Dr. Richard Cordero

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March 24, 2003

Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General,

I hereby submit to you, as the supervisory head of the U.S. Trustee Program, a complaint about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski. I also bring to your attention the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Indeed, last January 10, I submitted to Director Friedman a complaint accompanied by documentary evidence about the false and defamatory statements and the negligent and reckless performance of Trustee Kenneth Gordon, and the pro forma, substandard review of him by Assistant U.S. Trustee Kathleen Dunivin Schmitt, both in the Western District of New York; as well as the unresponsiveness to my complaint about them of U.S. Trustee for Region 2 Carolyn S. Schwartz. Although more than two months have gone by, I have not yet received even a letter of acknowledgment of my complaint, despite my phone calls to Mr. Friedman and Mr. Guzinski, to the latter of whom my complaint was internally transferred, and even though I wrote to him and again to Mr. Friedman on February 20 and March. 11.

The triggering events of misconduct and the substantive issues at stake are set out in detail in my January 10 letter to Director Friedman. To spare you reading them twice, I refer you to the copy on page ix. What you will find in the attached Statement of Subsequent Facts are some events among those that have occurred since in this ever compounding series of disturbing events. It runs for only EIGHT pages, whose reading is facilitated by page references to supporting documents in the Exhibits. After reading them, you may end up asking yourself how could it possibly be that so many officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal. Does this happen by coincidence or by concert? Did everybody fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? Why? What's in it for them?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of the courts and the justice that its officers are supposed to dispense. Likewise, if trust is not elicited by officers that carry that notion in their professional designation, in whom can it be placed? I much hope that trust can be placed in you, who according to the description in your DoJ webpage are "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Meantime, I would be most grateful if you would acknowledge receipt of this complaint and let me know how you have decided to proceed.

Yours sincerely,

Dr. Richard Cordero

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STATEMENT OF SUBSEQUENT FACTS*
in support of an application to
Attorney General John Ashcroft

to Open an Investigation into certain events and officers at the United States Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of NY

submitted by
Dr. Richard Cordero

Kenneth Gordon, Esq., was appointed trustee in December 2001, to liquidate Premier Van Lines, a moving and storage company in Rochester, NY, that had gone bankrupt in March of that year and had become the Debtor in case 01-20692 in the U.S. Bankruptcy Court of the Western District of NY. In January 2002, he determined[1] that Premier was an asset case. Premier was storing under contract the property of many clients, including that of Dr. Richard Cordero.

A. Trustee Gordon's negligent and reckless performance

Neither Premier nor Trustee Gordon gave notice to Dr. Cordero that Premier was in bankruptcy, let alone liquidation. On the contrary, the owner of Premier, Mr. David Palmer, and a principal of the Jefferson-Henrietta warehouse out of which Premier operated, Mr. David Dworkin, intentionally misled Dr. Cordero by telling him for months that his property was safe in that warehouse. However, they would not state so in writing. Finally, Mr. Palmer disappeared and Mr. Dworkin had to admit that Premier was in liquidation and that he was not even sure whether Dr. Cordero's property was in his warehouse.

Eventually, Mr. Dworkin referred Dr. Cordero to the holder of a blanket lien on Premier's assets, namely, Manufacturers & Traders Trust Bank, which in turn referred him to Trustee Gordon to find out

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* These are facts subsequent to those related in the letter of January 10, 2003, to Mr. Lawrence Friedman, Director of the Executive Office of the United States Trustee (see page ix) and the Statement of Facts in Dr. Cordero's Amended Answer with Cross-claims of November 20, 2002 (see page 60).

[1] This determination is the responsibility of the trustee, as provided in §2-2.1. of Chapter 7 Case Administration of the United States Trustee Manual, adopted by the Department of Justice and its United States Trustee Program. It requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**;" (emphasis added).

how to locate and retrieve his property. Dr. Cordero contacted the Trustee to request such information, but the Trustee would not take or return his calls, and after he did, he would not send an agreed upon letter of information. Dr. Cordero had to write to him and then even call him to ask for the letter.

When a letter dated June 10, 2002, arrived (see page 55, and page 12, heading 11), it was only to "suggest that you retain counsel to investigate what has happened to your property," and to address Dr. Cordero's attention to the attached copy of the Trustee's letter to Mr. Dworkin, dated April 16, 2002 (see page 56), wherein the Trustee informed Mr. Dworkin that he had abandoned Premier's assets in the Jefferson-Henrietta warehouse and "any issues renters may have regarding their storage units should be handled by yourself and M&T Bank.".

As a result of Dr. Cordero's search for his property, a third party (see footnotes 33 and 34 and referring text on page 101), by just reading Premier's business files that had been under the Trustee's control, found at the end of July 2002 other assets of Premier in a warehouse in Avon, NY, belonging to Mr. James Pfuntner (see pages 41 and 42). Dr. Cordero's property was supposed to be there, but Mr. Pfuntner would not release it to him for fear that the Trustee would sue him. Thus, Mr. Pfuntner referred Dr. Cordero to Trustee Gordon. Dr. Cordero tried to contact the Trustee, but the latter would not talk to him to the point that by letter of September 23, 2002, even enjoined him not to contact his office again (see page 29).

Consequently, Dr. Cordero wrote to the Bankruptcy Judge assigned to this case, the Hon. John C. Ninfo, II, and requested a review of the Trustee's performance and fitness to serve as trustee (see pages 46-49). Judge Ninfo referred the complaint to Assistant U.S. Trustee Schmitt. In an effort to dissuade them from launching that review, in a letter of October 1, 2002, the Trustee submitted to them statements that were false and defamatory of Dr. Cordero (see pages 27-28 and their analysis on pages 31-37).

B. The withholding of the transcript of the December 18 hearing

Thereafter Mr. Pfuntner sued, among others, the Trustee and Dr. Cordero in Adversary Proceeding no. 02-2230, with summons issued on October 3, 2002. Dr. Cordero cross-claimed the Trustee for defamation as well as negligent and reckless performance as trustee (see page 71). The Trustee moved to dismiss (see page 89). At the hearing last December 18, Judge Ninfo dismissed Dr. Cordero's cross-claims despite the fact that not even disclosure, let alone discovery, had begun and that other parties in this 10-party case could assert claims and defenses equal or similar to Dr. Cordero's.

Dr. Cordero appealed to the District Court. As part of the record on appeal, he needed the transcript of the hearing. So he contacted the Court Reporter, Ms. Mary Dianetti, at (585)586-6392, and asked her how much it would cost. After reviewing her notes, she called him and let him know that there could be some 27 pages and at $3 each, the transcript could cost some $80. By letter of January 23, with copy to the Bankruptcy Clerk, he agreed to her estimate and requested the transcript (see page 103).

However, weeks went by, but the transcript would not arrive. Dr. Cordero called Ms. Dianetti, but she would neither take nor return his calls despite his leaving voice messages for her inquiring about the transcript. He also called the Bankruptcy Clerk's office, but they said that they could not put him in touch with her because her office was not in that building.

On Monday, March 10, Dr. Cordero called Ms. Dianetti again. Once more he left a voice message explaining that there had been an offer and an acceptance between them for the transcript; that he had left messages for her because neither the transcript had been filed nor he had received a copy; that she had not responded to any of his voice messages; that he found the situation most strange because…she picked up the phone, she had been screening Dr. Cordero's call! She said that she had been sick, that she never got

sick but this time she had been sick, and that her typists had not typed the transcript. He reminded her that back in January she had told him that it would take some 10 days for the transcript to be ready. Again she said that she had been sick (for well over a month but nobody at the Clerk's office knew anything about it?!) Then she added that she would get the transcript out by the end of that week and 'you want it from the moment you came in on the phone.' A chill went down Dr. Cordero's spine, for what a remarkable comment to make!

A hearing begins when both parties can be heard by the judge in open court. Judge Ninfo had allowed Dr. Cordero, who lives in New York City, to attend the hearing in Rochester by phone. Ms. Dianetti was implying that the hearing had begun before Dr. Cordero was brought in. But why would she even assume that he wanted only that part of the transcript in which he had appeared? How could she possibly remember that a hearing that had taken place almost three months earlier had one party attending by phone, a fact never before discussed between them? Why would she care?

Dr. Cordero told her that he wanted everything and asked her whether something had occurred before he had come in on the phone. She replied that nothing had occurred before that moment. So why did she make that comment? (Had she tried to obtain his implicit assent to her sending him only part of the transcript?) Now she began to fumble. She put him on hold twice to consult her notes. She said that at the hearing, after she had called the case, Dr. Cordero had been brought in on the phone. She read passages from 'her notes' (that is, those that she had said her typists had not typed).

Dr. Cordero asked how many pages there would be in the transcript. She said some 15. How come? Dr. Cordero reminded her that she had told him that it would be some 27 pages long and cost some $80. She said that she always estimated more pages and if it came out to fewer, then the client was satisfied. (How many repeat clients does a court reporter have? Does she have competitors to which an appellant could go if dissatisfied with a page estimate? Given her experience, why did she have to overestimate at all, and why from 15 to 27, that is, by 80%? How many more clients does she dissatisfy with similar over-blown estimates? Would her repeat clients be satisfied if they came to realize that her estimates were so unreliable?). Finally, she assured him that he would have a copy of the transcript by the end of the week…but he is still waiting, two weeks later, for 15 pages double spaced?!

It is most unlikely that a court reporter that cared so much about satisfying clients by coming up with transcripts with page counts drastically below her own estimates would care so little about dissatisfying them by not taking their calls, ignoring their recorded messages, and keeping them waiting for well over a month and a half for transcripts without which their appeal records cannot even be filed, let alone their appeals begin. There is hardly any reason why Ms. Dianetti would take it upon herself to prevent an appeal from going forward. Rather, could it be that the whole transcript contained portions before or after Dr. Cordero was allowed to be on the phone and that such portions, constituting in effect ex parte exchanges, were incriminating? Who would benefit from the transcript not being prepared in its entirety and submitted?

C. Other components of the totality of circumstances to be assessed

It is said that a situation should be assessed on the basis of the totality of circumstances. In this case, the withholding of the transcript is only one of many disconcerting events. They are all the more disconcerting because they all happen to have the same effect of not reviewing in court Dr. Cordero's claims. But how likely is it that those events just by coincidence had the same effect? Or is it more likely that it is by concert that they have been aimed to achieve the same objective? To determine whether these questions are the fruit of paranoiac speculation or rather are grounded on a reasonable interpretation of the facts, let's examine some of those events.

1. Failed to review docket that could have led to discovery of Premier assets: The docket of the Premier bankruptcy case (see page 150) reveals that a Jim Pfuntner (entry 17) was involved in the case in connection with "efforts to collect a debt," and (entry 19) with "James Pfuntner re: motion to turnover property from Jim Pfutner." In December 2001, Trustee Gordon was appointed trustee (entry 63) to find and liquidate Premier's assets. However, it was not until eight months later that a third party, at Dr. Cordero's instigation, examined the Premier business files to which the Trustee had had the key and access and found that more Premier assets were in James Pfuntner's warehouse in Avon, NY. Could Trustee Gordon, by reading the docket and exercising due diligence, have found out the nature of Mr. Pfuntner's involvement in Premier's case and that Mr. Pfuntner was owed rent for storing in his warehouse assets of Premier and property of its clients?

2. Mishandled assets but complained about minimal compensation: Within a month of his appointment as trustee, Trustee Gordon knew on January 26, 2002, that the liquidation of Premier was an asset case (entry 70), meaning that there were assets to warrant and pay for his services (see footnote 1, supra, and accompanying text). However, only on July 23, 2002, is there a statement (entry 94) of:

> "Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentuckey trailer."

For the following day the docket states (entry 95):

> "Letter from trustee stating that this is **now** an **asset case** and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set)" (emphasis added)

It was not until September 26, 2002, (entry 98; see also page 17, heading 19) that the Trustee gave:

> "Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately **$139.00** for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankrupcy estate." (emphasis added; DIP= Debtor in Possession)

However, Trustee Gordon had already abandoned Premier's assets by letter of April 16, 2002, to Mr. Dworkin (see page 56), the owner of that Jefferson Road warehouse. That is the Jefferson-Henrietta warehouse where Premier had its office and kept in storage its clients' property. Thus, among the abandoned assets were office equipment and storage containers as well as income-generating storage contracts, for example, the contract to store Dr. Cordero's property on which the Jefferson Road warehouse billed him $301.60 on March 7, 2002 (see page 79).

Then, in his Memorandum of Law in Opposition to Cordero's Motion to Extend Time for Appeal, dated February 5, 2003, page 5, the Trustee submits to Judge Ninfo the following statement:

> "The underlying Chapter 7 proceeding is a **"no asset" case** in which the estate has no funds to pay creditors and no funds to pay for administrative expenses incurred by the Trustee. **As the Court is aware**, the sum total of compensation to be paid to the Trustee in this case is **$60.00**." (emphasis added)

These passages raise many troubling questions:

a. Was the case an "Asset Case" or was it a "„no asset‟ case""?

b. Since Trustee Gordon abandoned the assets in the Jefferson Road warehouse and those subsequently found, in spite of his inactivity, in the Pfuntner warehouse at Avon, could the estate have been expected to have funds to pay anything?

c. Why did Trustee Gordon give notice of such abandonment of Premier assets months after he had actually abandoned all the assets and the income-generating storage contracts to one single person? Was that person a creditor for warehousing rent? What happened with all those contracts and their stream of monthly income?

d. When was the Court made "aware" that the sum total of compensation for the Trustee was $60? It certainly was at a time when Dr. Cordero was not within hearing distance.

e. What happened with the assets that the Trustee intended to sell on July 23, 2002? Could and should notice have been given sooner after his appointment as trustee?

f. What happened to the "approximately $139.00" that as of September 26, 2002, the Trustee "plans to abandon" for the Debtor in Possession, Mr. David Palmer, the owner of Premier? Indeed, Mr. Palmer had become unreachable by phone from the end of February 2002, and what is even more telling, his own lawyer, Mr. Stilwell, had occasion to write to Judge Ninfo on December 20, 2002, that Mr. Palmer:

> "has not retained me relative to the suit, or even contacted me in over six months about anything. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them."

g. Did the Trustee perform negligently and recklessly precisely because he knew that he was going to be paid just "$60.00"?

h. Judge Ninfo received Dr. Cordero's letter of September 27, 2002, requesting a review of Trustee Gordon's performance and fitness to serve as trustee (see page 46), and referred it for a "thorough inquiry" to Assistant U.S. Trustee Schmitt. Did she ever ask herself or the Trustee any of these questions when she conducted her 'investigation' by establishing 'contact' -possibly only over the phone- with just the Trustee and one single other person? Did she get any answer? Not open to question is the fact that she did not give even a hint of either such questions, let alone any answers, in her letter of October 22, 2002, to Dr. Cordero with copy to Judge Ninfo and the Trustee (see page 22).

3. Summary dismissal of same or similar cross-claims as those of other parties: The docket reveals that Trustee Gordon abandoned the assets that Premier had at the time of his appointment and did not find other assets that the docket entries for James Pfuntner could have led him to discover had he exercised some curiosity and due diligence. Yet, the Trustee had the cheek to assert in his letter of October 1, 2002, to Judge Ninfo (see page 27) that:

> "Since conversion of this case to Chapter 7, I have undertaken **significant efforts to identify assets** to be liquidated for the benefit of creditors;" (emphasis added)

However, not only did Judge Ninfo not demand that the Trustee substantiate that assertion, as Dr. Cordero requested (see pages 71 and 31), but also the Judge dismissed, even before disclosure or discovery had started for any of the many litigants, his cross-claim that charged the Trustee with having submitted false statements to the Judge as well as to Assistant Schmitt with the intent of dissuading them

from undertaking the review that Dr. Cordero had requested of the Trustee's performance and fitness. Why would the Judge be indifferent, or even condone, the submission of falsehood by an officer of the court who in addition was a federal appointee?

4. Dismissal of claims even disregarding opposing party's statement against legal interest: On Trustee Gordon's motion, at the hearing on December 18, 2002, Judge Ninfo dismissed Dr. Cordero's cross-claims against the Trustee for defamation and negligent and reckless performance as Premier's trustee. The Judge told Dr. Cordero, who is appearing pro se, that he could appeal if he wanted. Dr. Cordero asked about any appeal forms and instructions and the Judge replied that they would be sent with the order of dismissal. That order was entered on December 30, 2002, and was mailed from Rochester. But when it arrived in New York City, it had no appeal forms or instructions, although in four previous occasions Dr. Cordero had received forms and instructions from the Court. Dr. Cordero had to call the clerk's office and ask for the forms to be mailed.

Time was running short since Dr. Cordero had learned that he had only 10 days to give notice of appeal. So he prepared the forms as soon as he could and mailed them timely on Thursday, January 9, 2003, reasonably relying that the complete-on-mailing rule of Rule 9006(e) and the three additional days to act after papers have been served by mail of Rule 9006(f) F.R.Bankr.P. were applicable. His notice of appeal was filed on Monday, January 13. To his astonishment, Trustee Gordon subsequently filed a motion in the U.S. District Court for the Western District of New York to dismiss the appeal on grounds that it had been filed untimely! After Dr. Cordero received that motion, he scrambled to prepare a motion to extend time to file the notice of appeal under 8002(c)(2) F.R.Bankr.P. Once more he mailed it timely on Monday, January 27, 2003. What is more, Trustee Gordon acknowledged that it had been also filed timely, for on page 2 of his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time for Appeal (see page 143) he wrote that:

> "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal."

The return day for the motion was February 12, 2003. Dr. Cordero attended by phone. This time, to his bafflement, Judge Ninfo ruled that the motion had been filed untimely on January 30 and therefore, he denied it! Dr. Cordero protested and brought to his attention that the Trustee himself had written in his responsive pleading that Dr. Cordero had filed it on January 29. Judge Ninfo disregarded that fact just as he did the squarely on point statement of the Supreme Court In re Pioneer, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993):

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

Judge Ninfo stated that Dr. Cordero did not get to keep talking after he had made a ruling. Dr. Cordero said that he wanted to preserve for the record the objection that page 2 of Trustee Gordon's papers in opposition stated that Dr. Cordero had filed his motion to extend on January 29 so that the…Dr. Cordero's phone connection was cut off abruptly.

5. Default judgment application handled contrary to law and facts: In this effort to consider the totality of circumstances, one should also consider what has happened with Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Premier. The latter never answered the third-party complaint against him (see page 66), nor did he oppose the default application, which Dr. Cordero not only served on his lawyer, Mr. Stilwell, but also on him directly.

Dr. Cordero submitted the default judgment application, as required, to the Bankruptcy Court, which was supposed to make a recommendation on it to the United States District Court, the one that would then make the decision on whether to enter the default judgment. But first, the bankruptcy clerk must act according to the unconditional legal obligation imposed on him by Rule 55 F.R.Civ.P., made applicable by Rule 7055 F.R.Bankr.P.:

> "When a party…has failed to plead or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

Dr. Cordero timely submitted the required Application for Entry of Default on December 26, 2002 (see page 104). That Mr. Palmer had failed to plead or defend was undisputable and undisputed. The application was accompanied by an Affidavit of Amount Due requesting that $24,032.08 be entered against Mr. Palmer (see page 108) as per the relief requested in the summons and complaint served on him. Nevertheless, for weeks nothing happened with the application and Dr. Cordero received no feedback either.

When Dr. Cordero began to inquire into this, he was bandied between the District Court and the Bankruptcy Court. Finally, he found out from a bankruptcy clerk that the application had been transferred to Judge Ninfo, who was holding it until Dr. Cordero's property could be inspected and he could demonstrate what damages he had sustained. But there is absolutely no legal basis under Rule 55 for requiring a plaintiff to have to demonstrate anything when applying for default judgment for a sum certain! In such a case, default judgment is predicated on the defendant's failure to appear and contest the sum certain claimed in the complaint, not on the plaintiff's loss.

