) (Entered: 10/26/2004)
10/28/2004	<a href="#">74</a>	Letter Filed by Debtor David G. DeLano. (Attachments: # <a href="#">1</a> Exhibit Discovery Response) (Werner, Christopher) (Entered: 10/28/2004)
11/05/2004	<a href="#">75</a>	Letter dated 10/27/04 to Christopher Werner, Esq. filed by Dr. Richard Cordero (Attachments: # <a href="#">1</a> certificate of service) (Finucane, P.) (Entered: 11/05/2004)
11/05/2004	<a href="#">76</a>	Letter dated 10/28/04 to George Reiber, Esq. Filed by Dr.Richard Cordero . (Finucane, P.) (Entered: 11/05/2004)
11/08/2004	<a href="#">77</a>	Notice of Motion to Enforce Judge Ninfo's Order of 8/30/04 for Discovery from David DeLano and to Obtain a Declaration that it does not exempt the Trustee from his obligations under B.C. Sec. 341. Filed by Dr. Richard Cordero (Finucane, P.) (Entered: 11/08/2004)
11/10/2004	<a href="#">78</a>	INTERLOCUTORY Order Denying Notice of Motion to Enforce Judge Ninfo's Order of August 30, 2004, For Discovery from David Delano and to Obtain a Declaration that it does not exempt the Trustee from his Obligations Under B.C. section 341. (Related Doc # <a href="#">77</a> ) Signed on 11/10/2004. (Attachments: # <a href="#">1</a> Interlocutory Order dated 8/30/04)(Tacy, K.) (Entered: 11/10/2004)
11/10/2004	<a href="#">79</a>	Response to (related document(s): <a href="#">78</a> Order on Generic Motion, ) Filed by Debtor David G. DeLano (Werner, Christopher) (Entered: 11/10/2004)
11/12/2004	<a href="#">80</a>	BNC Certificate of Mailing. (RE: related document(s) <a href="#">78</a> Order on Generic Motion, ) Service Date 11/12/2004. (Admin.) (Entered: 11/13/2004)

12/21/2004	<a href="#">81</a>	Scheduling Order Signed on 12/21/2004 (RE: related document(s) <a href="#">51</a> Motion to Object to Claim(s) filed by atty for Debtor David G. DeLano, Joint Debtor Mary Ann DeLano). Hearing to be held on 3/1/2005 at 01:30 PM Rochester Courtroom for Evidentiary Hearing <a href="#">51</a> , (Finucane, P.) (Entered: 12/22/2004)
12/24/2004	<a href="#">82</a>	BNC Certificate of Mailing. (RE: related document(s) <a href="#">81</a> Scheduling Order, ) Service Date 12/24/2004. (Admin.) (Entered: 12/25/2004)
01/03/2005	<a href="#">83</a>	Letter dated 12/30/04 from George Reiber, Esq. to Dr. Richard Cordero and Christopher Werner, Esq. Filed by Trustee George M. Reiber . (Finucane, P.) (Entered: 01/04/2005)
02/03/2005	<a href="#">84</a>	341 Meeting of Creditors Continued. Filed by Trustee (Reiber, George) (Entered: 02/03/2005)
02/10/2005	<a href="#">85</a>	Joint Transfer of Claim from Chase Manhattan Bank USA, NA to eCAST Settlement Corporation. Filed by Creditor eCAST Settlement Corporation. (Beckett, Alane) (Entered: 02/10/2005)
02/10/2005	<a href="#">86</a>	Joint Transfer of Claim from Fleet Bank (RI) N.A. and its assigns to eCAST Settlement Corporation. Filed by Creditor eCAST Settlement Corporation. (Beckett, Alane) (Entered: 02/10/2005)
02/14/2005	<a href="#">87</a>	Joint Transfer of Claim from MBNA America Bank, N.A. to eCAST Settlement Corporation. Filed by Creditor eCAST Settlement Corporation. (Beckett, Alane) (Entered: 02/14/2005)
02/14/2005	<a href="#">88</a>	Joint Transfer of Claim from MBNA America Bank, N.A. to eCAST Settlement Corporation. Filed by Creditor eCAST Settlement Corporation. (Beckett, Alane) (Entered: 02/14/2005)
02/14/2005	<a href="#">89</a>	Joint Transfer of Claim from MBNA America Bank, N.A. to eCAST Settlement Corporation. Filed by Creditor eCAST Settlement Corporation. (Beckett, Alane) (Entered: 02/14/2005)
02/22/2005	<a href="#">90</a>	Motion to Recuse Judge John C. Ninfo II Filed by Dr. Richard Cordero Hearing to be held on 3/1/2005 at 01:30 PM at Rochester Courtroom. (Finucane, P.) (Entered: 02/22/2005)
02/23/2005	91	Hearing Set (TEXT ONLY EVENT) (RE: related document(s) <a href="#">90</a> Motion to Recuse Judge Ninfo filed by Interested Party Richard Cordero) Hearing to be held on 3/1/2005 at 01:30 PM Rochester Courtroom for motion to Recuse <a href="#">90</a> , (Finucane, P.) (Entered: 02/23/2005)