Dr. Cordero had to write to Judge Ninfo, which he did by letter of January 30, 2003 (see page 116). The Judge never replied to that letter. Instead, on February 4, the Bankruptcy Clerk Paul Warren entered default, a fact that he had the unconditional legal obligation to enter back in December upon receiving the application. For his part, Judge Ninfo recommended to the District Court that default not be entered. His recommendation shows an astonishingly undisguised lack of impartiality and pre-judgment of the issues (see page 119).

Among other things, Judge Ninfo stated that Dr. Cordero had not demonstrated damages and that upon inspection of his property it would be shown that he had sustained no loss. UN-BE-LIVE-A-BLE! What could possibly give him grounds to make such assertion since no disclosure or discovery has taken place even now when this Adversary Proceeding no. 02-2230 is nearing the end of the six month after it was filed. Not only that, but Dr. Cordero's property has not been actually seen by anybody; the only thing that has been seen is a label bearing his name affixed to a container left behind in Mr. James Pfuntner's warehouse since who knows when. This is so even though Judge Ninfo required last January 10, at the only pre-trial meeting held so far, that this property be made available for inspection. Nevertheless, Mr. Pfuntner, the plaintiff who filed the Adversary Proceeding and sued Dr. Cordero for storage fees, has not yet held that inspection despite the fact that he has every interest in its taking place in order to establish his claim.

To top this off, the Hon. David G. Larimer, United States District Court Judge, who received the recommendation of his next door colleague Judge Ninfo, had a decision entered last March 12 (see page 147). Therein Judge Larimer concurred with the recommendation to "deny entry of default judgment…since the matter does not involve a sum certain." WHAT?! It does! Dr. Cordero's Affidavit of Sum Due clearly stated that the sum certain is $24,032.08. So does paragraph 59 of his Motion to Enter Default Judgment Against David Palmer and Withdraw Proceeding, which he submitted together with a letter addressed to Judge Larimer and dated March 2, 2003 (see pages 122 and 123).

However, Judge Larimer made no reference whatsoever to that motion, or the letter to him for that matter, in his decision entered 10 days later.

D. Conclusion: Is so much contempt for law and facts mere coincidence?

How could it possibly be that so many court officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal? How could this have happened by coincidence rather than by concert? Did everybody just fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? What's for them in this case and how much higher were and are the stakes in those other cases?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of those courts and the justice that its officers are supposed to dispense. So does the question of to what extent the reluctance or refusal of Trustee Program officers all the way to the top to investigate this matter results from a critical or worse problem in the Program's functioning. If trust is not elicited by officers that in their professional designation as trustees carry that notion, in whom can it be placed?

Dr. Cordero very much hopes that trust can be placed in Attorney General Ashcroft, who according to the description in his DoJ webpage is "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." This case cries for justice, particularly since Dr. Cordero's only fault in it has been that of having paid for years on end storage and insurance fees to store his property and then having tried to find it only to be sucked into this maelstrom of Kafkian non-sense and arbitrariness.

E. Action requested

Therefore, Dr. Cordero respectfully requests that Attorney General Ashcroft open a two prong investigation into the totality of circumstance forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Perhaps the Attorney General might wish to start by requesting Director Friedman and General Counsel Guzinski what they have done since receiving over two and a half months ago Dr. Cordero's letter of last January 10 (see page ix). As to the Courts, the Attorney General might wish to begin by requesting the transcript of the hearing of Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims held before Judge Ninfo on December 18, 2002, in Adversarial Proceeding no. 02-2230, which will make it possible to find out what went on between the participants physically present in court before or after Dr. Cordero was brought in on the phone. To that end, a list is submitted with the names, addresses, and phone numbers of all the parties (see page xx).

Dated: March 24, 2002

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COPY

January 10, 2003

Mr. Lawrence A. Friedman
Director
Executive Office for United States Trustees
20 MASSACHUSETTS AVE, N.W., Room 8000F
Washington, D.C. 20530

Dear Mr. Friedman,

The Overview of the United States Trustee Program states that, "The primary role of the U.S. Trustee Program is to serve as the "watchdog over the bankruptcy process."" The material attached hereto brings to your attention the case of two watchdogs, namely, Ms. Carolyn S. Schwartz, United States Trustee for Region 2, and her subordinate, Ms. Kathleen Dunivin Schmitt, Assistant United States Trustee in the Western District of New York, who have shown unacceptable indifference to the egregious conduct of a Chapter 7 Trustee, Kenneth Gordon, Esq. The three of them have failed to "act[ ] in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system," as it was their duty to do according to your Mission Statement. I am appealing to you to investigate and correct this situation.

Indeed, I complained about Trustee Gordon's performance and fitness to serve as trustee in case no. 01-20692, to the judge assigned to that case, the Hon. John C. Ninfo, II, Bankruptcy Judge in the Western District of New York (see page 46). Judge Ninfo referred my complaint to Assistant U.S. Trustee Schmitt for her to conduct a "thorough inquiry" into it (see page 26). However, what Assistant Schmitt did was merely to 'contact' Trustee Gordon and one single other person, both apparently on the phone, review the docket and some indeterminate "papers" (see page 22), and then write a two-page and a sentence letter riddled with 22 specific failures (see page 3) that are detailed in the accompanying brief and discussed in light of facts and legal requirements applicable to trustees and their supervisors (see pages 7-21).

Hence, I appealed to Region 2 U.S. Trustee Carolyn Schwartz by writing and submitting to her the accompanying brief last November 25 (see page 1a and brief in pages 1-29). Her failure to act, let alone to act as a watchdog, is even greater: To date, over a month and a half later, Trustee Schwartz has not deigned to send even a letter of acknowledgment of receipt of my appeal or take any of my calls or answer any of my messages left on her voice mail and with her secretary. On several occasions I have brought her inexplicable silence to the attention of a member of her own office here in New York City, namely, Bankruptcy Analyst John Segretto. On December 18, I managed to speak with Mr. Segretto on the phone. He assured me that within 5 to 10 days I would receive a written reply from the Trustee herself. When that proved not to be true, I called back. Neither would take my call and although I also left messages on their voice mails and with the receptionist, neither called me back.

Is it through such insensitive unresponsiveness that top officers of the Trustee Program 'act in the public interest'? If it is through such inaction how U.S. Trustee Schwartz "monitors the conduct of parties" on her own team, what kind of example as watchdog does she set for Assistant Schmitt to supervise her trustees, such as Trustee Gordon? If Ms. Schwartz were to send me a letter now, how could I reasonably not think that it was merely pro forma just to get rid of a complainant that would not go

away? If you were in my position, would you feel assured that she had cast anything but a reluctant look at your complaint about people under her supervision?

Laxness in the application of ethical, as opposed to legal, standards, by no means promotes integrity. By contrast, it does foster the kind of outrageous response of Trustee Gordon to my cross-claim in Adversary Proceeding No: 02-2230, (see the Statement of Facts, page 60). In my Amended Answer with Cross-claims (see page 58), I charged him, among other things, with making defamatory statements about me and false statements to Judge Ninfo and Assistant Schmitt in an effort to dissuade them from taking action on my application to review his performance and fitness to serve as trustee (see page 64, para. 34 to page 66, para. 42). In his motion to dismiss that charge (see page 89), Trustee Gordon found no better justification than to say that, "Assuming for the purposes of this Motion that the factual allegations set forth in Mr. Cordero's Amended Answer and Cross-Claim are true…the statements made in the correspondence by the Trustee were absolutely privileged and thus no action for defamation exists," (see page 91, para. 10, and page 92, para. 12; see my answer on page 97)

Does the Executive Office condone one of its trustees resorting to defamation of 'a party in interest' and to making false statements to federal judicial and Trustee Program officers in order to avoid a performance review because he counts on a privilege under state law? Is this the toe-high ethical standard to which a trustee is held? Do you think that the way to promote the public's confidence in your Program is by allowing a regional trustee, such as Ms. Schwartz, and an assistant trustee, such as Ms. Schmitt, to blatantly ignore such blamable conduct on the part of a trustee? I trust you do not.

Trustee Gordon has also moved to dismiss the other charge in my cross-complaint, to wit, negligent or reckless performance of his duties to liquidate the debtor efficiently and speedily. He has alleged that the duties in question were outside the scope of his duties (see page 92). Thereby he has tried to avoid the fundamental question that I posed from the beginning to the court and then to Assistant Schmitt for determination: What is it that Trustee Gordon has done to liquidate the debtor AT ALL!? (See Failure 20, page 18, and page 100)

Consequently, I respectfully request that you conduct a 'thorough inquiry' into Trustee Gordon's performance and fitness to serve; Assistant Schmitt's supervisory failures; and Trustee Schwartz' contemptuous disregard for a complaint about both of them. I would also appreciate your views on the questions that I have raised here.

I look forward to hearing from you, and meantime remain,

sincerely yours,

Dr. Richard Cordero

cc: Hon. John C. Ninfo, II

Dr. Richard Cordero

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

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COPY

February 20, 2003

Mr. Joseph A. Guzinski
General Counsel
Office of the General Counsel
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

Dear Mr. Guzinski,

Last January 10, I sent Director Lawrence A. Friedman a letter about the unresponsiveness and failures in performance of Ms. Carolyn S. Schwartz, United States Trustee for Region 2, and her subordinate, Ms. Kathleen Dunivin Schmitt, Assistant United States Trustee in the Western District of New York, who have shown unacceptable indifference to the egregious conduct of a Chapter 7 Trustee, Kenneth Gordon, Esq. To date, neither his office nor yours has sent me even an acknowledgment of receipt. Only because I have called repeatedly have I found out that the matter was assigned to Mr. Paul Bridenhagen, to no avail, for he has only heaped insult upon injury.

I always thought that 'trustee' derived from the noun 'trust' and designated a person that was trustworthy, highly conscientious, and that in the performance of the sensitive tasks assigned to him or her was guided by a strong sense of duty and selfless attitude. After you have read the letter to Mr. Friedman, of which a copy is attached hereto, and reviewed documents in the record that accompanied the original and that Mr. Bridenhagen now has, you may well understand why my dealings with everybody in the Trustee Program has led me to believe that it is a misnomer when applied to it. I very much hope that you give me cause to believe otherwise.

Consequently, for the reasons stated in the accompanying Application, I respectfully request that you take charge of the process for solving my complaint by reviewing the letter and documents submitted, and reassigning its investigation to an experienced investigator, one willing actually to read what this matter is all about and capable of conducting a through inquiry into it, and keep me abreast of its development and result.

Looking forward to hearing from you, I remain,

sincerely,

Dr. Richard Cordero

cc: Director Lawrence Friedman

Dr. Richard Cordero

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

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COPY

February 20, 2003

APPLICATION
to the General Counsel
of the
Executive Office of the United States Trustee
for the Assignment to
an Experienced and Willing Investigator
of
Dr. Richard Cordero's
Complaint about Trustees Carolyn Schwartz, Kathleen Schmitt, and Kenneth Gordon

In case 01-20692 and Adversary Proceeding 02-2230
in the Bankruptcy Court of the Western District of New York

Submitted
by: Dr. Richard Cordero

to: Mr. Joseph A. Guzinski
General Counsel
Office of the General Counsel
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

Last January 10, Dr. Richard Cordero sent Director Lawrence A. Friedman a letter about the unresponsiveness and failures in performance of Ms. Carolyn S. Schwartz, United States Trustee for Region 2, and her subordinate, Ms. Kathleen Dunivin Schmitt, Assistant United States Trustee in the Western District of New York, who have shown unacceptable indifference to the egregious conduct of a Chapter 7 Trustee, Kenneth Gordon, Esq. Copies of all the documents concerning this matter accompanied the letter. Unfortunately, it appears that the unresponsiveness complained about is only a reflection of the institutional attitude at the top of the hierarchy, for till this day Dr. Cordero has not received even an acknowledgment of receipt…and that despite his calls to the Office of the General Counsel of the Trustee Program and the promise to the contrary.

Indeed, beginning on February 4, Dr. Cordero called Mr. Friedman's office to inquire about the letter. He was transferred to the Office of the General Counsel, where eventually he was told that the case had been assigned to Mr. Paul Bridenhagen. Since only his voice mail came up, Dr. Cordero recorded a message inquiring about the letter. It went unanswered. So he had to call again, but it was only by going through the Office of the Director that he was connected to Mr. Bridenhagen. The latter admitted that he had not read anything, so Dr. Cordero had to explain to him what the letter was all about. Then he asked Dr. Cordero whether that was the thick material with a plastic cover. Dr. Cordero said that it was.

Anyway, Mr. Bridenhagen did not have it at hand. Dr. Cordero told him that he did not want to be kept waiting for nothing due to the same type of indifference shown by Ms. Schwartz, who never sent Dr. Cordero a letter of acknowledgment of receipt of his letter to her of November 25, 2002, and then would not take any of his calls or respond to any of his messages left with her staff or recorded on her voice mail. Mr. Bridenhagen said that he would contact the people in the field and would give them two weeks to respond after which he would write me a letter.

Last week Dr. Cordero called Mr. Bridenhagen again and could only record a message, which again went unanswered. Eventually, Dr. Cordero was connected to him through the Director's office. He asked that Mr. Bridenhagen send him a copy of the letters that he had sent out. After alleging that he might not be allowed to do that, Mr. Bridenhagen indicated that anyway, his letter to Ms. Kathleen Dunivin Schmitt was very short and only asked for her comments on the case. Dr. Cordero asked him whether he had read his letter to Mr. Friedman and the record. Mr. Bridenhagen said that he had not had time.

Unbelievable! Mr. Bridenhagen had just gone through the motions of trying to solve a complaint that he had not taken care to learn anything about! I asked whether he thought it reasonable that Ms. Schmitt would reply with incriminating comments rather than send a letter that praised her own performance, which Mr. Bridenhagen would have to accept because he knew nothing about the 22 specific failures that I had discussed in the record sent to Director Friedman. Mr. Bridenhagen said lamely that on occasion he has received a response from the field and asked for more details. How reassuring! And then, why did Mr. Bridenhagen not write to either Ms. Schwartz or Trustee Gordon? He said that he could do that if he felt that was necessary. But how can he solve a complaint involving three officers when he does not even contact all them? Likewise, how can he investigate anything when he does not even attempt to look at the whole picture by obtaining their stories, critically examining them for consistency and flaws, and asking perceptive questions?

Dr. Cordero asked Mr. Bridenhagen how long he thought his investigation would take if he asked for comments sequentially rather than simultaneously. He replied that in any event, it would take weeks. Dr. Cordero pointed out that if Mr. Bridenhagen had read the record, he would have realized that one of the major elements of his complaint was precisely that Trustee Gordon had ignored his requests for information and then went so far as to enjoin Dr. Cordero not call his office again. As a result, months have gone by without any progress and to the detriment of Dr. Cordero's search for his property, which was supposed to be in storage with the Debtor but turned out not to be.

Dr. Cordero also brought to Mr. Bridenhagen's attention that similarly even his letter to Mr. Friedman had been lying around with no action on the part of Mr. Bridenhagen. The latter then pretended that he had been close to sending a letter out to the field in connection with the letter to Mr. Friedman when Dr. Cordero called him the first time. Dr. Cordero reminded him that at that time Mr. Bridenhagen did not even know what the matter was about or where was the record with the transparent plastic cover. Mr. Bridenhagen then relented. Is it with this type of pretense that an officer honors the name of the Trustee Program and builds trust in a member of the public, not to mention one that complains about his colleagues?

Finally, Mr. Bridenhagen agreed to either send Dr. Cordero a copy of his letter to Ms. Schmitt or let him know that he could not do so. Unfortunately again, neither has happened. What did happen was that some 15 minutes after they finished talking on the phone, Mr. Bridenhagen called Dr. Cordero. He said that he had found the letter to Director Friedman and the record but did not know what 10 pages Dr. Cordero wanted him to read. UN-BE-LIEV-A-BLE! Mr. Bridenhagen does not trust himself to decide for himself what he must read to acquaint himself adequately with the complaint that he is supposed to solve! His attitude is all the more revealing and unacceptable because the letter to Director Friedman makes reference to the specific pages in the record that contain supporting evidence.

To make things even simpler for Mr. Bridenhagen, Dr. Cordero gave him a cue: to start reading on page one, where the brief titled Appeal began, the one sent to Ms. Schwartz. He looked it up…and then complained to Dr. Cordero that it was not 10 pages long but rather 21. What an astonishing confession of his reluctance to do anything but the minimum to appear to be doing anything? After Mr. Bridenhagen has exhibited such attitude toward pro forma performance, would it be reasonable to expect that when he receives Ms. Schmitt's most likely self-serving comments, he will do anything other than accept them and close the case? Will he be motivated to launch an independent investigation, as investigators do who want to solve any complaint, let alone one involving top officers? Will he be able to make a decision of what comments to believe and what to treat skeptically when he cannot decide what pages to read of a complaint? Forget'a 'bout it!

It could be that the Office of the General Counsel may deem Dr. Cordero's reaction to Mr. Bridenhagen's performance for over a month after the letter to Director Friedman unwarranted. Perhaps the performance of that colleague might not diverge from standard practice and thus, might not have given rise to serious doubts about Mr. Bridenhagen's capacity and willingness to conduct the "thorough inquiry" into this complaint requested by United States Bankruptcy Judge John C. Ninfo, II, when he referred it to Ms. Schmitt, to no avail. If so, Dr. Cordero submits a request to the General Counsel: If Dr. Cordero receives what will most probably be Mr. Bridenhagen's unsatisfactory 'short' statement finding that everything was just O.K and closing this complaint, thereby leaving no option to Dr. Cordero but to further add to and escalate the complaint to General Attorney John Ashcroft and Senators Shumer and Clinton, would the General Counsel please assign Mr. Bridenhagen as his and Director Friedman's representative to handle this matter before them? That would facilitate evidentiary matters greatly.

However, if neither General Counsel Guzinski nor Director Friedman might be tempted to do so or allow this series of complaints to be compounded so, Dr. Cordero respectfully requests that Mr. Guzinski:

1. take charge of the process for solving the complaint stated in Dr. Cordero's letter's to Director Friedman, reading it and reviewing the documents in the record;
2. reassign the investigation of the complaint to an experienced investigator, one willing actually to read what this matter is all about and capable of conducting the "thorough inquiry" into it that Judge Ninfo considered it warranted, by independently asking critical questions of the three complained-about officers and other parties involved, assessing the replies for their consistency, plausibility, and conformity with required procedure, and arriving at his or her own judgment, and who does what he or she says that he or she will do;
3. inform Dr. Cordero of the name of the assigned investigator, the expected length of the investigation, and eventually, it results.

Dr. Richard Cordero

cc: Director Lawrence Friedman

Dr. Richard Cordero

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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March 11, 2003

Mr. Joseph A. Guzinski
General Counsel
Office of the General Counsel
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

faxed to (202) 307-2397

Dear Mr. Guzinski,

I hereby invoke the **Freedom of Information Act** to request that you send me copies of all documents –excluding those that I have submitted, but including those pages therein that bear annotations by the addresses or third parties- concerning the matter discussed in the accompanying letters and involving, among others, Ms. Carolyn S. Schwartz, U.S. Trustee for Region 2; Ms. Kathleen Dunivin Schmitt, Assistant U.S. Trustee in the Western District of New York; Mr. Kenneth Gordon, Chapter 7 Trustee; and Mr. Paul Bridenhagen. I trust that you will comply with the statutory timeframe for a reply.

Please note that the belated call that Mr. Bridenhagen made today to me was totally unsatisfactory. The only thing that he had to say is that he is still gathering information…more than two months after I wrote to Mr. Friedman! If your Office tolerates that your own subordinate personnel in the field ignore for over two months a request for information –let alone comments, explanations, justification of acts and omissions- your Office would be hopelessly dysfunctional. Moreover, Mr. Bridenhagen has not even analyzed, let alone understood, the complaint that I submitted to Mr. Friedman or you:

1) I am not asking the Office of the Trustee in Washington to look for my property!

2) Neither has my property been located nor is my complaint moot. The party presumably in possession of it has ignored the instruction that the Hon. Judge John C. Ninfo, II, issued at the pre-trial conference on January 10 for a court-organized inspection of it. If that party had the property, it would have rushed to have it inspected in order to establish the validity of its claim against me for storage fees.

3) The issue of the defamatory and false statements made by Trustee Kenneth Gordon for the purpose of discrediting me and avoiding the review that I had requested of his performance just as the issue of his negligent and reckless handling of the liquidation of the Debtor were brought to Trustee Schmitt's attention even before the third party instituted his Adversary Proceeding. Therefore, my cross-claims against Trustee Gordon, their dismissal even before any discovery had begun at all, and my appeal to the U.S. District Court do not by any means bar your Office from investigating my complaint. The 22 counts of failures of Trustee Schmitt's substandard "investigation" of my complaint about Trustee Gordon have an independent jurisdictional ground based on the power of the Office of the Trustee to investigate its own field personnel, such as Trustees Gordon, Schmitt, and Schwartz.

4) My letter to you of February 20 complaining about Mr. Bridenhagen has not been answered yet. Since the most strange events that keep coming up in connection with this case may give rise to a federal probe, you are not covering yourself by just telling Mr. Bridenhagen to tell me that you are satisfied with his performance. What has he performed so far?! What will he be able to perform later on?

Consequently, I respectfully request that you intervene as per my letter of February 20 and discuss this matter with me.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

March 11, 2003

Ms. Erleen Harrison
Office of the General Counsel
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

faxed to (202) 307-2397

Dear Ms. Harrison,

As agreed in our conversation today, please find herewith copies of the letters that I have sent to Director Friedman and General Counsel Guzinski. Please note that I have not received even an acknowledgment of receipt for either of them.

I would appreciate it if Mr. Guzinski would do me the courtesy of returning my call at (718) 827-9521. After two months without anything happening in this matter, that request is not unreasonable, particularly since I have complained about the same kind of unresponsiveness on the part of other trustees.

Kindly bring to Mr. Guzinski's attention that in the accompanying letter to him I have made a request under the **Freedom of Information Act**, which must be replied to within the statutory deadline.

Sincerely,

Dr. Richard Cordero

List of Parties With Contact Information and Case Numbers

I. Trustee Program

A. Executive Office of the U.S. Trustee
20 Massachusetts Ave., N.W., Room 8000
Washington, D.C. 20530

1. Mr. Lawrence A. **Friedman**
Director
tel. (202)307-1391
fax (202)307-0672

2. Mr. Clifford White
Deputy Director

3. Mr. Joseph A. **Guzinski**
General Counsel
Office of the General Counsel
tel. (202)307-1399
fax (202) 307-2397
www.usdoj.gov/ust/htm

4. Ms. Esther **Estryn**
Deputy General Counsel

5. Mr. Paul **Bridenhagen**
Office of the General Counsel

6. Anthony Ciccone, Esq.
Trial Attorney-FOIA Counsel

B. United States Trustee Region 2
3 Whitehall Street, Suite 2100
New York, NY 10004

1. Ms. Carolyn S. **Schwartz**
tel.: (212)510-0500
fax: (212) 668-2256

2. Mr. John **Segretto**
Bankruptcy Analyst

C. Ms. Kathleen Dunivin **Schmitt**
Assistant United States Trustee
Office of the United States Trustee
100 State Street, Room 609
Rochester, NY 14614
tel. (585)263-5706
fax (585)263-5862
http://www.justice.gov/ust/r02/rochester.htm

D. Mr. Kenneth W. **Gordon**
Chapter 7 Trustee
Gordon & Schaal
100 Meridian Center Blvd., Suite 120
Rochester, NY 14618
tel. (585) 244-1070
fax (585) 244-1085

Staff members: Carroll, Brenda

II. United States Courts

A. United States **Bankruptcy Court** (WBNY)
1220 US Court House
100 State Street
Rochester, NY 14614
tel. (585) 263-3148
for phone appearance in Court:
(585) 263-3101

*In re **Premier** Van Lines*, case no. 01-20692

*James **Pfuntner** v. Chapter 7 Trustee Kenneth W. Gordon et al.*, adversary proceeding no. 02-2230

1. Hon. John C. **Ninfo**, II
U.S. Bankruptcy Judge

2. Mr. Paul R. **Warren**
Clerk of the Bankruptcy Court

3. Ms. Karen **Tacy**
Case Administrator

4. Ms. Mary **Dianetti**
Court Reporter
612 South Lincoln Road
East Rochester, NY 14445
tel. (585) 586-6392

B. United States **District Court** (WDNY)
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387
tel. (585) 263-6263

Cordero v Gordon, case no: 03-CV-6021L
Cordero v Palmer, case no: 03-MBK-6001L

1. Hon. David G. **Larimer**
U.S. District Court Judge

2. Mr. Rodney C. **Early**
Clerk of Court

3. Brian, Deputy Clerk

4. Peggy, Appeals Clerk

III. Parties

A. Premier Van Lines, debtor in liquidation
(formerly at
900 Jefferson Road
Rochester, NY
tel. (585) 292-9530)

B. Raymond **Stilwell**, attorney for Premier
Adair, Kaul, Murphy, Axelrod & Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883
tel. (585) 248-3800;
fax (585) 248-4961

2. David **Palmer,** owner of Premier and third-party defendant in

James Pfuntner v. Chapter 7 Trustee Kenneth W. Gordon, adversary proceeding no. 02-2230, WBNY

1829 Middle Road
Rush, New York 14543

3. James **Pfuntner,** landlord of the warehouse at Avon and plaintiff in

James Pfuntner v. Chapter 7 Trustee Kenneth W. Gordon, adversary proceeding no. 02-2230

Mr. James **Pfuntner** and his warehouse
2140 Sackett Road
Avon¸ NY 14414
tel. (585) 738-3105; (585) 226-2122

Mr. John **Ormand**, building manager of buildings around Pfuntner's warehouse
tel. (585) 226-8303

Western Empire Truck Sale, owned by Pfuntner
2926 West Main Street
Caledonia, NY 14423
tel. (585) 538-2200
fax (585) 538-9858

Margie, receptionist

Western **Empire** Storage, owned by Pfuntner
2926 West Main Street
Caledonia, NY 14423
tel. (585) 538-6100

David **MacKnight**, Esq., attorney for Pfuntner
Lacy, Katzen, Ryen & Mittleman
130 East Main Street
Rochester, NY 14604
tel. (585) 454-5650
fax (585) 454-6525

4. **Hockey Club,** defendant

   Rochester Americans Hockey Club, Inc.
   100 Exchange Boulevard
   Rochester, NY 14614

5. David **Dworkin**, owner of the Jefferson-Henrietta warehouse and third-party defendant
   Jefferson Henrietta Associates
   415 Park Avenue
   Rochester, NY
   tel. (585) 442-8820
   fax (585) 473-3555

   Simply Storage, owned by Mr. Dworkin
   tel. (585) 442-8820

   LLD Enterprises, owned by Dworkin
   tel. (585) 244-3575
   fax (716) 647-3555
   lldenterprises.com

   Ms. **Wendy** Dworkin, partner and wife of Dworkin

   Karl S. **Essler**, Esq., attorney for Mr. Dworkin and Jefferson Henrietta Associates
   Fix Spindelman Brovitz & Goldman, P.C.
   Crossroads Office Building
   2 State Street, Suite 1400
   Rochester, NY 14614-1396
   tel. (585) 232-1660
   fax (585) 232-4791

6. **Jefferson Henrietta Associates**, third-party defendant
   415 Park Avenue
   Rochester, NY
   tel. (585) 442-8820
   fax (585) 473-3555

   Karl S. **Essler**, Esq.
   same as above

7. **M&T Bank**, defendant and cross-defendant

   Manufacturers & Traders Trust Company
   255 East Avenue
   Rochester, NY 14604
   tel. (800) 724-2440

8. David **DeLano**, M&T Bank Assistant VP and bankruptcy officer in charge of the loan to Mr. David Palmer and the bankruptcy of his company, Premier Van Lines

   same as above
   tel. (585) 258-8475

   Mr. Vince Pusateri, M&T Bank VP and boss of Mr. DeLano
   tel. (716) 258-8472

   Michael J. **Beyma**, Esq., attorney for M&T Bank and Mr. DeLano
   tel. (585) 258-2890
   Underberg & Kessler, LLP
   1800 Chase Square
   Rochester, NY 14604
   tel. (585) 258-2800;
   fax (585) 258-2821
   www.Underberg-Kessler.com

   Amber M. **Barney**, Esq., worked with Mr. DeLano on the Premier loan
   tel. (585) 258-2835
   fax (585) 258-2821
   abarney@Underberg-Kessler.com

9. Dr. Richard **Cordero,** defendant, cross-defendant and third-party plaintiff
   59 Crescent Street
   Brooklyn, NY 11208-1515
   tel. (718) 827-9521

10. Kenneth **Gordon**, Chapter 7 Trustee
    see I.B. above

11. Kathleen Dunivin **Schmitt**, Esq.
    Assistant U.S. Trustee
    see I.B. above

IV. Non-parties

1. Mr. Christopher **Carter,** owner
Champion Moving & Storage and purchaser at auction of the assets of Premier at the Jefferson-Henrietta warehouse

Mr. Christopher **Carter**
cellphone (585) 820-4645

Champion Moving & Storage, Inc
Agent for Allied Van Lines
795 Beahan Road
Rochester, NY 14624
tel. (585) 235-3500
fax (585) 235-2105
www.ChampionAllied.com

Angie and Jennifer**,** receptionists
Scott Leonard, manager

2. Allied Van Lines
215 West Diehl Road
Naperville, Ill. 60563
tel.(630) 717-3000
www.Alliedvan.com

Hatch Leonard Insurance
Company, Champion's insurer

John **Reynolds**, auctioneers
tel. (315)331-8815

V. Case numbers

A. **In** U.S. **Bankruptcy Court** for the Western District of New York, WBNY

1**.** *In re* ***Premier*** *Van Lines*, liquidation case no. 01-20692

2. *James* ***Pfuntner*** *v. Chapter 7 Trustee Kenneth Gordon et al*., adversary proceeding no. 02-2230

B. In U.S. **District Court** for the Western District of New York, WDNY

1. *Cordero v.* ***Gordon***, case no. 03-CV-6021L

2. *Cordero v.* ***Palmer***, case no**.** 03-MBK-6001L

VI. U.S. Department of Justice

A. U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
tel. (202)514-2001
fax (202)616-9884

1. Mr. John Ashcroft, Attorney General

2. Citizens Correspondence Unit
tel.(202)514-1152-2
fax 202-616-0762

3. Mr. Peter Keisler
Principal Deputy to
the Associate Attorney General
tel. (202)514-9500
fax (202)514-0238;

Staff Marleen

4. Mr. Thomas Bondurant
Head of the Investigations Division
of the DoJ Inspector General,
fax (202)616-9881

5. Mr. Glenn Fine
Inspector General
fax (202)616-9884

6. Mr. Roger M. Williams
Special Agent in Charge of Operations
Investigations Division

7. Office of Information and Privacy
Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

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

COPY

November 25, 2002

Ms. Carolyn S. Schwartz
United States Trustee
3 Whitehall Street, Suite 2100
New York, NY 10004

Re: Assistant U.S. Trustee Kathleen Dunivin Schmitt and
Kenneth Gordon, Esq., Trustee; Chapter 7 case no. 01-20692

Dear Ms. Schwartz,

I understand that you are the hierarchical superior of Ms. Kathleen Dunivin Schmitt, Assistant United States Trustee in the Western District of New York. Thus, I am taking to you an appeal from a decision that Assistant Schmitt made regarding my application for the review of the performance and fitness to serve of Kenneth Gordon, Esq., Trustee in the above-captioned bankruptcy case under Chapter 7.

Initially, I submitted my application to the Hon. Judge John C. Ninfo, II, of the United States Bankruptcy Court for the Western District of New York. He referred it to Assistant Schmitt, presumably together with a reply submitted to the Judge by Trustee Gordon with copy to Assistant Schmitt. Thereupon, I submitted a rejoinder directly to Assistant Schmitt. She then sent me her letter of October 22, 2002. For the reasons set forth in the accompanying brief of appeal, her supervisory review of this matter is based on substandard investigation and is infirm with mistakes of fact and inadequate coverage of the issues raised.

While I am aware that you are not a court, you have supervisory functions. Hence, my appeal seeks to have Assistant Schmitt's decision reviewed and to launch an adequate inquiry into trustee Gordon's handling of the case at hand and of his fitness to continue in charge of it.

I thank you in advance for the time and effort that you dedicate to this appeal and look forward to hearing from you soon.

Yours sincerely,

Dr. Richard Cordero

Cc: The Hon. Judge John C. Ninfo, II
Ms. Kathleen Dunivin Schmitt
Kenneth Gordon, Esq.

Dr. Richard Cordero

Ph.D., University of Cambridge, England
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November 25, 2002

APPEAL

from a supervisory opinion of

Kathleen Dunivin Schmitt
Assistant United States Trustee

USTP Region 2

In re Kenneth Gordon, Esq., trustee for Premier Van Lines,
Chapter 7 bankruptcy case number 01-20692

Submitted:
By: Dr. Richard Cordero, Esq.

To: Ms. Carolyn S. Schwartz
United States Trustee
3 Whitehall Street, Suite 2100
New York, NY 10004
Phone: 212-510-0500
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USTP Region 2

A. A. Procedural Background

On September 27, 2002, Dr. Richard Cordero, submitted to the Hon. Judge John C. Ninfo, II,[1] (hereinafter referred to as Judge Ninfo or the Court) a Statement of Facts and Application for a Determination (hereinafter referred to as the original Application) concerning the adequacy of the performance and fitness to serve as trustee of Kenneth Gordon, Esq.,[2] (hereinafter referred to as Trustee Gordon or the Trustee), who is the Chapter 7 trustee for Premier Van Lines, Inc.,[3] (hereinafter referred to as Premier or the Debtor), a company formerly engaged in the business of moving and storing property of customers. Judge Ninfo had been assigned the Premier case, at first filed under Chapter 11 and subsequently converted to a Chapter 7 case.

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[1] Hon. Judge John C. Ninfo, II, United States Bankruptcy Judge, United States Bankruptcy Court, Western District of New York, 1400 United States Courthouse, Rochester, NY 14614; tel. (585) 263-3148.

[2] Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618; tel. (585) 244-1070, fax (585) 244-1085.

[3] Premier Van Lines, Inc., 900 Jefferson Road, Rochester, NY 14623.

Trustee Gordon opposed Dr. Cordero's Application in a letter dated October 1, 2002, (hereinafter referred to as the Answer), which he sent to Judge Ninfo with copy to Assistant United States Trustee Kathleen Dunivin Schmitt (hereinafter referred to as Assistant Schmitt). Judge Ninfo transmitted the Application on October 8, 2002. Dr. Cordero sent directly to Assistant Schmitt a Rejoinder and Application for a Determination dated October 14, 2002, (hereinafter referred to as the second Application or Rejoinder). In turn, Assistant Schmitt sent Dr. Cordero a letter on October 22, 2002, after concluding her supervisory review of the matter (hereinafter referred to as the Opinion). This is an appeal from Assistant Schmitt's Supervisory Opinion.

Trustee Gordon's performance has adversely affected the steps that Dr. Cordero has taken since early January 2002 to locate and retrieve his property, which Premier received for storage packed in storage containers owned by and constituting assets of Premier. Till this day, Dr. Cordero has no certainty of the whereabouts of all his property, let alone its condition. This property interest justifies his concern in the proper handling and disposition of the bankruptcy case of Premier and, consequently, the competent and prompt discharge by Trustee Gordon of his duties as Premier's trustee.

B. Standards of review and thorough inquiry

Title 28 of the United States Code provides in §586(a), that the United States Trustee must supervise the actions of trustees in the performance of their responsibilities. In turn, the United States Trustee Manual adopted by the Department of Justice and its United States Trustee Program states in §2.1.1. of Chapter 7 Case Administration that the actions of the United States Trustee are guided by "the primary goals of ensuring the prompt, competent, and complete administration of chapter 7 cases."

The exercise in which these principles would have guided the determination of Trustee Gordon's competence of performance and fitness to serve applied for by Dr. Cordero was named by Judge Ninfo when he referred to Assistant Schmitt Dr. Cordero's initial Application. In his referral letter of October 8, Judge Ninfo wrote, "I am confident that Ms. Schmitt will make thorough inquiry and assist you in reconciling this matter."

A "thorough inquiry" is an investigative exercise that entails, at a minimum, reading closely the terms of the problem to the point of mastering its key issues, names, and relations; choosing evaluating standards and formulating the specific questions on which to focus the exercise; requesting documentary evidence and interviewing third-parties for independent corroboration of what is alleged to have been done as well as to unearth what was embarrassing or incriminating enough not to have been even mentioned; asking all along tough whys, hows, and whens about the relevant acts and omissions; and finally reaching concrete findings and conclusive value judgments in which the specific questions of the inquiry are determined. Alas!, there is no evidence that this is the kind of exercise that Assistant Schmitt undertook.

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C. Quick contact conducted instead of *"thorough inquiry"*

Judge Ninfo referred Dr. Cordero's original Application to Assistant Schmitt expecting that she would conduct a "thorough inquiry," and Dr. Cordero followed up with his second Application, the Rejoinder, requesting that she make specific determinations concerning Trustee Gordon, her supervisee. She then went to work to carry out her idea of a "thorough inquiry"…or rather, simply of 'inquiry,' which she described in her own words in her Supervisory Opinion of October 22, as follows: "In order to respond to your inquiry, we **contacted** the chapter 7 trustee, the attorney for the party who is now believed to be in possession of your belongings, and reviewed the docket and papers in this case;" (emphasis added).

Assistant Schmitt's statement that her exercise was "to respond to your inquiry," points to her awareness and acceptance that she was supposed to conduct a "thorough inquiry" and that she had been asked something by Dr. Cordero. What he had asked in both Applications was that determinations be made as to specific failings in Trustee Gordon's performance and his fitness to serve as trustee.

However, as will be shown below, what Assistant Schmitt actually conducted was only a 'contact': a communication exercise limited in its scope to two people and in its depth to uncritically accepting at face value what she was told. As to the requested determinations, they flowed from three main issues discussed by Dr. Cordero in his Rejoinder, namely,

a. Trustee Gordon's key claim that, "Since conversion of this case to Chapter 7, I have undertaken **significant efforts to identify assets** to be liquidated for the benefit of creditors;" (emphasis added);
b. whether the Trustee had made untruthful statements to the Court and the United States Trustee; and
c. whether the Trustee had cast aspersions on Dr. Cordero's character and competence in order to dissuade the Court and the U.S. Trustee from undertaking the review of his performance and fitness to serve as trustee requested by Dr. Cordero.