02/24/2005	<a href="#">92</a>	Letter dated 2/22/05 from Karl S. Esster, Esq. advising of his opinion regarding the Motion for Rucusal . (Finucane, P.) (Entered: 02/24/2005)
03/01/2005	<a href="#">93</a>	Letter dated 2/22/05 to Mr. George M. Reiber, Trustee. Filed by Dr. Richard Cordero regarding documents produced by Atty. Werner for Delanos. (Finucane, P.) (Entered: 03/02/2005)
03/01/2005		Hearing Held (TEXT ONLY EVENT) (RE: related document(s) <a href="#">90</a> Motion to Recuse Judge filed by Interested Party Richard Cordero) Motion denied. The Court will issue a written decision. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Pro Se. Appearing in opposition: Christopher Werner, Atty. for Debtors. (Parkhurst, L.) (Entered: 03/03/2005)
03/01/2005		Hearing Held (TEXT ONLY EVENT) (RE: related document(s) <a href="#">51</a> Motion to Object to Claim(s) filed by Debtor David G. DeLano, Joint Debtor Mary Ann DeLano) RESERVE. The Court denied Dr. Cordero's oral motion for the production of documents. The Court will issue a written decision. NOTICE OF ENTRY TO BE ISSUED. Appearances: Christopher Werner, Atty. for Debtors; Michael Beyma, Atty. for M & T Bank. Appearing in opposition: Dr. Richard Cordero, Pro Se. Witnesses: David DeLano, Debtor. (Parkhurst, L.) (Entered: 03/03/2005)

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<b>PACER Service Center</b>			
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03/13/2005 18:29:29			
<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2-04-20280-JCN Fil or Ent: Fil Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
<b>Billable Pages:</b>	6	<b>Cost:</b>	0.48

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**General Docket**  
**US Court of Appeals for the Second Circuit**  
Second Circuit Court of Appeals

INDIV

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Court of Appeals Docket #:03-5023-bk

Nsuit: 3422 STATUTES-Bkrup Appeals 801  
In Re: Premier Van v. Palmer  
Filed: 5/2/03

Appeal from: WDNY (ROCHESTER)

Case type information:

Bankruptcy  
District Court

None

Lower court information:

District: 03-cv-6021

Trial Judge David G. Larimer  
MagJudge:  
Date Filed: 01/15/03

Date 3/27/2003  
order/judgement:  
Date NOA filed: 4/25/2003

Fee status:Paid

Panel Assignment:

Panel: JLO JMW RAK 40 Foley Sq.  
Date of decision 1/26/04

Prior cases: NONE

Current cases: NONE

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Official Caption 1/  
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Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,

Debtor.

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RICHARD CORDERO,

Third-Party-Plaintiff - Appellant

v.