Assistant Schmitt failed to grasp the central importance to the assessment of the Trustee's performance and fitness to serve as well as to the conduct of a focused investigative exercise, of ascertaining the Trustee's "significant efforts to identify assets" claim. Thus, she failed to identify any such efforts. Likewise, she failed to check other Trustee's claims against the documentary evidence submitted by Dr. Cordero; nor is there evidence that she obtained documents or interviewed independent third-parties to corroborate or refute his claims. She made no findings as to what other efforts the Trustee made to liquidate the estate, not to mention whether they were significant to the "prompt, competent, and complete" discharge of his duties as trustee. As to the other two main issues, Assistant Schmitt failed even to grasp their gist, let alone their legal and professional implications, by reducing them to "your comments [about] "honesty and candor"' followed by a reminder to the Trustee about being courteous. And she dealt

with both grave issues of untruthful and defamatory statements by a trustee under her supervision in one single short paragraph!

One reason why Assistant Schmitt missed the key issues presented is that she did not allow herself enough time to grasp them. Thus, Dr. Cordero's Rejoinder and Application for a Determination consisted of 7 pages of exposition and 8 pages of exhibits plus a cover letter, for a total of 16 pages. They were mailed late on Tuesday, October 15, from Brooklyn, in New York City, and may have arrived in Rochester on Friday, October 18, and perhaps were first read only on Monday, October 21. By the following day, Tuesday, October 22, Assistant Schmitt had completed her 'contact' with Trustee Gordon and was dating and mailing her letter of reply to Dr. Cordero. That was awfully quick!

It should be noted that the issues that Dr. Cordero raised in the Rejoinder and Application for a Determination dealt with the letter that Trustee Gordon had sent to Judge Ninfo on October 1, which the Judge referred to Assistant Schmitt on October 8. Hence, whatever 'contact' Assistant Schmitt established with the Trustee from that moment on could not have dealt with the issues raised for the first time in the Rejoinder, which she would only receive and read later either on October 18 or 21.

Since Assistant Schmitt permitted herself only a quick reading 'contact' with Dr. Cordero's Applications, she failed to pick up not only key issues, but also related issues raised in them as well as important points in the evidence discussed there. Thus, as shown below, in her letter she even made mistakes of facts and missed even points implicit in her own statements. What is more, she failed to grasp that each Application for a Determination indeed requested that specific determinations be made, which required specific findings, concerning Trustee Gordon's performance and fitness to serve as such.

In brief, from the content and quality of Assistant Schmitt's letter of October 22, one may reasonably deduct that her 'contact' with Trustee Gordon may have consisted in dashing a note requesting comments on the Applications or perhaps in just picking up the phone for a friendly conversation, merely to hear what the Trustee had to say. After all, she stated in her letter that "we have talked with Mr. Gordon…," but not that she wrote to him or he to her, and that she understood something "from speaking with David MacKnight," the only other third-party "contacted." By either means, her 'contact' was nothing probing or inquisitional, let alone critical or confrontational. Actually, it only led to that good-natured reminder for the Trustee to always be courteous. Then Assistant Schmitt liquidated the 'contact' with a letter to Dr. Cordero. This was hardly a "thorough inquiry."

1. Failure to press the Trustee on Debtor's assets and files not looked up

It was prominently set out in Dr. Cordero's Applications[5] that Trustee Gordon failed to find out that Premier, the Debtor, which operated out of the Jefferson-Henrietta

[5] See the Statements of Facts in the original Application of September 27, 2002, as well as section I.a. of the second one, the Rejoinder of October 14, 2002.

warehouse,[6] also had assets stored elsewhere, namely, in the Avon warehouse.[7] Trustee Gordon should have found those assets just as did Mr. Christopher Carter, the owner of Champion,[8] after he bought Premier's assets, which contained its business files, from their lienholder, M&T Bank[9]. Indisputably this was a failure, for a Chapter 7 trustee is duty bound under 11 U.S.C. §704(4) to "investigate the financial affairs of the debtor," and under §2-2.2.1 of the Trustee Manual, Chapter 7 Case Administration, "A trustee must also ensure that a debtor surrenders non-exempt property of the estate to the trustee, and that records and books are properly turned over to the trustee." One obvious use of those "records and books" is to find out where debtor's assets may be located.

Yet, Assistant Schmitt wrote in her letter, "Unfortunately, it is not uncommon for debtors to keep incomplete books and records. As a result, trustees frequently must learn of potential assets through outside sources." She missed the point! There was no need to look for outside sources. It would have sufficed to look in the inside sources, namely, the business files inside Premier's office inside the Jefferson-Henrietta warehouse. Trustee Gordon had access to that office given that, according to the manager/owner of that warehouse, Mr. David Dworkin,[10] it was Trustee Gordon who gave Mr. Dworkin the key to that office.

Assistant Schmitt failed to inquire why Trustee Gordon did not look into those business files, although he had the same reason to do so as Champion's Mr. Carter, to wit, Dr. Cordero had informed the Trustee that he was looking for his property in storage with Debtor Premier, who was in the storage business. Did Assistant Schmitt even

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[6] Thus, the Jefferson-Henrietta warehouse has the same address as Premier; see footnote 3, above. It is owned by Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607; tel. (585) 442-8820; fax (585) 473-3555.

[7] The Avon warehouse is located at 2140 Sackett Road, Avon, NY 14414. It is owned by Mr. James Pfuntner, tel. (585) 738-3105, the Plaintiff in the Adversarial Proceeding No. 02-2230.

[8] Christopher Carter, cellphone (585) 820-4645, owner of Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624; tel. (585) 235-3500; fax (585) 235-2105.

[9] M&T Bank is Manufacturers & Traders Trust Bank, at 255 East Avenue, Rochester, NY 14604. It holds a general lien on all Debtor Premier's assets, known at the time to be only at the Jefferson-Henrietta warehouse. These assets consisted of storage containers, each of which was packed with the property belonging presumably to a single Premier customer, and office equipment, including business files. M&T Bank sold these assets at an auction, but not the property in the storage containers, to Champion. Since the Bank officer in charge of Premier, Assistant Vice President David Delano, tel. (585) 258-8475; (800) 724-2440, had said to have seen containers labeled Cordero, he referred Dr. Cordero to Champion. Dr. Cordero requested Mr. Carter to let him know the condition of his belongings. However, Mr. Carter informed him that no storage container bore his name. Then Mr. Carter looked in Premier's business files and found that Premier had assets, including storage containers, in the Avon warehouse. He informed M&T Bank thereof. In turn, the attorney for M&T Bank, Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604, tel. (585) 258-2800, fax (585) 258-282, informed Dr. Cordero of this by letter with copy to Trustee Gordon.

[10] David Dworkin, manager of the Jefferson-Henrietta warehouse and of Simply Storage, tel. (585) 442-8820; officer also of LLD Enterprises, tel. (585) 244-3575; fax 716-647-3555.

wonder whether still more Premier's assets are out there waiting to be discovered by a go-getter trustee?

2. Failure to notice that Debtor did not cease operating as a business

Assistant Schmitt wrote as follows in her Supervisory Opinion of October 22:

> "By way of background, we learned that the case originally was filed as a chapter 11. In chapter 11, the debtor generally retains possession of the estate and continues to operate the business as a debtor-in-possession while it attempts to formulate a plan of reorganization. As a result, it is not surprising that Premier Van Lines continued to bill and collect fees for items it held in its storage facilities while it was attempting to reorganize. The case later was converted to one under chapter 7 **on December 20, 2001. At this point, the debtor ceased operating as a business** and a chapter 7 trustee was appointed to liquidate any assets of the estate and distribute any proceeds therefrom according to a scheme of distribution set forth in 11 U.S.C. §726," (emphasis added).

Assistant Schmitt failed to pick up that in Dr. Cordero's Rejoinder, section I.a., as well as in the first paragraph of Dr. Cordero's initial Application for a Determination, Dr. Cordero stated that neither the owner of Debtor Premier, Mr. David Palmer, nor the lessor of the Jefferson-Henrietta warehouse out of which Premier operated, Mr. David Dworkin, let alone Trustee Gordon, gave him notice that Premier was either in reorganization or liquidation. On the contrary, for months after that conversion in December 2001, Mr. Palmer and Mr. Dworkin assured Dr. Cordero repeatedly that his property was safe and even billed him for its storage as if the business were a going concern.

Yet, Assistant Schmitt affirms that, "…on December 20, 2001. At this point, the debtor ceased operating as a business." In what way? The Applications complained about Premier not having ceased operating as such. Since Assistant Schmitt failed to grasp the facts, it is unlikely that she investigated what was doing 'the chapter 7 trustee appointed to liquidate any assets,' who allowed the Debtor and his lessor to continue doing business as if nothing had happened. Was Assistant Schmitt just copying what she read in the docket or simply repeating what she heard through her phone 'contact' with the Trustee without checking it with what she should have read in the Applications?

3. Failure to understand who the parties and their relations are

Then Assistant Schmitt went on to write:

> "We learned from the chapter 7 trustee that on April 16, 2002, he **wrote to M&T Bank, in care of Mr. David Dworkin**, informing them that he did not plan to administer **any items being stored by**

> **the debtor** as he had determined that these stored items were not property of the bankruptcy estate. He further stated that if any **rental issues** arose, that M&T Bank should handle them directly. I understand that a copy of this letter was sent to you on June 10, 2002 after the trustee learned of your difficulties in trying to locate and retrieve your property," (emphasis added).

In this paragraph Assistant Schmitt really messes up. The Trustee did not write to M&T Bank, which is the lienholder, he wrote to Mr. Dworkin, who is not in care of the Bank at all, but rather is the lessor at the Jefferson-Henrietta warehouse. Assistant Schmitt should never ever have made this mistake. To beginning with, she should have asked Trustee Gordon to send her a copy of his April 16 letter as well as of any other that he claimed to have written and sent…and then she should have asked Mr. Dworkin for a copy of it too. However, Assistant Schmitt did not even need to wait for the copies to arrive. She only had to pay attention to what had already been submitted to her by Dr. Cordero: A copy of that April 16 letter is found on page 11 of the original Application and on page 9 of the Rejoinder (pages 56 and 38, respectively, of this Appeal). But this is not the end of Assistant Schmitt's shaky grasp of facts.

4. Failure to understand the facts of the case: assets and storage containers

Assistant Schmitt also failed to pick up the crucial difference between the two sets of "any items stored by the debtor." On the one hand are the storage containers and office equipment belonging to Debtor Premier and on which M&T Bank had a lien. On the other hand is the property of Premier's customers stored inside those storage containers. Contrary to the tenor of Assistant Schmitt's letter, the storage containers and office equipment "stored by the debtor" most certainly ***were*** "property of the bankruptcy estate." That is precisely why M&T Bank had a lien on them!

5. Failure to grasp difference between "rental issues" and renters' property

Nor did Assistant Schmitt grasp the issue that concerned Dr. Cordero, let alone its importance: It was not, as she put it, "rental issues," such as the amount of 'rent' or whom to pay it to, but rather a fundamentally more important one, namely, the whereabouts and condition of his property. Even today that fundamental question has not been answered conclusively and Dr. Cordero is still searching for his property, not to mention wondering about its condition.

Moreover, what Trustee Gordon actually wrote in his April 16 letter was this: "Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank." It would be kinder to Assistant Schmitt to assume that she failed to read that letter than to assume that she could not perceive the difference between "rental issues" and "issues renters may have," and all the more so if she read Dr. Cordero's Applications at all and picked up the saga of his search for his property.

6. Failure to find out why wait 4 months to instruct holder of estate assets

Assistant Schmitt also failed to pick up the critical nature of another issue. As she put it, it was "December 20, 2001. At this point, the debtor ceased operating as a business and a chapter 7 trustee was

appointed to liquidate any assets." How come it was not until four months later, on April 16, that the appointed Trustee informed by letter Mr. Dworkin, the person physically holding in his warehouse both types of Debtor's assets, what the Trustee intended to do with them? Did Assistant Schmitt investigate how the Trustee had discharged his duty during all that time? Did she find out how he expected the Debtor or Mr. Dworkin to handle those assets during all that time, not to mention how he thought the assets he was in charge of liquidating had actually been handled?

7. Failure to find out whether Trustee protected estate assets

Assistant Schmitt could also have wondered whether the assets were still there at all after so many months. But it appears that she disregarded the notion that assets of a bankrupt company fare as well as the candy of a busted piñata. The facts are these: The Debtor's Attorney, Mr. Raymond Stilwell,[11] Mr. Dworkin, and M&T Bank Assistant Vice President David Delano wrote or said that Dr. Cordero's property was in the Jefferson-Henrietta warehouse. But now it is no longer there. Where did it go? Did Assistant Schmitt investigate whether Trustee Gordon took appropriate protective measures on behalf of the Debtor's assets while he was making up his mind how to handle them?

8. Failure to find out why Trustee gave the estate's storage fees to M&T Bank

Evidently Assistant Schmitt also failed to grasp the implications of the Trustee's statement: "He further stated that if any rental issues arose, that M&T Bank should handle them." What about those issues being handled by Mr. Dworkin, whose warehouse was being occupied by the Debtor's assets? Did Assistant Schmitt find out why the Trustee should give to a party, whether M&T Bank or Mr. Dworkin, the income from storage fees that belonged to the estate? And why give them forever?! No wonder the Trustee stated in his Answer that he was going to issue a No Distribution Report. This issue was raised in section III. of the Rejoinder, but it would seem that Assistant Schmitt's reading contact with it did not reach that far.

9. Failure to inquire into No Distribution Report and Premier as asset case

There is another reason why Assistant Schmitt should have inquired into Trustee Gordon's justification for issuing a No Distribution Report: More Premier's assets were discovered in the Avon warehouse…thanks not to the Trustee's efforts, but rather to Champion's Mr. Carter. If there was nothing to distribute and the conversion to a Chapter 7 case occurred, according to Assistant Schmitt, on December 20, 2001, she should have inquired into whether the Trustee discharged his duty under §2-2.1. of the Trustee Manual, which requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case;**" (emphasis added). Did Assistant Schmitt at least wonder what the Trustee had been administering for 10 months although, according to him, the known assets in the Jefferson-Henrietta warehouse would generate nothing to distribute?

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[11] Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883; tel. (585) 248-3800; fax (585) 248-4961.

10. Failure to analyze instruction for Dworkin to refer customers to M&T Bank

If Assistant Schmitt had analyzed critically the Trustee's instruction to Mr. Dworkin to refer Premier's customers, "renters," to M&T Bank, she would have picked up a key problem that it posed: How would those customers know that they needed to get in touch with somebody about their property? She would not have missed the question had she checked that instruction against the stated facts in Dr. Cordero's Applications: Nobody, including Trustee Gordon, gave him notice that Premier was either in bankruptcy reorganization or liquidation. On the contrary, he had been assured repeatedly by Mr. Palmer, the Debtor Premier's owner, and by Mr. Dworkin, his lessor at the Jefferson-Henrietta warehouse, that his property was safe; and he was even being billed for its storage. Therefore, how would Dr. Cordero, just as the other Premier's customers, become aware that "rental issues arose"?…such as that minor one, that their property was nowhere to be found!

11. Failure to visualize the blamable referral to just "M&T Bank"

Had Assistant Schmitt been conducting a "thorough inquiry," then her inquisitive approach would have led her to ask for a copy of Trustee Gordon's April 16 letter or to look it up in Dr. Cordero's Applications. There she would have found that the Trustee had written: "Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank. M&T Bank is represented by Mike Beyma and Tim Johnson of Underberg & Kessler, LLP."

That's it! No address of M&T Bank. Did the Trustee expect Premier's customers, who had placed their property in storage precisely because they had to leave Rochester, perhaps for New York City, or California, or Japan, or Timbuktu, to inquire about their property by writing a letter and mailing it in an envelope addressed to just 'M&T Bank'? Were they supposed to phone the Bank and ask its address? How? The Trustee did not even write the Bank's phone number! Were the customers supposed to look it up in their *local* yellow pages, e.g. the San Francisco phonebook!? Were they to call directory assistance? The Trustee did not even spring the full name of the Bank!: Manufacturers & Traders Trust Bank. And once the customers somehow conjured up the address or phone number, to whom would they address their questions? The Bank has thousands and thousands of employees! 'No, no, the customers were supposed to address themselves to Mr. Beyma or Mr. Johnson at Underberg & Kessler.' But how? Again, the Trustee did not state their address or phone number either! In any event, how would the Bank's lawyers know where the property of Premier's customers was and in what condition? Why would they care…if the Trustee managing the estate didn't?

'Well, let's see…the customers were supposed to phone Premier.' But Premier's phone number is not stated on its invoices!, let alone the Trustee's letter What is more, Premier's phone had been disconnected!! "No further information is available on this number," stated the recording. 'Then have the customers write to Premier.' And who was going to open the letter? Mr. Palmer, Premier's owner, was nowhere to be seen. Even today, his lawyer, Mr. Stilwell, will not even disclose his whereabouts, not even to M&T Bank holding a judgment against Mr. Palmer. Was it Mr. Dworkin who would open the letter?, and answer it too? What did the Trustee think was the incentive for Mr. Dworkin to take upon himself that task? Because he was running Premier? But remember, Assistant Schmitt said that Premier had ceased business upon going into liquidation in December 2001, and the Trustee's letter is dated April 16, 2002, so Premier should have been by then not only dead, but also way past the autopsy.

Never mind, imagine that somehow, which you have to figure out yourself, you stumbled upon Mr. Dworkin…you would have been no better off anyway: Mr. Dworkin did not know either!…or so he said.

So you are on your own, hundreds of miles from your property, even thousands of miles away, perhaps in another continent, and you have to find out who knows about your property, which is so valuable to you that you did not throw or give it away when you moved from Rochester, but rather you packed it carefully for long term storage and paid the fees month after month, year after year. Yet, nobody knows where it is. But take heart, hallelujah!, for the Trustee hath come with the saving suggestion of his letter of June 10, 2002: 'Hire a lawyer to look for it.' What?! From hundreds of miles, half a continent away, from the other side of the world? Is he serious? Wouldn't he, as trustee, be precisely the first person that such lawyer would expect to obtain information from? Do you, reader, feel the human element? Put yourself in Dr. Cordero's place Do you feel the futility of your efforts, the sheer frustration of it all, the waste of money, the huge investment of time, the sense of outrage at knowing that the one person who knew all this information, Trustee Kenneth Gordon, did not care to write down a complete address, at least the full name, not even a phone number, let alone take the initiative to give you notice? His was an even quicker job of a letter!

And Assistant Schmitt did not pick any of this up. Is not noticing or tolerating this conduct by the trustees under her supervision her idea of "ensuring the prompt, competent, and complete administration of chapter 7 cases"…by people that cannot even write a complete address?

12. Failure to recognize Premier's customers as creditors of Premier

Assistant Schmitt wrote that, "The trustee in a chapter 7 estate represents the creditors of that estate, not clients or customers of the debtor, unless, of course, those clients are owed funds."

Where in Bankruptcy Code did Assistant Schmitt get the notion that clients and customers are in principle not creditors? If it was not from Trustee Gordon, it certainly was not from the Code. Far from it, 11 U.S.C. §101(10) provides that "'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, estate, trust, governmental unit, and United States trustee:" Hence, Premier's customers are creditors who instead of being owed funds, are owed the property that Premier was keeping in storage for them. They too were entitled to notice of Bankruptcy proceedings so that they could file their claims. Yet, Dr. Cordero, as a Premier creditor, was never given such notice and thus, was not included in the matrix.

13. Failure to notice the Trustee's reluctance to provide information

Assistant Schmitt also failed to pick up another issue that Dr. Cordero brought up in his Applications, namely, Trustee Gordon's reluctance to respond to Dr. Cordero's request for information. So she wrote, "I understand that a copy of this letter [of April 16] was sent to you on June 10, 2002 after the trustee learned of your difficulties in trying to locate and retrieve your property."