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KENNETH W. GORDON, Esq.,

Trustee - Appellee,

DAVID PALMER

Third-Party-Defendant - Appellee.

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Clerk,Bank Ct,RONY  
None

Clerk,Bank Ct,RONY  
n/a

68 Court St. U.S. Courthouse  
Buffalo , NY , 14202  
716-846-4130

David Palmer  
Defendant-Appellee

David Palmer  
n/a

1829 Middle Rd.  
Rush , NY , 14543

Kenneth W. Gordon  
Trustee-Appellee

Kenneth W. Gordon  
n/a  
Gordon & Schaal LLP  
100 Meridian Centre Blvd.  
Rochester , NY , 14618  
585-244-1070

Richard Cordero  
Third-Party-Plaintiff-App

Richard Cordero  
n/a

59 Crescent St.  
Brooklyn , NY , 11208  
718-827-9521

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5/2/03 Note: This appeal was PRO SE when filed.

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. [03-5023]

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023]

5/2/03 Copy of notice of appeal and district court docket entries on behalf of Appellant Richard Cordero filed. [03-5023] "FeePaid #64514".

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023]

5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume.

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received.

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5/28/03 Scheduling order #1 filed. Record on appeal

due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03 . Argument as early as week of 9/22/03.

- 5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03.
- 5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received.
- 6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received.
- 6/5/03 Record on appeal received in records room from team.
- 6/5/03 1st supplemental index on appeal filed.
- 6/13/03 Record on appeal received in records room from team.
- 7/14/03 Appellant Richard Cordero brief FILED with proof of service.
- 7/14/03 Appellant Richard Cordero appendix filed w/pfs. Number of volumes; 1.
- 8/11/03 Notice of appearance form on behalf of Kenneth W. Gordon, Esq., filed. (Orig in acco , copy to Calendar)
- 8/11/03 Appellee Kenneth W. Gordon MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due.

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- 8/19/03 Proposed for argument the week of 10/27/03.
- 8/25/03 Appellant Richard Cordero reply brief filed with proof of service.
- 9/16/03 Argument as early as week of 9/22/03.
- 9/30/03 Proposed for argument the week of 12/8/03.
- 10/20/03 Set for argument on 12/11/03 . [03-5023]
- 11/4/03 Appellant Richard Cordero motion to allow leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in it's order of October 23, 2003,

denyig Dr. Cordero's request for a jury trial , which Dr. Cordero submitted to and is under consideration by this Court of Appeals FILED (w/pfs). [2471688-1]

11/6/03 Notice of Hearing Date from Appellant Richard Cordero received.

11/13/03 Order FILED GRANTING motion to allow"leave to introduce an updating supplement on the issue of the Bankrupt Court's bias against petition's evidenced in it's order of 10/23/03" [2471688-1] by Appellant Richard Cordero, endorsed on motion form dated 11/4/03(FOR THE COURT-AV).

11/13/03 Letter dated 11-5-03 from Kenneth W. Gordon, Esq. requestingpermission from the Court to waive oral argument. received

11/13/03 Notice to counsel re:order dated 12/11/03.

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11/24/03 Copy of Bankruptcy Court order dated 10-23-03 scheduling order in connection with the remaining claims of the plaintiff, James Pfunter, and the cross-claims, counter-claims and third-party claims of the third-party plaintiff, which has attached to it the following additional orders: 1) an October 16 , 2003 order denying and recusal and removal motions and objection of Richard Cordero to proceeding with any hearings and trial on 10-16-03; 2) An October 16, 2003 order disposing of cause of action; and an October 23, 2003 decision & order finding a waiver of a trial by jury from Hon. John C. Ninfo, II, Chief U.S. U.S. Bankruptcy Judge. received.

12/11/03 Case heard before WALKER, CH.J; OAKES, KATZMANN, C.JJ . (TAPE: CD date: 12/11/03)

12/11/03 Outline of the oral argument from Appellant Richard Cordero received.