It took almost a month to get that letter from Trustee Gordon!, and only after Dr. Cordero called several times, then wrote to him a reminder, then called again. What is more, or rather less, is that for all information that the Trustee deigned to provide in his cover letter to Dr. Cordero was that, "I suggest that you retain counsel to investigate what has happened to your property."

Two copies of that June 10 cover letter were among the exhibits that Dr. Cordero sent to Assistant Schmitt. Did she read it? If so, did she not consider that this 'suggestion' revealed the Trustee's unjustifiable unwillingness to share information, coming as it did from the trustee that was supposed to have been working for almost six months to liquidate Premier's assets, including storage containers holding Dr. Cordero's property? Was that all the information that Trustee Gordon had gathered in all that time? If he had more but chose to provide nothing but grossly inadequate information, why did Assistant Schmitt not state that Trustee Gordon had failed in his duty to furnish Dr. Cordero with information? And the Trustee did have such duty!

14. Failure to recognize the Trustee's duty to inform and his breach of it

Section 704(7) of 11 U.S.C. includes among the duties of trustees that they must, "unless the court orders otherwise, furnish such information concerning the estate and the estate administration as is requested by a party in interest." Note that this duty extends to any "party in interest," so that one need not even have to be a creditor to invoke the benefit of that duty. Owners of property in the hands of a debtor whose business reason is precisely the storage of such property definitely qualify as parties in interest.

Nonetheless, Trustee Gordon wrote to Dr. Cordero on September 23, 2002, thus: "I have directed my staff to receive and accept no more telephone calls from you regarding this subject.…I trust that you will not be contacting my office again." What triggered this refusal to deal with Dr. Cordero was that he called the Trustee after being referred to him by the owner of the Avon warehouse, Mr. James Pfuntner,[12] who refused to let Dr. Cordero take his property found there lest the Trustee sue Mr. Pfuntner for disposing of assets of Debtor Premier. Yet, the Trustee would not take or return Dr. Cordero's phone call or answer his letter.

Therefore, Assistant Schmitt failed to recognize that it was a breach of his duty as trustee for Trustee Gordon to be reluctant and even refuse to provide information about the case and his administration of it to Dr. Cordero, although he was referred to the Trustee by one party after the other, including their attorneys, who had stated that the Trustee could provide him with information and assistance in locating his property.

[12] James Pfuntner, (585) 738-3105, owner of the Avon warehouse; also an officer of Western Empire Truck Sale, 2926 West Main Street, Caledonia, NY 14423; tel. (585) 538-2200.

15. Failure to recognize the Trustee's duty to assist in locating property

Assistant Schmitt wrote, "[T]he trustee had no legal responsibility to locate the assets belonging to the debtor's customers and clients and to negotiate their return to them."

Far from this, Section 704 of 11 U.S.C. states the opposite when setting forth the first duty of the trustee: "(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interest of the parties in interest." It should also be remarked here that the law does not limit to creditors the benefit of this duty, but rather extends it to all "parties in interest."

Once more, Assistant Schmitt missed the point: The property of the clients was held in storage containers belonging to Debtor Premier and thus, constituting assets of the estate. By locating the property held and owed by Premier to its clients, the Trustee would also have found assets of the estate in the form of storage containers and maybe other types of assets. That is precisely what happened when Champion's Mr. Carter looked for Dr. Cordero's property and found other assets of Premier in the Avon warehouse. Assistant Schmitt failed to pick up how this event indicted the performance of Trustee Gordon, for he not only had the same opportunity as Mr. Carter to locate those assets and property, but also the duty to do so.

16. Failure to listen attentively and question the Trustee's words

Assistant Schmitt failed to approach Trustee Gordon's statements inquisitively. So she wrote, "I understand that a copy of this letter was sent to you on June 10, 2002 after the trustee learned of your difficulties in trying to locate and retrieve your property." The underlying tenor of these words is that the Trustee told Assistant Schmitt that, after learning from Dr. Cordero of his property-search difficulties, the Trustee responded promptly by sending him the requested information right away…and she just believed him!

It is clear that Assistant Schmitt did not hear the clash between those words and what Dr. Cordero wrote in his Applications. There he complained loudly that he had to call the Trustee several times in the first part of May 2002 before the Trustee finally took his call, and that then he had to write to him to remind him of the letter that the Trustee had said he would send Dr. Cordero, and that then Dr. Cordero even had to call again the Trustee to ask whether he would answer the letter, and that when the Trustee finally, on June 10, 2002, answered the letter, it was just to "suggest that you retain counsel…." Assistant Schmitt may not have asked herself, not to mention the Trustee, about his tardiness in responding if she was not inquiring into his performance, but rather just listening to his story.

17. Failure to pick up the inconsistency between Trustee's words and actions

Assistant Schmitt wrote: "I do understand, however, that early on in the case, the chapter 7 trustee made repeated requests to counsel for the debtor to provide a list of all customers who currently were storing items with the debtor. Counsel failed to provide such a list."

However, Assistant Schmitt failed to pick up the inconsistency between what Trustee Gordon said there that he did and what he actually did when he learned about Dr. Cordero. The latter was one of those customers that would have been on the requested list of Premier's customers. What did the Trustee do for him? After a month of Dr. Cordero trying to obtain a written statement concerning his property held by Debtor Premier, the Trustee wrote, "I suggest that you retain counsel to investigate what has happened to your property," and clipped his letter to that to Mr. Dworkin of April 16, wherein he bounced Premier's customers from Mr. Dworkin to yet another third-party, i.e. M&T Bank. Did Assistant Schmitt grasp the inconsistency: Why would the Trustee ask repeatedly for that list if he was so unwilling to do anything for those that would be on it? The evidence points to Assistant Schmitt just listening and then repeating uncritically what she was told during her 'contact' with Trustee Gordon.

18. Failure to pick up inconsistency in her own actions

Assistant Schmitt failed to pick up her own inconsistency in action. Why did she not call the counsel for Debtor Premier, Mr. Stilwell, to ask him for copies of the letters in which the Trustee claimed to have asked him for the list of Premier's customers? Those letters must exist given that Assistant Schmitt wrote that, "Mr. Gordon states that generally, it is his policy to correspond with parties via mail rather than telephone." She should have been very interested in knowing the exact dates when the Trustee wrote to Attorney Stilwell asking for that list and what he stated he wanted it for.

Moreover, why did she not call Attorney Stilwell although she wrote that she "contacted…the attorney for the party who is now believed to be in possession of your belongings," that is, Attorney David MacKnight.[13] No doubt, Assistant Schmitt could also have asked Trustee Gordon to send her copies of those letters…but then she would have sounded in her 'contact' with the Trustee as if she had been conducting a "thorough inquiry," which, of course, was not the case, for it was just a friendly communication to hear his story, which needed no corroboration since the Trustee was to be taken at his word.

19. Failure to pick up indicia of Trustee's need to be prompted into action

As a result of Dr. Cordero's repeated requests for information from Trustee Gordon, the Trustee finally wrote to him on June 10, 2002. Three days later, according to Assistant Schmitt, "On June 13, 2002, the chapter 7 trustee filed a formal Notice of his intent to abandon all assets of Premier Van Lines…." Likewise, as a result of Dr. Cordero's letter followed up with phone calls, which the Trustee would neither take nor return, the Trustee finally sent him a letter on September 23. Three days letter, according to Assistant Schmitt, "on September 26, 2002, the trustee filed a Notice of his intent to abandon unscheduled assets of the debtor recently learned to have been located in Avon, New York." Was this pure coincidence or was Trustee Gordon finally taking some action in the Premier case because Dr. Cordero's requests were operating as reminders for the Trustee that he had to do something about that case?

[13] David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604; tel. (585) 454-5650, fax (585)454-6525.

In this context, a comparison of reaction time raises questions about Trustee Gordon's handling of this case.

1. As early as July 23, Dr. Cordero called Mr. Christopher Carter at Champion to ask him about his property. Mr. Carter told him that it was not among Debtor Premier's storage containers that he had collected at the Jefferson-Henrietta warehouse; then he promised to look into the matter.
2. On July 29, Dr. Cordero called Mr. Carter again, who said that he had found in Premier's files that Dr. Cordero's property might be in a warehouse in Avon.
3. On July 30, at Dr. Cordero's instigation, Mr. Carter wrote about it to Mr. Vince Pusateri[14] at M&T Bank, which held a lien on all Premier's storage containers.
4. On August 1, M&T Bank wrote to Dr. Cordero to let him know that his property was likely in Avon.
5. On August 7, Dr. Cordero faxed a letter to M&T Bank's attorney, Michael Beyma,[15] requesting confirmation of the whereabouts of his property.
6. On August 9, M&T Bank appears to have conducted a physical inspection of the Avon warehouse.
7. On August 12, Mr. David Delano, the M&T Bank officer in charge of the Premier case, called Dr. Cordero to let him know that storage containers with labels bearing his name had been found in the Avon warehouse.
8. On August 15, Attorney Beyma confirmed this by letter to Dr. Cordero with copy to the Trustee.
9. Not until September 26, almost a month and a half later and only after Dr. Cordero's letter and phone calls and finally the Trustee's letter of September 23, did the Trustee file his Notice of intent to abandon the newly found property. What was Trustee Gordon doing in the meantime?

There is no evidence that Assistant Schmitt asked that question. Nor that she asked whether Trustee Gordon actually went to the warehouse in Avon for a physical inspection of not only the storage containers, but also all the other assets of Debtor Premier found there. Did she ask why the Trustee was abandoning that property just as he had abandoned, six months after the conversion to Chapter 7 on December 20, 2001, Premier's assets at the Jefferson-Henrietta warehouse? What did Assistant Schmitt actually ask of the Trustee during her friendly 'contact' with him?

20. Failure to wonder 'What has Trustee Gordon been doing?!'

If Trustee Gordon:

1. does not, as a policy, take or return phone calls;

[14] Vince Pusateri, Vice President, tel. (716) 258-8472, at M&T Bank in Rochester.

[15] Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604; tel. (585)-258-2800; fax (585) 258-2821; attorney for M&T Bank.

2. and does not, as a matter of practice, promptly and usefully correspond with parties via mail;
3. and does not even write complete addresses or phone numbers;
4. and does not concern himself with "rental issues" of the Debtor's customers;
5. and does not "administer any items being stored by the debtor;"
6. and does not exercise "control over" but rather abandons Debtor's assets in the main place of business;
7. and does not examine the "records and books" in the Debtor's business equipment;
8. and does not "locate" the property of Debtor's customers;
9. and does not "notify" Debtor's customers "of the progress of the case;"
10. and does not find on his own Debtor's assets elsewhere;
11. and does not convert into cash but rather abandons assets found by others;
12. and does not have anything for the creditors except a No Distribution Report;
13. does not want even his staff "to receive and accept [any] more telephone calls from [a Debtor's customer, Dr. Cordero] regarding this subject";

did Assistant Schmitt wonder what really Trustee Gordon does as a chapter 7 trustee? Did she not wonder what the "significant efforts" that the Trustee claimed to have made in this case could possibly have been? Had she conducted a "thorough inquiry," would she have found evidence of Trustee Gordon's significant inactivity?

21. Failure to deal with the issues of untruthfulness and defamation

Assistant Schmitt also failed to grasp the serious professional and legal implications of the two other main issues of Dr. Cordero's Application to her: Whether Trustee Gordon made untruthful statements to the Court and the U.S. Trustee and whether he cast aspersions on Dr. Cordero's conduct, character, and competence so as to belittle him and persuade the Court and the U.S. Trustee that "it is not necessary…to take any action on Dr. Cordero's application" (see the Trustee's letter of October 1, 2002) for a review of his performance and fitness as trustee. Assistant Schmitt dealt with these two issues by 'thoroughly' liquidating them in a single paragraph:

> "Concerning your comments that all parties who appear before the court are officers of that court and must conduct themselves with "honesty and candor," we couldn't agree more. To that extent we have talked with Mr. Gordon about the need to maintain the highest level of professionalism as he administers bankruptcy cases and reminded him that he and his staff must remain courteous during all exchanges with the public, even when frustrated. We also reiterated that he and his staff must respond courteously and timely either by telephone or in writing to questions posed. Mr. Gordon states that generally, it is his policy to correspond with parties via mail rather than telephone."

Is this the best Assistant Schmitt can come up with by way of thoughtful analysis of the evidence and the reflective discussion of either of these two issues? They could give rise to charges that could get a lawyer disbarred or held liable for defamation. Did she ever consider, as Dr. Cordero requested, asking Trustee Gordon to provide proof of his impugnment of Dr. Cordero, such as affidavits from his staff regarding what he alleged that they told him about Dr. Cordero? Far from it, Assistant Schmitt found Trustee Gordon's behavior deserving of not even a slap on the wrist, just a reminder to remain professional and always be a good courteous boy. She must be kidding!

22. Failure to realize the inadequacy of a mere chatty supervisory 'contact'

To conduct at a professionally acceptable standard an investigative exercise into concrete charges concerning her supervisee, Assistant Schmitt would have had to read closely Dr. Cordero's Applications; notice and pursue the three main issues of claimed "significant efforts," untruthful statements, and impugnment of Dr. Cordero; examine critically the Trustee's story; request as a matter of course supporting documents; and interview independent third-parties in a position to corroborate or refute his averments. Then to adequately "respond to the inquiry" that she sensed she had been asked to con-duct, Assistant Schmitt would have had to conclude the 'contact' that she actually con-ducted by making concrete findings and reaching the specific determinations requested.

There is no evidence that any of this happened any where near to a passing, let alone adequate, degree. From the beginning, Assistant Schmitt should have known that her quick reading 'contact' with the Applications and her friendly 'contact' with Trustee Gordon, and just one other party could not possibly amount to the requested "thorough inquiry" into her supervisee's performance and fitness to serve. She should have realized that Trustee Gordon would not simply give up and confess to his many failings just because she asked him for his story. The inadequacy of her 'contact' should certainly have become obvious as the evidence began to pile up that the Trustee's performance consisted overwhelmingly of what he did not do rather than what he did do. At least she should have shown awareness that the object of her exercise was to reach the requested determinations and should have concluded with them. Instead, she wrote: "We appreciate your correspondence and trust that this information will be of assistance to you."

No! no! no! It was not to obtain "information" that the Court had forwarded to Assistant Schmitt the first Application of Dr. Cordero and that he had submitted to her his Rejoinder. Rather, it was for her to make the specific determinations clearly identified as such and listed in each of the two Applications. Did Assistant Schmitt provide as a result of a "thorough inquiry" any new "information" that determined whether Trustee Gordon's performance was competent and he was fit to serve as such in the Premier case? No, of course not.

Hence, both the "thorough inquiry" and the requested determinations remain to be made. But not by Assistant Schmitt, for she foreclosed the possibility of having anything else to do with this matter when, without inviting Dr. Cordero's comments, she remanded the case to whence it had come to her, the Court, thus: "Finally, to the extent you disagree with the legal position taken by Mr. Gordon, you should resolve that issue(s) in court."

Before going back to the Court, an appeal from her "information" lies with the hierarchical superior of Assistant Schmitt.

D. Relief requested

Consequently, through this appeal, Dr. Cordero requests that, on the basis of the facts, arguments, and exhibits contained herein and his two Applications, copies of which are attached hereto, the United States Trustee launch a "thorough inquiry" in order to determine whether Kenneth Gordon, Esq., as trustee of Premier Van Lines and in his dealings with Dr. Cordero:

1. failed to recognize that customers of Debtor Premier, who had entrusted it with their property for storage for a fee, are parties to these bankruptcy proceedings and should have been informed of such proceedings just as creditors of Premier were entitled to;
2. failed to provide Dr. Cordero -and perhaps others similarly situated- with adequate information upon being referred to the Trustee:
   - by lienholder M&T Bank and Dr. Cordero requested such information from the Trustee in mid-May and June 2002;
   - by Mr. Pfuntner and Dr. Cordero requested it from him in August and September 2002;
3. fails in his basic duty of fairness as a fiduciary by having refused specifically to communicate with Dr. Cordero and by explicitly enjoining him not to contact his office again, although the Trustee has provided other parties with information concerning Dr. Cordero;
4. failed to take measures to protect the assets of Premier in the Jefferson-Henrietta warehouse and prevent that assets once affirmed and seen to be there can now no longer be found;
5. failed to locate other Premier's assets, just as Champion's Mr. Carter did in Mr. Pfuntner's warehouse in Avon, and take such prompt and adequate action as to render unnecessary his being sued by Mr. Pfuntner, which has resulted in Premier's customers being dragged into Mr. Pfuntner's adversarial proceeding and their property there being frozen;
6. failed to make "significant efforts" to discharge his duties competently;
7. made untruthful statements to the Court and the U.S. Trustee;
8. cast aspersions on Dr. Cordero's character, conduct, and competence; and
9. is not fit to continue as trustee in the Premier case.

Similarly, Dr. Cordero requests also that the United States Trustee determine whether Assistant Schmitt:

10. failed to conduct the "thorough inquiry" expected of her as well as an adequate investigative exercise regarding the matter within the scope of her supervisory duty submitted to her by the Court and a party in interest; and

11. failed to discharge her supervisory duty "of ensuring the prompt, competent, and complete administration of" the Premier case assigned to Trustee Gordon.

Dr. Richard Cordero

Cc: The Honorable Judge John C. Ninfo, II
Assistant Kathleen Dunivin Schmitt
Kenneth Gordon, Esq., Trustee

U.S. Department of Justice

Office of the United States Trustee
Western District of New York

100 State Street, Suite 609
Rochester, New York

(585) 263-5706
FAX (585) 263-5862

October 22, 2002

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

Re: Premier Van Lines

Dear Dr. Cordero:

This is in further response to your letter to the Court dated September 27, 2002, and to this Office dated October 14, 2002, concerning the Premier Van Lines chapter 7 bankruptcy case. I understand from your letter that you are concerned that despite numerous phone calls made to various parties, including the chapter 7 trustee in this case, you have been unsuccessful in regaining possession of items that you had paid to store with the debtor.

As you are aware, the United States Trustee Program is a component of the Department of Justice that supervises the administration of bankruptcy cases and trustees. In order to respond to your inquiry, we contacted the chapter 7 trustee, the attorney for the party who is now believed to be in possession of your belongings, and reviewed the docket and papers in this case.

By way of background, we learned that the case originally was filed as a chapter 11. In chapter 11, the debtor generally retains possession of the estate and continues to operate the business as a debtor-in-possession while it attempts to formulate a plan of reorganization. As a result, it is not surprising that Premier Van Lines continued to bill and collect fees for items it held in its storage facilities while it was attempting to reorganize. The case later was converted to one under chapter 7 on December 20, 2001. At this point, the debtor ceased operating as a business and a chapter 7 trustee was appointed to liquidate any assets of the estate and distribute any proceeds therefrom according to a scheme of distribution set forth in 11 U.S.C. § 726.

We learned from the chapter 7 trustee that on April 16, 2002, he wrote to M&T Bank, in care of Mr. David Dworkin, informing them that he did not plan to administer any items being stored by the debtor as he had determined that these stored items were not property of the bankruptcy estate. He further stated that if any rental issues arose, that M&T Bank should handle them directly. I understand that a copy of this letter was sent to you on June 10, 2002 after the trustee learned of your difficulties in trying to locate and retrieve your property.