12/29/03 Appellant Richard Cordero motion to allow leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal, FILED (w/pfs). [2509028-1]

1/26/04 Order FILED GRANTING motion to allow by endorsed on motion dated 12/29/2003. "IT IS

HEREBY ORDERED that appellant Cordero`s motion for leave to file a brief on issue raised at oral argument be and it hereby is Granted". Before Hon. JMW, JLO, RAK, CJS. Endorsed by Arthur M. Heller, Motions Staff Attorney.

1/26/04 Notice to counsel and pro se re: order dated 01/26/04 Granting motion for leave to file a brief on issue raised at oral argument.

1/26/04 Judgment filed; judgment of the district Docket as of February 03, 2005 6:06 pm

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court is Dismissed by detailed order of the court without opinion filed. (JMW)

1/26/04 Notice to counsel and pro se re: summary order dated 1/26/04.

2/9/04 Appellant Richard Cordero motion for extended time to file a petition for rehearing, filed with proof of service.

2/9/04 Appellant Richard Cordero motion for stay of mandate, filed with proof of service.

2/13/04 Order FILED REFERRING motion for extended time by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for extension of time to file petition for rehearing to Hon. JMW, JLO, RAK.

2/13/04 Order FILED REFERRING motion for stay by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for stay mandate to Hon. JMW, JLO, RAK.

2/23/04 IT IS HEREBY ORDERED that the motion for an extension of time to file a petitionn for rehearing and to stay the mandate is GRANTED. The petition shall be filed by March 10, 2004 . Before Hon. JMW, JLO, RAK, CJ. Endorsed by Arthur M. Heller, Motions Staff Attorney.

2/26/04 Notice to counsel and pro se re: order dated 02/23/04.

3/10/04 Appellant Richard Cordero motion for leave to attach some entries of the Appendix to the petition for panel rehearing and hearing en banc, filed with proof of service.

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- 3/10/04 APPELLANT Richard Cordero, petition for rehearing and rehearing en banc, received.
- 3/11/04 Appellant Richard Cordero Petition for rehearing and petition for rehearing en banc filed with proof of service.
- 3/22/04 Appellant Richard Cordero motion for the Hon . Chief Judge Walker to recuse himself from this case and from considering the pending petition for panel rehearing and rehearing en banc, filed with proof of service.
- 3/22/04 Papers (Booklet) of Evidentiary Documents supporting a complaint from APPELLANT Richard Cordero, received.
- 3/23/04 Order FILED GRANTING motion for leave to file by Appellant Richard Cordero, endorsed on motion dated 3/10/2004. IT IS HEREBY ORDERED that the motion be and it hereby is GRANTED. Before Hon. Walker, Oakes, Katzmann. Endorsed by Arthur M. Heller, Motions Staff Attorney.
- 3/24/04 Notice to counsel and pro se re: order dated 03/23/04.
- 4/19/04 Appellant Richard Cordero -leave to update the motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case with recent evidence.....filed with proof of service.
- 5/4/04 Order FILED DENYING motion to recuse by Appellant Richard Cordero, endorsed on motion dated 3/22/2004. "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED." Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Richard C. Wesley, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

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- 5/4/04 Notice to counsel and pro se re: order dated 05/04/04.

5/10/04 AMENDED order stating "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED," filed. Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Robert A. Katzmann, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

5/10/04 Notice to counsel and pro se re: amended order dated 05/10/04.

5/17/04 Appellant Richard Cordero motion for declaratory judgment that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16, filed with proof of service.

6/2/04 Appellant Richard Cordero motion to allow for the Hon. John M. Walker, Jr., Chief Judge, Either to state his arguments for denying the motions that he disqualify himself from considering the pending petition for panel rehearing and hearing en banc; and from having anything else to do with this case or disqualify himself and failing that for this court to disqualify the chief judge therefrom, filed with proof of service.

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion is DENIED, endorsed on motion dated 6/2/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW, Chief Judge, JLO, RAK, C.J.J.)