On June 13, 2002, the chapter 7 trustee filed a formal Notice of his intent to abandon all assets of Premier Van Lines, which was served on all creditors. In addition, on September 26,

2002, the trustee filed a Notice of his intent to abandon unscheduled assets of the debtor recently learned to have been located in Avon, New York. Apparently, the trustee was unaware of these "assets" as they had not been listed on the debtor's schedules or disclosed at the meeting of creditors. We further understand that on September 23, 2002, the trustee sent a second letter to you further explaining his position that your stored items were not property of the bankruptcy estate and that he had no right or control over them.

It would appear that most of the difficulties you encountered in trying to obtain your property were not a result of the chapter 7 trustee's diligence, but rather involved the debtor's failure to inform its customers about its progress in the bankruptcy case and to carefully and fully identify where it had stored certain items. Although, we are unable to comment fully on your particular issue because of a lack of jurisdiction, we can say that the debtor should have kept proper books and records while in chapter 11, and it should have identified on the Schedules and Statement of Financial Affairs where assets were located, and where it kept all of its books and records. In this case, it did not. As noted earlier, the schedules do not reflect the property kept at the Avon location and the Statement of Financial Affairs do not identify this location as an additional place where records were maintained. Unfortunately, it is not uncommon for debtors to keep incomplete books and records. As a result, trustees frequently must learn of potential assets through outside sources.

We understand from the docket, your letter, and from speaking with David MacKnight that pending before the bankruptcy court is a Complaint to determine, inter alia, what property stored at the Avon location belongs to whom. To that end, although we are prohibited from providing you with legal advice, and strongly suggest that you consult with a lawyer to understand what legal rights you may have, a letter to the court specifically outlining what items you had stored with the debtor may be appropriate at this time.

With regard to your concern that the trustee failed to notify you regarding the progress of the case and to help you locate your property, our review does not indicate any deviation from applicable law and procedure. The trustee in a chapter 7 estate represents the creditor's of that estate, not clients or customers of the debtor, unless, of course, those clients are owed funds. As such, the trustee had no legal responsibility to locate the assets belonging to the debtor's customers and clients and to negotiate their return to them. I do understand, however, that early on in the case, the chapter 7 trustee made repeated requests to counsel for the debtor to provide a list of all customers who currently were storing items with the debtor. Counsel failed to provide such a list.

Concerning your comments that all parties who appear before the court are officers of that court and must conduct themselves with "honesty and candor," we couldn't agree more. To that extent we have talked with Mr. Gordon about the need to maintain the highest level of professionalism as he administers bankruptcy cases and reminded him that he and his staff must remain courteous during all exchanges with the public, even when frustrated. We also reiterated that he and his staff must respond courteously and timely either by telephone or in writing to questions posed. Mr. Gordon states that generally, it is his policy to correspond with parties via mail rather than telephone.

Finally, to the extent you disagree with the legal position taken by Mr. Gordon, you should resolve that issue(s) in court.

We appreciate your correspondence and trust that this information will be of assistance to you.

Sincerely yours,

Kathleen Dunivin Schmitt
Assistant United States Trustee

cc: The Honorable John C. Ninfo, II
Kenneth Gordon, Esquire

U.S. Department of Justice

Office of the United States Trustee
Western District of New York

100 State Street, Suite 609
Rochester, New York

(585) 263-5706
FAX (585) 263-5862

October 8, 2002

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

Re: Premier Van Lines

Dear Dr. Cordero:

I am writing to you in response to your letter to the Court dated September 27, 2002, concerning the chapter 7 trustee, Mr. Kenneth Gordon, in the above referenced case. The United States Trustee Program is a component of the Department of Justice that supervises the administration of bankruptcy cases and trustees.

As part of our investigation into this matter, we have contacted Mr. Gordon for response. Our office will contact you as information is received and reviewed.

The concerns raised in your letter are appreciated. The United States Trustee encourages active involvement by parties to promote efficient and appropriate case administration.

Please let me know if I may be of further assistance.

Very truly yours,

Kathleen Dunivin Schmitt
Assistant United States Trustee

United States Bankruptcy Court
Western District of New York
1400 UNITED STATES COURTHOUSE
ROCHESTER, NEW YORK 14614

Hon. John C. Ninfo, II
CHIEF UNITED STATES
BANKRUPTCY JUDGE

October 8, 2002

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

Re: Premier Van Lines, Inc.
Case No:. 01-20692

Dr. Cordero:

By copy of this letter the Court acknowledges receipt of your correspondence, dated September 27, 2002, in which you request the Court to make a determination as to whether the Chapter 7 Trustee, Ken Gordon, Esq., is satisfactorily administering the above-referenced bankruptcy estate. Such a determination, however, is not appropriate for the Court to make at this time.

The appointment of a Chapter 7 trustee is a function of the Department of Justice, Office of the United States Trustee, and the supervision of the Chapter 7 trustee remains in the province of that office. Accordingly, any concerns that you may have regarding Mr. Gordon's capacity as the Chapter 7 trustee in this case should first be addressed to Kathleen Dunivin Schmitt, Esq., Assistant United States Trustee, 100 State Street, Room 6090, Rochester, New York 14614.

I am confident that Ms. Schmitt will make thorough inquiry and assist you in reconciling this matter. Thank you for your continued patience.

Very truly yours,

Hon. John C. Ninfo, II
Chief U.S. Bankruptcy Judge

JCN/ams

cc: Kathleen Dunivin Schmitt, Asst. U.S. Trustee
Kenneth W. Gordon, Chapter 7 Trustee

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

October 1, 2002

Hon. John C. Ninfo, II
U.S. Bankruptcy Justice
100 State Street
Rochester, New York 14614

Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Judge Ninfo:

Please accept this letter as my response to the application made by Richard Cordero dated September 27, 2002 in the above-referenced matter in which he seeks my removal as Trustee. This converted Chapter 11 filing involves a corporation which provided both moving and storage services for its customers. Since conversion of this case to Chapter 7, I have undertaken significant efforts to identify assets to be liquidated for the benefit of creditors. Unfortunately, I have discovered that the assets of the corporation which remained upon conversion are insubstantial or otherwise liened in amounts exceeding the value of the assets. Accordingly, I am in the process of abandoning the remainder of the assets of the corporation and will shortly be filing a No Distribution Report.

Richard Cordero is apparently a former customer of Premier Van Lines whose possessions were stored by the company. It has been my position consistently since my appointment as Trustee in this case that the property owned by customers of Premier Van Lines and stored by it was not property of the bankruptcy estate for administration. Moreover, as the Court is aware, I have not sought to operate the corporation under Chapter 7. Accordingly, I have instructed my staff to advise former customers of Premier Van Lines that items stored with Premier Van Lines were not property of the bankruptcy estate, were not to be administered by me and could be accessed by contacting either the landlord from whom Premier Van Lines rented its facilities or the attorney's for M&T Bank who held a lien on the assets of Premier Van Lines. Mr. Cordero was so advised when he contacted my office in the early spring of 2002. In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them. I spoke myself with Mr. Cordero on at least one occasion to reemphasize

the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys. I wrote to the landlord of the Jefferson Road facility in April of 2002 and later provided a copy of that letter to Mr. Cordero. Copies of my letters dated April 16, 2002 and June 10, 2002 are enclosed herewith. Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff. After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets. A copy of my September 23, 2002 letter is also enclosed herewith.

I have tried to explain to Mr. Cordero that I am not his attorney and that he should seek his own legal representation if he is having difficulty reacquiring his assets. Apparently, he has chosen not to seek his own legal counsel. I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application. As I will soon be issuing a No Distribution Report, this case will be closed and my duties as Trustee will come to an end. Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application. However, should the Court desire to calendar this matter, please let me know so that I may appear in Court and answer any questions that the Court may have regarding this matter.

Respectfully submitted,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs
Enclosure

pc: Kathleen Dunivin Schmitt, Esq.
Richard Cordero
David MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

September 23, 2002

Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Mr. Cordero:

You have repeatedly contacted my office regarding the property you stored with the debtor Premier Van Lines, Inc. prior to its filing for bankruptcy. I have repeatedly advised you that I do not possess nor control any property which was stored by customers of Premier Van Lines. Assets that were stored by customers of Premier Van Lines are not property of the bankruptcy estate and I have no right nor have I asserted any control over those assets. From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York. I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets.

Further efforts by you to acquire your assets through my office are pointless. Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again.

Very truly yours,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs

pc: David D. MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

Dr. Richard Cordero, Esq.

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

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

COPY

October 14, 2002

Ms. Kathleen Dunivin Schmitt
Assistant United States Trustee
U.S. Department of Justice
100 State Street, Suite 609
Rochester, NY 14614

Re: Kenneth Gordon, Esq., Trustee for Premier Van Lines,
Chapter 7 bankruptcy case number 01-20692

Dear Ms. Schmitt,

Thank you for your letter of 8 instant informing me that my letter of last September 27, to Judge John C. Ninfo concerning the above-captioned case was transmitted to you.

I understand that you were also copied by the trustee in this case, Kenneth Gordon, Esq., to his letter of October 1, 2002, to U.S. Bankruptcy Judge John C. Ninfo, II. In that letter, Mr. Gordon makes allegations to refute the contents of my Statements of Facts with a view to moving the Court and persuading you not to take any action on my application. Hence, I am submitting to you a Rejoinder that analyzes Trustee Gordon's allegations.

Please rest assured of my willingness to cooperate with you and your office in the review of this matter.

I look forward to hearing from you and remain,

yours sincerely,

Dr. Richard Cordero

Cc: Judge John C. Ninfo, II
Trustee Kenneth Gordon, Esq.
Michael J. Beyma, Esq.

Dr. Richard Cordero, Esq.

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

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

COPY

October 14, 2002

REJOINDER
and
APPLICATION FOR A DETERMINATION

In re Kenneth Gordon, Esq., Trustee for Premier Van Lines,
Chapter 7 bankruptcy case number 01-20692

Submitted by: Dr. Richard Cordero, Esq.

to: Ms. Kathleen Dunivin Schmitt
Assistant United States Trustee
U.S. Department of Justice
100 State Street, Suite 609
Rochester, NY 14614

On September 27, 2002, I submitted to U.S. Bankruptcy Judge John C. Ninfo, II,[16] (hereinafter referred to as the Court) a Statement of Facts and Application for a Determination concerning the performance and fitness to serve of Kenneth Gordon, Esq.,[17] Chapter 7 Trustee for Premier Van Line[18] , (hereinafter referred to as Premier), a company formerly engaged in the business of moving and storing property of customers. Trustee Gordon sent an Answer dated October 1, 2002, to the Court with copy to the U.S. Trustee. The Court transmitted my Statement and the Trustee's Answer to Assistant U.S. Trustee Kathleen Dunivin Schmitt (hereinafter referred to as the U.S. Trustee). This is my Rejoinder to that Answer.

Trustee Gordon's performance has adversely affected the steps that I have taken since early January 2002 to locate and retrieve the property that I entrusted for storage to Premier, which packed it in storage containers owned by and constituting assets of Premier. Till this day, I have no certainty of the whereabouts of all my property, let alone its condition. This property interest justifies my concern in the proper handling and disposition of the bankruptcy proceedings relating to Premier.

I. Trustee Gordon's "significant efforts" as Premier's trustee

In his answer dated October 1, 2002, to the Court with copy to the U.S. Trustee, Trustee Gordon alleges that, "Since conversion of this case to Chapter 7, I have undertaken significant efforts to identify assets to be liquidated for the benefit of creditors."

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[16] Judge John C. Ninfo, II, U.S. Bankruptcy Judge, United States Bankruptcy Court, Western District of New York, 1400 United States Courthouse, Rochester, NY 14614, tel. (585) 263-3148.

[17] Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618, tel. (585) 244-1070, fax (585) 244-1085.

[18] Premier Van Lines, 900 Jefferson Road, Rochester, NY 14623.

By the common sense standard that when success is possible, efforts that failed were poor, Mr. Gordon's efforts, and consequently, his performance, were poor. Indeed, he failed to find out that Premier had assets at a warehouse located in Avon.[19] and owned by Mr. James Pfuntner.[20] It fell upon me, in my quest for my property, to instigate other parties to this case to launch a search for other assets of Premier. It was through those parties that the discovery of other Premier's assets was made, including storage containers in which my property is said to be contained. The facts surrounding this discovery raise some very troubling questions about what efforts, let alone significant ones, Mr. Gordon has been making in this case. The facts are as follows:

a. The facts of Trustee Gordon's performance

Premier never informed me that it had filed for bankruptcy in March 2001. Instead, it kept billing me and I kept paying it. Neither Premier nor Trustee Gordon informed me that the case had been converted from Chapter 11 to Chapter 7 in December 2001. Far from it, in January 2002, Mr. David Palmer, owner of Premier,[21] assured me repeatedly that my property was safe and referred me to the manager of the warehouse where he had stored the containers with my property, Mr. David Dworkin.[22]

Mr. Dworkin also assured me that my property was safe and in good condition in his warehouse and then billed me on March 7, 2002, on Jefferson Henrietta stationery for storage fees. However, he failed to give me his assurances in writing, as I had requested and he had agreed to do. This was well before Mr. Gordon wrote to Mr. Dworkin on April 16, as follows:

> "Please be advised that M&T Bank has a blanket lien against the assets of Premier Van Lines. As the Chapter 7 Trustee, I will not be renting or controlling the storage units or any of the assets at the Jefferson Road location. Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank…"

It was not Trustee Gordon, but rather Mr. Dworkin who in March had referred me to M&T Bank.[23] I had to find out on my own who were the officers in charge of the Premier case. They turned out to be Mr. Vince Pusateri,[24] and Mr. David Delano.[25] Mr. Delano told me that he had seen containers with my name at Mr. Dworkin's warehouse. After being bandied between these parties and by them to yet other parties, I found out that M&T Bank had sold the Premier's assets stored at Mr. Dworkin's warehouse to Champion Moving & Storage

Champion's owner is Mr. Christopher Carter.[26] He informed M&T Bank and me by letter of July 30, 2002, that my property was not among the storage containers and other assets that he had bought from M&T Bank and picked up at Mr. Dworkin's warehouse. By contrast, among those assets were

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[19] Avon warehouse, located at 2140 Sackett Road, Avon, NY 14414.

[20] James Pfuntner, (585) 738-3105, owner of the Avon warehouse; see footnote above; also an officer of Western Empire Truck Sale, 2926 West Main Street, Caledonia, NY 14423, tel. (585) 538-2200.

[21] David Palmer, tel. (585) 292-9530, owner of the now bankrupt Premier Van Lines.

[22] David Dworkin, manager of the warehouse of Jefferson Henrietta Associates, 415 Park Avenue, Rochester, NY 14607, tel. (585) 442-8820; fax (585) 473-3555; and of Simply Storage, tel. (585) 442-8820; officer also of LLD Enterprises, tel. (585) 244-3575; fax 716-647-3555.

[23] M&T Bank, Manufacturers & Traders Trust Bank, 255 East Avenue, Rochester, NY 14604.

[24] Vince Pusateri, M&T Bank Vice President in Rochester, tel. (716) 258-8472.

[25] David Delano, M&T Bank Assistant Vice President in Rochester, tel. (585) 258-8475; (800) 724-2440.

[26] Christopher Carter, cellphone (585) 820-4645, owner of Champion; see footnote above.

Premier's business files. There Mr. Carter was able to find Premier invoices indicating that in 2000, Premier had stored my property in a warehouse in Avon.

The ensuing search discovered that not only at least one storage container there is said to bear my name, but that other assets belonging to Premier are also at that warehouse in Avon owned by Mr. Pfuntner; see footnotes 4 and 5 above. The latter has acknowledged that there is property belonging to me in his warehouse, but refused to state its condition. In addition, he claimed that he wanted compensation for storage and that if he let me take my property, the Trustee could sue him.

Mr. Pfuntner's lawyer is Mr. David MacKnight.[27] The latter has not answered any of my letters to provide me the requested information concerning the number of containers with property of mine and the condition of such property. Nor has he taken or returned any of my calls. However, Mr. MacKnight sent me a letter dated September 19, 2002, stating that:

> "I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfunter and those claiming on [sic] interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint."

From a copy of Trustee Gordon's answer, I have learned that I am a named defendant in the lawsuit brought by Mr. Pfuntner against Trustee Gordon et al, although I have not yet being served.

b. Questions to assess Trustee Gordon's "significant efforts"

Did Trustee Gordon ever look at the Premier business files at Mr. Dworkin's warehouse, which would have allowed him to discover that Premier had assets at the Avon warehouse, just as Mr. Carter of Champion did? Where else did Trustee Gordon, or for that matter any trustee, look for assets of the debtor when he does not look at the debtor's business files?

If Trustee Gordon did not look at those files, why did he not do so given that with due diligence he would have found out that, as Mr. Dworkin told me, Premier had also rented office space at the Dworkin's warehouse and had his office equipment and cabinets there?

If Trustee Gordon did look at those files and that enabled him to write to Mr. Dworkin on April 16 that, "I will not be renting or controlling the storage units or any of the assets at the Jefferson Road" warehouse, that is, Mr. Dworkin's, why did he not notify the Premier clients with property in Premier's storage containers? Without notifying them, Trustee Gordon could not properly dispose of Premier's assets. Indeed, professional experience or common sense would have told Trustee Gordon that such Premier clients would want to have their property back or know its whereabouts. Therefore, they had claims on Premier, but would run into difficulty with Premier creditors, including those that had possession or control of Premier's containers and assets stored elsewhere. The correctness of this elemental reasoning is shown by Mr. Pfuntner's refusal to release Premier's assets in the Avon warehouse, including the property of Premier customers stored in Premier's storage containers.

Trustee Gordon wrote to me on September 23, 2002, that, "From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York." Did Trustee Gordon try to ascertain with due diligence what other Premier assets were at that Avon

[27] David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604, tel. (585) 454-5650, fax 585-454-6525.

warehouse? Or did he just wait until receiving the summons and complaint of Mr. Pfuntner's lawsuit against him et al?

That suit shows that Trustee Gordon made a gross mistake in his way of handling this case, which he thus expressed in his October 1 Answer to the Court and the U.S. Trustee: "It has been my position consistently since my appointment as Trustee in this case that the property owned by customers of Premier Van Lines and stored by it was not property of the bankruptcy estate for administration." With that statement, the disposition of Premier' assets, including containers with customers' property, is not solved as if by magic. Far from it! Now Trustee Gordon is facing a lawsuit. Therefore, how can the Trustee affirm in that same letter that, "this case will be closed and my duties as Trustee will come to an end. Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application." Are bankruptcy cases closed when the trustee is sued?

Since Trustee Gordon abandoned Premier assets at Mr. Dworkin's warehouse, failed to identify other Premier assets elsewhere, and after third parties without his help found more such assets at the Avon warehouse, satisfied himself with "it appears as if your property is" there, to what were Trustee Gordon's "significant efforts" addressed and what were their results? Can another trustee find other Premier assets by making "efforts" to that end, particularly "significant" ones, which could avoid issuing a No Distribution Report?

II. Whether the Trustee's statements to Court & U.S. Trustee are true

When on September 27, I applied to the Court for a review of Trustee Gordon's performance and fitness to continue as trustee in this case, I also protested the unjustified content and unprofessional tone of Trustee Gordon's letter to me of September 23. Therein the Trustee wrote, among other things, that "Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject." In his October 1 Answer, submitted to the Court with copy to the U.S. Trustee, Trustee Gordon made the following allegations, among others:

> "In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them…
> "Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff…
> "After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets."

With these statements Trustee Gordon casts aspersions on me and my conduct. With them he also intends to make the Court as well as the U.S. Trustee believe that his own conduct was justified. Moreover, he intends to obtain a personal benefit, namely, that the Court take no action on my application for review of his performance and fitness as trustee. Since Trustee Gordon is both an officer of the court and an appointee under federal law, he must know that when he addresses either, his declarations must be truthful. His character and his fitness, not only as trustee, but also as an officer of the court, would be revealed by the truthfulness or lack thereof of his declarations.