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion for declaratory judgment is denied, endorsed on motion dated 5/17/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW

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, Jr. Chief Judge, JLO, RAK, C.J.J.)

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04.

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04 re: declaratory judgment.

9/10/04 Appellant Richard Cordero motion allow /to quash the Order of August 30, 2004 of WBNY J. John C. Ninfo, II, to sever claim from this case, filed with proof of service.



10/5/04 Copy of the letter dated 9-29-04 to Christopher K. Werner, Esq. from APPELLANT Richard Cordero, received.

10/13/04 Order FILED DENYING motion to quash order of August 30, 2004 of WBNY J. John C. Ninfo, II, to sever claim from this case by Appellant Richard Cordero, (JLO,RAK)

10/14/04 Notice to counsel (order dated 10-13-04)

10/18/04 Letter dated 10-12-04 from appellant pro se Cordero to George M. Reiber, Esq. received (copy to the Court)

10/26/04 Order FILED DENYING motion petition for rehearing and petition for rehearing en banc by Appellant Richard Cordero, (ah)

10/27/04 Notice to counsel (order dated 10-26-04)

11/2/04 Appellant Richard Cordero motion stay the mandate filed with proof of service.

11/2/04 Letter dated 10-20-04 from P. Finucane,  
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Deputy Clerk , U.S. Bankruptcy Court George M . Reiber, Esq. received (copy submitted by appellant pro se Cordero)

11/2/04 Letter dated 10-21-04 from appellant pro se Cordero to Kathleen Dunivin Schmitt, Esq. received (copy to the Court)

11/8/04 Order FILED DENYING motion stay the mandate by Appellant Richard Cordero, endorsed on motion dated 11/2/2004, (JLO,RAK)

11/8/04 Notice to counsel (order dated 11-8-04)

11/8/04 Judgment MANDATE ISSUED. CLOSED

11/9/04 Letter dated 10-27-04 from APPELLANT Richard Cordero, to Christopher K. Werner, Esq. Re: David and Mary Ann DeLano, Bkr. dkt no. 04-20280 received.

11/9/04 Copy of the Notice of Motion to enforced Judge Ninfo's order of 8-30,2004 submitted the the US Bankruptcy Court WDNY from APPELLANT Richard Cordero, received.

11/22/04 Acco received in records room from team.

Number of Volumes: 2

11/30/04 Mandate receipt returned from the district court.

2/1/05 Notice of filing petition for APPELLANT Richard Cordero, dated January 27, 2005, filed. Supreme Court #: 04-8371.

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<b>Transaction Receipt</b>			
03/13/2005 19:14:56			
<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	dkt report	<b>Case Number:</b>	03-5023
<b>Billable Pages:</b>	12	<b>Cost:</b>	0.96

---

## United States Bankruptcy Court

04-20280

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

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

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

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

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

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

See Reverse Side For Important Explanations.

## Meeting of Creditors:

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

Location: U.S. Trustees Office  
6080 U.S. Courthouse  
100 State Street  
Rochester, NY 14614

FEB - 6 2004

## Deadlines:

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

## Deadline to File a Proof of Claim:

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

For governmental units: July 26, 2004

## Deadline to Object to Exemptions:

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

## Filing of Plan, Hearing on Confirmation of Plan

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

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

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

## Creditors May Not Take Certain Actions:

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

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

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

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

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

Address of the Bankruptcy Clerk's Office: U.S. Bankruptcy Court 100 State St.  Rochester, NY 14614	Website: <a href="http://www.nywb.uscourts.gov">http://www.nywb.uscourts.gov</a>  Clerk of the Bankruptcy Court: PAUL R. WARREN  DATED: February 03, 2004
--	--

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

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

**CERTIFICATE OF MAILING**

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

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

AFFA

CERTIFICATE OF MAILING

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

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

32 NOTICES

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

\*CM - Indicates notice served via Certified Mail

<b>FORM B1</b>	<b>United States Bankruptcy Court Western District of New York</b>	<b>Voluntary Petition</b>
----------------	--	---------------------------

Name of Debtor (if individual, enter Last, First, Middle): DeLano, David G.	Name of Joint Debtor (Spouse) (Last, First, Middle): DeLano, Mary Ann
--	--

All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
--	--

Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517
--	--

Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580
--	--

County of Residence or of the Principal Place of Business: Monroe	County of Residence or of the Principal Place of Business: Monroe
---	---

Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
---	---

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

**Information Regarding the Debtor (Check the Applicable Boxes)**

**Venue** (Check any applicable box)

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

<p><b>Type of Debtor</b> (Check all boxes that apply)</p> <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____ <input type="checkbox"/> Clearing Bank	<p><b>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box)</p> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input checked="" type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding
---	---

<p><b>Nature of Debts</b> (Check one box)</p> <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business	<p><b>Filing Fee</b> (Check one box)</p> <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.
---	--

**Chapter 11 Small Business** (Check all boxes that apply)

 Debtor is a small business as defined in 11 U.S.C. § 101  
 Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

**Statistical/Administrative Information** (Estimates only)

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

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts							
\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THIS SPACE IS FOR COURT USE ONLY

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

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

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

**Signatures**

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

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

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

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

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

January 26, 2004  
Date

**Exhibit A**

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

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

**Exhibit B**

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

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

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

**Exhibit C**

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

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

**Signature of Attorney**

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

**Signature of Non-Attorney Petition Preparer**

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

\_\_\_\_\_  
Printed Name of Bankruptcy Petition Preparer

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

\_\_\_\_\_  
Address

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

**Signature of Debtor (Corporation/Partnership)**

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

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

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



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

In re David G. DeLano,  
Mary Ann DeLano  
Debtors

Case No. \_\_\_\_\_  
Chapter 13

**SUMMARY OF SCHEDULES**

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

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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

### SCHEDULE A. REAL PROPERTY

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

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

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

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

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

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

Total > 98,500.00

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

## SCHEDULE B. PERSONAL PROPERTY

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

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

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

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

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

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

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

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

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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

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

Sub-Total > 6,500.00  
(Total of this page)

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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

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

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

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

(Report also on Summary of Schedules)

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

### SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

[Check one box]

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

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

0 continuation sheets attached to Schedule of Property Claimed as Exempt

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS**

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

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

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

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

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

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

0 continuation sheets attached

Subtotal  
(Total of this page)

87,369.49

Total  
(Report on Summary of Schedules)

87,369.49



In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

### SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

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

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

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

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

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

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

**Extensions of credit in an involuntary case**

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

**Wages, salaries, and commissions**

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

**Contributions to employee benefit plans**

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

**Certain farmers and fishermen**

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

**Deposits by individuals**

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

**Alimony, Maintenance, or Support**

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

**Taxes and Certain Other Debts Owed to Governmental Units**

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

**Commitments to Maintain the Capital of an Insured Depository Institution**

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

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

0 continuation sheets attached

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

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

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

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

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

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

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

3 continuation sheets attached

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

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

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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

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

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No. 5466-5360-6017-7176  Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115	H		1990 and prior Credit card purchases			4,043.94
Account No. 6011-0020-4000-6645  Discover Card P.O. Box 15251 Wilmington, DE 19886-5251	J		1990 and prior Credit card purchases			5,219.03
Account No.  Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515	H		2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.	X	X	Unknown
Account No. 5487-8900-2018-8012  Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368	W		1990 and prior Credit card purchases			2,126.92
Account No. 5215-3125-0126-4385  HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627	H		1990 and prior Credit card purchases			9,065.01
Sheet no. <u>2</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal (Total of this page)	20,454.90

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

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

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

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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

## **SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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

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

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

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

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

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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE H. CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

0 continuation sheets attached to Schedule of Codebtors

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

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

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

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

(Report also on Summary of Schedules)