By the same token, both the Court and the U.S. Trustee must require that officers that have been sworn to uphold the law make truthful declarations before them. The insistence that this requirement be satisfied is indispensable for the application of the law and the administration of justice. Likewise, ethical considerations requiring that lawyers conduct themselves with honesty and candor are predicated on lawyers being truthful.

Therefore, let Trustee Gordon present the evidence supporting his statements. It should be very easy for him to do so. To begin with, he says that "In fact" his staff has received more than 20 calls from me. Thus, he must have a record keeping system for phone calls whereby incoming calls are logged, whether manually or electronically. Such systems do exist and they make it possible to bill clients for the time that the staff spent answering phone calls pertaining to their cases. Anyway, since Trustee Gordon asserts as a matter of his own knowledge that it is a "fact," then he can prove it. Let him do so.

By contrast, in the second part of the sentence, Trustee Gordon relies on hearsay to impugn my conduct and move the Court to favor him: "my staff has advised me that he has been belligerent… became more demanding and demeaning to my staff… became very angry at my staff." These are categorical statements. No reasonable person would have any doubt as to what constitutes such conduct. Hence, the Trustee's staff should easily state the details that describe such conduct, particularly since the Trustee submits as a "fact" that his staff received more than 20 of my calls. Let Trustee Gordon provide, not hearsay, but rather affidavits from his staff to substantiate his statements. Let him also describe in an affidavit of his own the tenor of our phone conversation, for he acknowledges that we spoke on the phone "on at least one occasion."

Meantime, the degree of Trustee Gordon's due care in preparing his statements and of their reliability can begin to be assessed when he writes thus:

> "Richard Cordero is apparently a former customer of Premier Van Lines…Mr. Cordero was so advised…that former customers of Premier['s] items…were not to be administered by me…when he contacted my office in the early spring of 2002…I spoke myself with Mr. Cordero on at least one occasion to reemphasize the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys."

If Trustee Gordon is truthfully submitting to the Court and the U.S. Trustee that he and his staff have received more than 20 calls from me, how come he cannot state for sure but only "apparently" that I am a former Premier customer? Or does it take still more calls for him to make a truthful determination? For the sake of truthfulness, it should also be noted that I did not contact his office in early spring. Nor was it in March or April, but only as late as mid-May. His intended implication in the statement that "on at least one occasion" he spoke with me is that he may have spoken with me more than once. His implication is misleading. He has spoken with me exactly one single time, on May 16, 2002. On that single occasion, he could not possibly have spoken with me "to reemphasize" anything, not only because there had been no previous occasion in which he could 'emphasize' it, but also because nobody else had told me his position on the Premier case. Trustee Gordon should be able to easily challenge this assertion of mine since he must have a record keeping system that allows him to state as a "fact" that I called his staff more than 20 times and he knows from his staff what transpired in those calls.

III. The understanding of Trustee Gordon's role

Trustee Gordon not only impugns my character and conduct, but also belittles my competence when he writes that:

> "I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application."

If Trustee Gordon's role were so unambiguously understandable, there should be no reason for Lawyer David MacKnight, who represents Mr. Pfuntner, the Avon warehouse owner, to be suing him "to determine the obligations and duties of the Trustee…," or for Mr. Pfuntner both to refuse to release my property in Premier's storage containers for fear that the Trustee may sue him and to refer me to the Trustee. Nor would there be any reason for Lawyer Raymond Stilwell,[28] who represents Mr. Palmer, the owner of Premier, to have engaged in conduct objected to by the Trustee, as shown in Mr. Stillwell's letter of last May 30. Nor would Lawyer Michael Beyma,[29] who represents M&T Bank, have referred me to the Trustee, just as did M&T Bank Vice President Vince Pusateri and Assistant Vice President David Delano. Nor would Lawyers MacKnight and Beyma feel compelled to copy the Trustee to letters that they wrote to me. Likewise, there should have been no need for the Trustee to write to Mr. Dworkin, in whose warehouse Premier had leased storage and office space, in April 2002, four months after the conversion of the case from Chapter 11 to Chapter 7, to let him know what the Trustee would be or not be renting or controlling and how Mr. Dworkin should handle Premier clients. Nor would Mr. Dworkin too deem it necessary to refer me to the trustee for Premier.

Is it because Trustee Gordon understands his role as being so limited that he is issuing a No Distribution Report? After all, he gave Lawyer Stilwell to understand, as the latter stated in his May 30 letter, "Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings." Why did Trustee Gordon let one creditor, Mr. Dworkin, keep running the Premier as if it still were an ongoing business and without distributing its income?

IV. Request for review of Trustee Gordon's performance and fitness

I respectfully request that the U.S. Trustee, taking into account this Rejoinder as well as my Statement of September 27, determine whether Trustee Gordon, as trustee of Premier Van Lines:

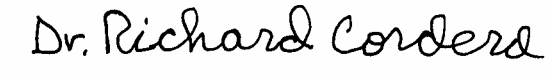
1. failed to recognize that clients of Premier, who had entrusted it with their property for storage for a fee, are parties in these bankruptcy proceedings and should have been informed of such proceedings as were creditors of the debtor;
2. failed to provide me -and perhaps others similarly situated- with adequate information when I was referred to him by lien holder M&T, and I contacted him and specifically requested such information in mid-May and June 2002;
3. failed to identify Premier's assets, such as those in Mr. Pfuntner's warehouse, and take such action as to render unnecessary his being sued by Mr. Pfuntner;

[28] Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, tel. (585) 248-3800; fax (585) 248-4961; attorney for Mr. David Palmer; see footnote 6 above.

[29] Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604, tel. (585)-258-2800; fax (585) 258-2821; attorney for M&T Bank; see footnotes 8-10 above.

4. fails in his basic duty of fairness as a fiduciary by having refused to communicate with me and explicitly enjoining me not to contact his office again, although he has provided other parties with information concerning me;
5. fails to recognize his duty to allow me access to him and provide me with information, particularly since I have been referred to him for his role as Premier's trustee by a creditor, Mr. Pfuntner, who refuses to release my property lest the Trustee sue him;
6. failed to make "significant efforts" to discharge his duties competently;
7. made untruthful statements to the Court and the U.S. Trustee;
8. cast aspersions on me, my conduct, and my competence; and
9. is not fit to continue as trustee in this case.

Sincerely,



Cc: Judge John C. Ninfo, II
Kenneth Gordon, Trustee
Michael J. Beyma, Esq.

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

April 16, 2002

David Dworkin
415 Park Avenue
Rochester, New York 14607

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Mr. Dworkin:

Please be advised that M&T Bank has a blanket lien against the assets of Premier Van Lines. As the Chapter 7 Trustee, I will not be renting or controlling the storage units or any of the assets at the Jefferson Road location. Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank. M&T Bank is represented by Mike Beyma and Tim Johnson of Underberg & Kessler, LLP.

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,

Kenneth W. Gordon

KWG/sem

ADAIR, KAUL, MURPHY, AXELROD & SANTORO, LLP
ATTORNEYS AND COUNSELORS AT LAW

Raymond C. Stilwell 300 Linden Oaks • Suite 220 • Rochester, New York 14625-2883
Telephone: 585/248-3800 • Fax: 585/248-4961
E-mail: rcstilwell@adairlaw.com
Please reply to:
Rochester

May 30, 2002

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

VIA FACSIMILE 718/827-9521

Re: Premier Van Lines, Inc.

Dear Dr. Cordero:

I am in receipt of your May 21 letter and am aware of additional attempts by you to contact this office. While I appreciate your frustration with the way the "system" has failed you in this case, I regret that I am unable to be of either legal or practical assistance to you in trying to solve your problem.

Premier ceased operations at the end of 2001. Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about.

I must suggest- in fact insist- that you direct your inquiries to the landlord as the party in a position to be of assistance to you. The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company (at least to the extent I would be entitled to be compensated for such efforts), and it is not my place to question his judgment on such matters.

You have asked me to attend to your inquiries with a sense of professional responsibility. That is exactly what I am doing. I have an obligation to avoid conflicts of interest, which prevent me from offering you any form of legal advice other than to advise you to seek your own independent counsel. I also have an obligation to maintain the confidences of our own client, which precludes me from putting you in direct contact with Mr. Palmer or assisting in your efforts to do so without his consent. Within these bounds, I have provided you with every permissible courtesy, but I cannot permit continued repeated contacts- particularly to our office staff- which are directed at obtaining things from us which we cannot give you.

Very truly yours,

Raymond C. Stilwell

RCS\

Buffalo Office: The Law Center, 17 Beresford Court, Williamsville, NY 14221 • Phone (716)634-8307• Fax (716)639-0714

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

June 10, 2002

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

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Dr. Cordero:

Enclosed please find a copy of correspondence dated April 16, 2002 from myself as the Chapter 7 Trustee to Mr. Dworkin, landlord of 900 Jefferson Road, with respect to the above-referenced bankruptcy proceeding. I suggest that you retain counsel to investigate what has happened to your property.

Very truly yours,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/sem
Enclosure

Champion Moving & Storage, Inc.

795 Beahan Road
Rochester, New York 14624
Tel: (585) 235-3500

July 30, 2002

Dr. R. Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Dear Dr. Cordero,

Please find enclosed my letter to Mr. Busateri, a copy of an old Premier Van Lines invoice indicating the goods are in Avon. I also enclose an unsigned Bill of Sale.

Yours sincerely,

Christopher D. Carter

Enc.

ALLIED
Agent for Allied Van Lines®

Champion Moving & Storage, Inc.

795 Beahan Road
Rochester, New York 14624
Tel: (585) 235-3500

July 30, 2002

Manufacturers and Traders Trust Company
255 East Avenue
Rochester, New York 14604

Dear Mr. Busateri,

Dr. Cordero has contacted us regarding his goods, which were stored by Premier Van Lines. In the transfer of goods from Premier's warehouse no containers for Dr. Cordero were received. In looking on the invoices from Premier it would appear Dr. Cordero's items are still in Avon (please see enclosed invoice). I understand that the Avon building is for rent, and there are still containers for storage their. Champion would be willing to pick up their storage lots.

Please call me at 235-3500 x 312 to discuss.

Yours sincerely,

Christopher D. Carter

Enc.
Cc: Dr. R. Cordero

ALLIED
Agent for Allied Van Lines®

Lacy, Katzen, Ryen & Mittleman, LLP

LOUIS A. RYEN
RONALD A. MITTLEMAN
MICHAEL S. SCHNITTMAN
PETER T. RODGERS
SALLY A. SMITH+
KAREN SCHAEFER
RICHARD G. CURTIS
LAWRENCE J. SCHWIND
DAVID E. ANDERSON
CRAIG R. WELCH
CHRISTOPHER B. MUMFORD
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LARA R. BADAIN
SUZANNE L. AMICO
KEVIN MORABITO
DANIEL S. BRYSON
LISA C. ARRINGTON°

ALSO ADMITTED IN:
* ILLINOIS
+ NEW JERSEY
° DISTRICT OF COLUMBIA

September 19, 2002

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

Re: Stored Property

Dear Dr. Cordero:

I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfunter and those claiming on interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint.

Very truly yours,

David D. MacKnight

DDM/cc
Cc: Trustee
Michael Beyma, Esq.

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

September 23, 2002

Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Mr. Cordero:

You have repeatedly contacted my office regarding the property you stored with the debtor Premier Van Lines, Inc. prior to its filing for bankruptcy. I have repeatedly advised you that I do not possess nor control any property which was stored by customers of Premier Van Lines. Assets that were stored by customers of Premier Van Lines are not property of the bankruptcy estate and I have no right nor have I asserted any control over those assets. From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York. I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets.

Further efforts by you to acquire your assets through my office are pointless. Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again.

Very truly yours,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs

pc: David D. MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
In Re:

PREMIER VAN LINES, INC.,

Debtor

Case No: 01-20692

JAMES PFUNTER,

Plaintiff,

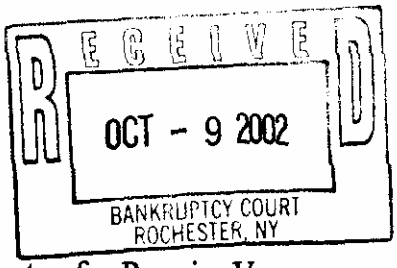
-vs-

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

Defendants

TRUSTEE'S ANSWER

Adversary Proceeding
Case No: 02-2230



Defendant, Kenneth W. Gordon, as the Chapter 7 Trustee in Bankruptcy for Premier Van Lines, Inc., answering the Complaint:

1. Denies the allegations set forth in paragraph 17 of the Plaintiff's Complaint.

2. Denies knowledge and information sufficient to form a belief as to the remaining allegations of this Complaint.

3. Affirms that all of the assets of the estate have been abandoned on due notice and that there are no assets out of which to pay any claims.

WHEREFORE, Kenneth W. Gordon, as Trustee, requests dismissal of the Complaint against the Trustee together with such other and further relief as is just and proper.

Dated: Rochester, New York
October 9, 2002

By: _____

Kenneth W. Gordon
Chapter 7 Trustee
100 Meridian Centre Blvd.
Suite 120
Rochester, New York 14618
(585) 244-1070

Dr. Richard Cordero, Esq.

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

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

September 27, 2002

Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

Re: Premier Van Lines, bankruptcy case number 01-20692, Chapter 7

Dear Judge Ninfo,

Kindly find herewith a copy of the letter that the trustee in the above captioned case, Kenneth Gordon, Esq., sent me last September 23. It confirms his refusal to communicate with me in this matter although I have a legitimate and justifiable interest in knowing about the course of the proceedings, and all the more so since they have taken a new turn upon the discovery of other assets of the debtor.

To assist you in understanding the context in which Mr. Gordon wrote that letter, I am sending you my reply to him and supplying a Statement of Facts, which is supported by pertinent documents.

I am submitting this material to you so that you may determine whether in this case Mr. Gordon's performance complies with his duties as trustee and whether he is fit to continue as such.

Looking forward to hearing from you, I remain,

yours sincerely,

Dr. Richard Cordero

Dr. Richard Cordero, Esq.

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

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

September 27, 2002

STATEMENT OF FACTS
and
APPLICATION FOR A DETERMINATION

In re Premier Van Lines, bankruptcy case number 01-20692, Chapter 7
and its Trustee Kenneth Gordon, Esq.

Submitted by: Dr. Richard Cordero, Esq.

to: Hon. Judge John C. Ninfo, II
United States Bankruptcy Court
1220 US Court House
100 State Street
Rochester, NY 14614

The bankrupt company, Premier Van Lines, located at 900 Jefferson Road, Rochester, NY 14623, was in the storage business and had received my property for storage. For more than three months beginning in early January 2002, I communicated with both Premier's owner, Mr. David Palmer, and the manager of the warehouse where my property allegedly was stored, Mr. David Dworkin of Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607, to find out where and in what condition my property was and to have them commit themselves in writing to their response. Yet throughout those months neither informed me that Premier was in bankruptcy proceedings, let alone that it was in liquidation. On the contrary, they told me that my property was safely stored in the Jefferson Henrietta warehouse and continued billing me. Then Mr. Palmer disappeared and even his telephone was disconnected

It was only when Mr. Dworkin referred me to a Premier lien holder, Manufacturers & Traders Trust Bank (M&T), 255 East Avenue, Rochester, NY 14604, that I first learned that Premier was in bankruptcy proceedings. By that time all the filing deadlines had passed. What is more, although Premier had filed under Chapter 11 over year earlier, in March 2001, both Mr. Palmer and Mr. Dworkin kept billing me for storage for a year thereafter and for months after the conversion of the case to Chapter 7 in December 2001, as if the company were a going concern.

Lien holder M&T referred me to Premier's lawyer, Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883. Mr. Stilwell would not put me in contact with Mr. Palmer. Instead, he wrote me that Mr. Dworkin, "with the trustee' knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings.The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company." I wrote to Mr. Dworkin, but he refused to commit himself in writing concerning the whereabouts and condition of my stored property.

Likewise, M&T referred me to the trustee, Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618. I had to call Mr. Gordon several times until he first took my call on May 16, 2002, and requested information from him about the case and the parties dealing with him. When no information or documents were forthcoming, I had to write to him on May 30. I had to follow up with calls to him, which were neither taken nor returned. It was not until two weeks later that for all communication with me Mr. Gordon sent me copy of his letter to Mr. Dworkin dated April 16, 2002, and a letter to me simply suggesting "that you retain counsel to investigate what has happened to your property."

I kept investigating. I found out that even the information that M&T provided to me was, at the very least, incorrect. M&T informed me that it sold the crates containing the stored property of Premier's clients, but not the property itself, to Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624. M&T let me know that the crates with my property were included in the sale and referred me to Champion. But Champion indicated that it had not received either my property or that of other Premier clients. At my instigation, M&T launched another investigation. It then found out that Premier had stored crates in a warehouse on 2140 Sackett Road, in Avon, NY 14414. His owner is Mr. James Pfunter and M&T referred me to him and his lawyer. I was being bandied yet to another party.

I wrote to Mr. Pfunter's lawyer, Mr. David MacKnight, of Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604. In light of the discovery of new assets of Premier and the appearance of another of its creditors, who according to M&T was "claiming a self-storage lien against the storage cabinets," I copied Mr. Gordon. For weeks Mr. MacKnight would neither answer my letter nor take my calls; neither would Mr. Gordon.

Thus, I had to contact Mr. Pfunter by phone. He expressed his wish to be paid for the storage of my property in his warehouse. I asked and he promised to find out and let me know the number of crates in which my property was stored. Yet, he failed to provide that information. When I called him again, he told me that he would not release my property because the Premier trustee, Mr. Gordon, could then sue him. I asked him to put that in writing. Mr. Pfunter refused and then hung up on me.

Once more, I had no other source of information but Trustee Gordon. Consequently, I called him. But he would not take or return any of my calls. In my last call to his office, on Monday, September 23, I asked to speak with him. His secretary Brenda put me on hold. When she came back she said that Mr. Gordon was not taking any more calls concerning Premier. I asked why and she said that I could write. I told her that I had sent Mr. Gordon a copy of my letter to Mr. Pfunter's lawyer, Mr. MacKnight, but that Mr. Gordon had not given me any feedback on it. Therefore, I asked whether Mr. Gordon would reply to any letter from me. Brenda said that she was only a secretary following instructions and hung up on me. A few days later I received Mr. Gordon's letter of September 23. In my response to his letter, which I hereby incorporate by reference, I have stated why Mr. Gordon's letter is unjustified in its content and unprofessional in its tone.

I respectfully request that the Court determine whether Mr. Gordon, as a court appointed trustee in bankruptcy with fiduciary duties to all the parties,

1. failed to recognize that clients of Premier, who had entrusted it with their property for storage for a fee, are parties in these bankruptcy proceedings and should have been informed of such proceedings as were creditors of the debtor,
2. failed to provide me -and perhaps others similarly situated- with adequate information when I was referred to him by lien holder M&T, and I contacted him and specifically requested such information in May and June 2002,

3. failed to identify debtor's assets, such as those in Mr. Pfunter's warehouse, and/or to take a position on them so that Mr. Pfunter's lawyer now has "drafted a complaint to determine the obligations and duties of the Trustee…,"
4. fails in his basic duty of fairness as a fiduciary by having refused to communicate with me and explicitly enjoining me not to contact his office again, although he has provided other parties with information concerning me,
5. fails to recognize his duty to allow me access to him and provide me with information, particularly since I have been referred to his role as trustee by a creditor, Mr. Pfunter, who refuses to release my property lest the Trustee sue him; and
6. is not fit to continue as trustee in this case.