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

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by \$1,129/month.  
Retirement Loan was made to son, who was to re-pay @\$200/mon. but has been unable to do so as employed at \$10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.  
Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)



In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

### SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

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

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

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

[FOR CHAPTER 12 AND 13 DEBTORSONLY]

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

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

(interval)

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

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

Case No. \_\_\_\_\_  
Chapter 13 \_\_\_\_\_

**DECLARATION CONCERNING DEBTOR'S SCHEDULES**

**DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR**

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

Date January 26, 2004 \_\_\_\_\_

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

Date January 26, 2004 \_\_\_\_\_

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

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

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

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

Case No. \_\_\_\_\_  
Chapter 13

**STATEMENT OF FINANCIAL AFFAIRS**

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

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

*DEFINITIONS*

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

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

**1. Income from employment or operation of business**

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

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

**2. Income other than from employment or operation of business**

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

AMOUNT	SOURCE
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### 3. Payments to creditors

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

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

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

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

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

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

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

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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### 5. Repossessions, foreclosures and returns

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

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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## 6. Assignments and receiverships

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

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

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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## 7. Gifts

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

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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## 8. Losses

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

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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## 9. Payments related to debt counseling or bankruptcy

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

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

## 10. Other transfers

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

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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**11. Closed financial accounts**

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

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

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

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

**13. Setoffs**

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

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

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

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

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

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

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

NAME
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**17. Environmental Information.**

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

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

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

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

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

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

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None  c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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**18 . Nature, location and name of business**

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

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

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

NAME	TAXPAYER I.D. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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- None  b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

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

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

### 19. Books, records and financial statements

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

NAME AND ADDRESS

DATES SERVICES RENDERED

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

NAME

ADDRESS

DATES SERVICES RENDERED

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

NAME

ADDRESS

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

NAME AND ADDRESS

DATE ISSUED

### 20. Inventories

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

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY  
(Specify cost, market or other basis)

- None  b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY  
RECORDS

### 21 . Current Partners, Officers, Directors and Shareholders

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

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

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

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE  
OF STOCK OWNERSHIP



**22 . Former partners, officers, directors and shareholders**

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

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

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23 . Withdrawals from a partnership or distributions by a corporation**

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

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

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

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER
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**25. Pension Funds.**

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

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER
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**DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR**

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

Date <u>January 26, 2004</u>	Signature <u>/s/ David G. DeLano</u> David G. DeLano Debtor
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Date <u>January 26, 2004</u>	Signature <u>/s/ Mary Ann DeLano</u> Mary Ann DeLano Joint Debtor
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*Penalty for making a false statement:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

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

In re David G. DeLano  
Mary Ann DeLano

Debtor(s)

Case No. \_\_\_\_\_  
Chapter 13

**DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)**

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

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

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

Debtor       Other (specify):

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

Debtor       Other (specify):

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

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

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

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

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

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

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

**CERTIFICATION**

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

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.

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

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

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

Case No. \_\_\_\_\_  
Chapter 13

**VERIFICATION OF CREDITOR MATRIX**

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

Date: January 26, 2004

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

Date: January 26, 2004

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

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

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

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

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

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

Chase  
P.O. Box 1010  
Hicksville, NY 11802

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

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

Citibank USA  
45 Congress Street  
Salem, MA 01970

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

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

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

Genesee Regional Bank  
3670 Mt Read Blvd  
Rochester, NY 14616

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

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

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

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

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

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

In re David G. DeLano  
Mary Ann DeLano

Debtor(s)

Case No.

Chapter

13

**CHAPTER 13 PLAN**

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

a. Administrative Expenses

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

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

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

c. Secured Claims

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

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

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

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

d. Unsecured Claims

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

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

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

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

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

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

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

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

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

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

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

Name	Amount of Claim	Description of Property
-NONE-		

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

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

13. Other Provisions:

Date January 26, 2004

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

Date January 26, 2004

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