Dr. Richard Cordero

Dr. Richard Cordero, Esq.

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

59 Crescent Street
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COPY

September 27, 2002

Kenneth Gordon, Esq.
Gordon & Schaal, LLP
100 Meridian Center Blvd., Suite 120
New York, NY 14618

Re: Your letter of September 23, 2002, and
Premier Van Lines, bankruptcy case number 01-20692, Chapter 7

Dear Mr. Gordon,

Your letter to me of September 23, 2002, has arrived. It is as unjustified in its content as it is unprofessional in its tone. I take exception to it.

Had you deigned to take my first call or return it, I would not have had to keep calling you, to no avail. The fact is that we have spoken only once, on May 16, and only after I had called several times. Even to obtain a response from you to my May letter to you I had to call your office.

It should be quite obvious to you and everybody else why a creditor of a bankrupt company and those similarly situated would have to contact its trustee. That is particularly so in a case like this where the owner of the bankrupt company cannot be found and his lawyer will not reveal his whereabouts. It has been more necessary to contact you because only through my relentless efforts to locate my stored property, which turned out not to be where I had been told it was, has it come to light that there is another place where debtor Premier had stored property of its clients, including mine, namely the warehouse at Sackett Road, owned by Mr. James Pfunter.

It has been still more necessary to contact you because Mr. Pfunter's lawyer had not answered my letter to him and would not even take my calls. However, after I had no choice but to contact Mr. Pfunter, he said on the phone that he could not release my stored belongings claiming that Premier's trustee, that is you, could then sue him. Naturally, I needed to know what your position was on the matter and whether there had even been any contact between you and Mr. Pfunter, who would not put anything in writing either. All that you would have known had you taken any of my calls, if not out of professional duty as Premier's trustee, then out of professional courtesy to another lawyer.

Why you would not communicate with me is all the more questionable and unacceptable given the fact that you did communicate with everybody else concerning me specifically. Indeed, in your improper letter to me of September 23 you state that, "I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets." You communicated with them because you entertained their communications to you, which you revealed when writing in that letter that, "From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York." Why would you then advise them but not even take or return my calls? Why did you send

them copies of your improper letter to me, but not send me a copy of your letters to them, even though I sent you a copy of my August letter to Mr. Pfunter's lawyer?

Had you communicated with me, you would have spared yourself the calls that I had to make to your office. Thus, it is utterly unjustified for you to accuse me of "harassment of my staff," and to enjoin me not to call again and even to "have directed my staff to receive and accept no more telephone calls from you regarding this subject". I am a professional and do not harass anybody! What I certainly do is expect and insist that those that have information directly affecting my interests do share with me that information, particularly if they are officers of the court and all the more so if they have been appointed by the court.

Given that you meet both criteria, that you are the trustee for Premier, that other parties refer me to you concerning my interests, that even you refer to other parties concerning me, and thus that you are an integral party in this transaction that affects my interests, I have a legitimate and justifiable reason for contacting you. I expect that you will play your role professionally.

Therefore, I request that you:

1. apologize for your unjustified and unprofessional letter to me,
2. assure me that the lines of communication between us will be opened, and
3. send me copies of the letters concerning me that you sent to other parties.

Meantime, I am requesting that the Hon. Judge John C. Ninfo, II, determine whether in this case your performance complies with your duties as trustee and whether you are fit to continue as such.

Sincerely,

Dr. Richard Cordero

Cc: Judge John C. Ninfo, II
Michael J. Beyma, Esq.
David D. MacKnight, Esq.
Raymond Stillwell, Esq.

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

September 23, 2002

Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

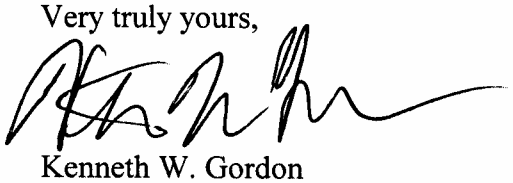
Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Mr. Cordero:

You have repeatedly contacted my office regarding the property you stored with the debtor Premier Van Lines, Inc. prior to its filing for bankruptcy. I have repeatedly advised you that I do not possess nor control any property which was stored by customers of Premier Van Lines. Assets that were stored by customers of Premier Van Lines are not property of the bankruptcy estate and I have no right nor have I asserted any control over those assets. From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York. I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets.

Further efforts by you to acquire your assets through my office are pointless. Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again.

Very truly yours,



Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs

pc: David D. MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

Lacy, Katzen, Ryen & Mittleman, LLP

LOUIS A. RYEN
RONALD A. MITTLEMAN
MICHAEL S. SCHNITTMAN
PETER T. RODGERS
SALLY A. SMITH+
KAREN SCHAEFER
RICHARD G. CURTIS
LAWRENCE J. SCHWIND
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KEVIN MORABITO
DANIEL S. BRYSON
LISA C. ARRINGTON°

ALSO ADMITTED IN:
* ILLINOIS
+ NEW JERSEY
° DISTRICT OF COLUMBIA

September 19, 2002

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

Re: Stored Property

Dear Dr. Cordero:

I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfunter and those claiming on interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint.

Very truly yours,

David D. MacKnight

DDM/cc
Cc: Trustee
Michael Beyma, Esq.

Dr. Richard Cordero, Esq.

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

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

August 26, 2002

Att: Thomas: kindly acknowledge receipt at (718) 827-9521.

David MacKnight, Esq.
130 East Main Street
Rochester, NY 14604

fax 585-454-6525; tel. 585-454-5650

Dear Mr. MacKnight,

I have been referred to you by Mr. Michael J. Beyma, attorney for Manufacturers & Traders Trust Bank (M&T) who copied you to his letter to me of last August 15. Mr. Beyma indicated that you represent Mr. James Pfuntner, landlord of the Avon warehouse at 2140 Sackett Road in Avon, where two "Pyramid" storage cabinets are located which contain property of mine that I entrusted for storage to the now bankrupt Premier Van Lines.

I would like to remove my property. Hence, I would like to make arrangements with your client for access to the warehouse. The removal would be carried out by either Champion Moving & Storage or a similar company. I understand that Champion bought from M&T these two cabinets as well as those of other people similarly situated as part of a batch of storage containers and other assets owned by Premier and that Champion has the right to remove them to its own warehouse. Presently, I am only interested in the storage containers holding my property. Therefore, I would like to know the following:

1. whether in addition to these two "Pyramid" storage cabinets there are any other storage containers holding property of mine at the Sackett Road warehouse or elsewhere known to Mr. Pfuntner;
2. what the dimensions, material, and condition of any such cabinets and containers are which hold property of mine;
3. whether and, if so, when I, Champion, and/or any similar company can have access to the Sackett Road warehouse to inspect the condition of such cabinets and containers and remove them as appropriate;
4. if such cabinets or containers cannot themselves be taken away from the Sackett Road warehouse, why that is so, and what it would take to be able to remove them together with my property;
5. if the cabinets or containers cannot be removed, how access to them can be arranged in order to remove only my property;
6. regardless of whether it may be to remove such cabinets and containers or just my property in them, whether a forklift or similar machine would be necessary and, if so, whether there is such forklift or machine at the Sackett Road warehouse that can be used for that purpose and, if so, under what terms.

I thank you in advance for your attention to this matter and would appreciate any other piece of pertinent information.

Yours sincerely,

Dr. Richard Cordero

cc: Michael J. Beyma, Esq.
Kenneth Gordon, Esq.
Christopher Carter, Champion Moving & Storage

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

June 10, 2002

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

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Dr. Cordero:

Enclosed please find a copy of correspondence dated April 16, 2002 from myself as the Chapter 7 Trustee to Mr. Dworkin, landlord of 900 Jefferson Road, with respect to the above-referenced bankruptcy proceeding. I suggest that you retain counsel to investigate what has happened to your property.

Very truly yours,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/sem
Enclosure

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

April 16, 2002

David Dworkin
415 Park Avenue
Rochester, New York 14607

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Mr. Dworkin:

Please be advised that M&T Bank has a blanket lien against the assets of Premier Van Lines. As the Chapter 7 Trustee, I will not be renting or controlling the storage units or any of the assets at the Jefferson Road location. Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank. M&T Bank is represented by Mike Beyma and Tim Johnson of Underberg & Kessler, LLP.

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,

Kenneth W. Gordon

KWG/sem

ADAIR, KAUL, MURPHY, AXELROD & SANTORO, LLP
ATTORNEYS AND COUNSELORS AT LAW

Raymond C. Stilwell 300 Linden Oaks • Suite 220 • Rochester, New York 14625-2883
Telephone: 585/248-3800 • Fax: 585/248-4961
E-mail: rcstilwell@adairlaw.com
Please reply to:
Rochester

May 30, 2002

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

VIA FACSIMILE 718/827-9521

Re: Premier Van Lines, Inc.

Dear Dr. Cordero:

I am in receipt of your May 21 letter and am aware of additional attempts by you to contact this office. While I appreciate your frustration with the way the "system" has failed you in this case, I regret that I am unable to be of either legal or practical assistance to you in trying to solve your problem.

Premier ceased operations at the end of 2001. Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about.

I must suggest- in fact insist- that you direct your inquiries to the landlord as the party in a position to be of assistance to you. The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company (at least to the extent I would be entitled to be compensated for such efforts), and it is not my place to question his judgment on such matters.

You have asked me to attend to your inquiries with a sense of professional responsibility. That is exactly what I am doing. I have an obligation to avoid conflicts of interest, which prevent me from offering you any form of legal advice other than to advise you to seek your own independent counsel. I also have an obligation to maintain the confidences of our own client, which precludes me from putting you in direct contact with Mr. Palmer or assisting in your efforts to do so without his consent. Within these bounds, I have provided you with every permissible courtesy, but I cannot permit continued repeated contacts- particularly to our office staff- which are directed at obtaining things from us which we cannot give you.

Very truly yours,

Raymond C. Stilwell

RCS\

Buffalo Office: The Law Center, 17 Berestford Court, Williamsville, NY 14221 • Phone (716)634-8307• Fax (716)839-0716

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:
PREMIER VAN LINES, INC.,

Debtor

Chapter 7
Case No: 01-20692

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

CORDERO'S AMENDED ANSWER WITH CROSSCLAIMS

Adversary Proceeding
Case No: 02-2230

RICHARD CORDERO

Cross-plaintiff

-vs-

KENNETH W. GORDON and M&T BANK

Cross-defendants

Dr. Richard Cordero, co-defendant, incorporates herein his Answer, mailed to the Plaintiff and each co-defendant on November 2, 2002, in its entirety without modifying its contents. Thus, this pleading serves as a vehicle to add his cross-claims against co-defendants Trustee Kenneth Gordon, Esq., and Manufacturers & Traders Trust Bank. The pleading also gives notice to the Plaintiff and the co-defendants of Dr. Cordero's third-party complaints against Mr. David Palmer, Mr. David Dworkin, Jefferson Henrietta Associates, and Mr. David Delano.

1. Mr. David Palmer, who owned the Debtor, Premier Van Lines, (hereinafter referred to as Premier) doing business from the warehouse at 900 Jefferson Road, Rochester, NY, 14623, and who represented to Dr. Cordero that his property was stored there, is joined as a third-party defendant.

2. Mr. David Dworkin, owner and/or manager of the warehouse at 900 Jefferson Road, Rochester, NY, 14623, (hereinafter referred to as the Jefferson-Henrietta warehouse), who represented to Dr. Cordero that his property was stored there and billed him therefor, is joined as a third-party defendant.

3. Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607, which is the company that owns or manages the Jefferson-Henrietta warehouse where Dr. Cordero's property was represented to be stored by Mr. Dworkin, its principal or agent, is joined as a third-party defendant.

4. Manufacturers & Traders Trust Bank, at 255 East Avenue, Rochester, NY 14604, (hereinafter referred to as M&T Bank), which holds a blanket lien against the Debtor's assets, including the storage containers supposedly containing Dr. Cordero's property, is served as a cross-defendant.

5. Mr. David Delano, Assistant Vice President at M&T Bank in Rochester, who represented to Dr. Cordero that his property was stored at the Jefferson-Henrietta warehouse, is joined as a third-party defendant.

6. Kenneth Gordon, Esq., the Chapter 7 Trustee, is served as a cross-defendant.

7. The jurisdiction of the Court over this Adversary Proceeding, which relates to Chapter 7 Case No: 01-20692, pending in the U.S. Bankruptcy Court of the Western District of New York, and over the herein stated cross-claims, and third-party complaints is provided by 28 U.S.C. 1334 and 28 U.S.C. 157(b) (2) and (c)(1).

8. Under 28 U.S.C. 1409, the Court is the proper venue for this Adversary Proceeding and cross-claims, and third-party complaint.

TABLE OF CONTENTS

STATEMENT OF FACTS

9. The parties listed above are the main actors in this almost year-long saga about how principals or agents can bounce forward and kick back a person that lives hundreds of miles away in order to escape responsibility for their own lack of due care and diligence and thereby, with no regard for that person's property, effort, time, money, and needs, pass on that responsibility to someone else…and the customer?, 'may he fend for himself!' Some of the salient bouncings are the following, whose account may not make for a soothing bedtime reading, but the events that they refer to have certainly constituted a nightmarish imbroglio for Dr. Cordero. Enjoy!

10. Premier was in the storage business and had received Dr. Cordero's property for storage.

11. Beginning on January 9, 2002, and continuing for more than three months Dr. Cordero communicated with Premier's owner, Mr. David Palmer, who assured him that his property was safe at the Jefferson-Henrietta warehouse. Yet, Mr. Palmer failed to keep his promise to confirm that in writing... At no time did he mention that Premier was in financial difficulties, let alone in liquidation under Chapter 7. Then he bounced Dr. Cordero to his associate, Mr. David Dworkin, and eventually, even his phone would be disconnected and there would be no way of getting in touch with Mr. Palmer.

12. Likewise beginning in January 2002 and continuing for some three months, Dr. Cordero communicated with Mr. Dworkin. He too assured Dr. Cordero that his property was in good condition at the Jefferson-Henrietta warehouse, where Premier rented warehousing space and Mr. Palmer had his office. Just as Mr. Palmer, Mr. Dworkin failed to keep his promise to

state that in a letter and send it to Dr. Cordero. Nor did he mention for months that Premier was in any sort of financial difficulties, let alone that it had gone bankrupt.

13. By contrast, Jefferson Henrietta Associates, Mr. Dworkin's company, sent Dr. Cordero a bill for the storage of his property, including the insurance fee.

14. After Dr. Cordero kept calling Mr. Dworkin and asking him for that written statement of the whereabouts and condition of his property, Mr. Dworkin told him for the first time in April that Premier was in bankruptcy proceedings. By that time all the filing deadlines had passed. What is more, although Premier had filed under Chapter 11 over a year earlier, in March 2001, both Mr. Palmer and Mr. Dworkin kept billing Dr. Cordero for storage for a year thereafter and for months after the conversion of the case to Chapter 7 in December 2001, as if the company were a going concern and without giving notice of to Dr. Cordero of any bankruptcy proceedings. Then Mr. Dworkin bounced Dr. Cordero to M&T Bank, a Premier lien holder, without stating the name of any officer in specific.

15. M&T Bank, through Mr. Mike Nowicki in Buffalo and his Vice President Vince Pusateri in Rochester, acknowledged that their Bank held a general lien against Premier's assets, including storage containers, but not against the property of Premier's customers contained in them. Mr. Pusateri referred Dr. Cordero to his Assistant Vice President David Delano, to Trustee Kenneth Gordon, and to Premier's attorney, Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro.

16. Dr. Cordero called Attorney Stilwell, explained the situation, and asked to be put in touch with Mr. Palmer. Attorney Stilwell agreed and said that he would have Mr. Palmer call him and added that if Mr. Palmer did not call him by the end of the week, Dr. Cordero could call back.

17. Mr. Palmer never called, wrote, or otherwise communicated with Dr. Cordero through his attorney or anybody else.

18. Dr. Cordero kept calling Attorney Stilwell, who did not take or return his calls. Eventually he wrote to Dr. Cordero that he could not disclose Mr. Palmer's whereabouts and that, "Premier ceased operations at the end of 2001. Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed

this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about.…The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company…."

19. Dr. Cordero had to call Trustee Gordon several times until he first took his call on May 16, 2002. The Trustee said that he did not run Premier's business; that Mr. Dworkin had taken it over, and told Dr. Cordero to file a proof of claim in the bankruptcy court, whose phone number and case number 01-20692 he gave him. Dr. Cordero requested Trustee Gordon to put in writing the information about the case and the parties that he had already dealt with in his search for his property. The Trustee agreed to do so. Then he bounced Dr. Cordero back to Mr. Dworkin, saying that he would know about Dr. Cordero's property.

20. Dr. Cordero called the Bankruptcy Court only to learn from Deputy Clerk Karen Tacy that the deadline for filing a proof of claim had already gone by on April 24, 2002, and that Dr. Cordero was not in the mailing matrix.

21. After Trustee Gordon failed to send the promised information and documents, Dr. Cordero had to write to him on May 30, and then follow up with calls, which Trustee Gordon neither took nor returned. It was not until two weeks later that for all communication with Dr. Cordero the Trustee sent him copy of his letter to Mr. Dworkin dated April 16, 2002, and a cover letter to Dr. Cordero simply suggesting "that you retain counsel to investigate what has happened to your property."

22. Dr. Cordero called Mr. Dworkin, who said that he had received from Trustee Gordon the keys to Mr. Palmer's office, located in the Jefferson-Henrietta warehouse.

23. Dr. Cordero called M&T Bank Pusateri, who said that he would try to find a list of Premier's customers, that Mr. Delano was in charge of the Premier case and was working with an appraiser to determine the value of Premier's assets in order to determine the value of the lien, and that he would have Mr. Delano call Dr. Cordero.

24. Mr. Delano called Dr. Cordero on June 18, 2002, and said that he had called Mr. Dworkin to request a list of all the Premier customers with belongings in the Jefferson-Henrietta warehouse and that Mr. Dworkin had agreed to send it, and that Mr. Dworkin was billing the other Premier customers with belongings in that warehouse. Mr. Delano said that he had seen

crates with the label "Cordero" in the warehouse. He referred Dr. Cordero to M&T Bank's Attorney Mike Beyma, at Underberg & Kessler, and told Dr. Cordero that he would have his lawyer call him once he had received the documents from Mr. Dworkin.

25. Attorney Amber Barney, at Underberg & Kessler, called Dr. Cordero. She said that the Bank sold at auction storage containers and other assets of Premier to Champion Moving & Storage. Then by letter she bounced Dr. Cordero to Champion at 795 Beehan Road, Rochester, NY 14624.

26. Dr. Cordero called Champion and talked to his manager, Mr. Scott Leonard, who confirmed that Champion had bought Premier's assets and equipment, including storage containers. He promised to send information thereabout and Champion catalogs. Mr. Leonard never sent anything to Dr. Cordero. He bounced Dr. Cordero to Trustee Gordon.

27. Dr. Cordero called Mr. Delano. He confirmed the sale to Champion of the Premier assets on which M&T Bank had a lien, but that it was still too earlier for Champion to contact Dr. Cordero about his property and that Champion would continue to serve the storage contracts.

28. Dr. Cordero called Champion's owner, Mr. Christopher Carter, who indicated that he had not received either his property or that of some other Premier customers.

29. Mr. Carter then examined the business files included among the Premier assets and equipment that he had removed from the Jefferson-Henrietta warehouse to Champion's warehouse. Thereby he discovered that Premier had assets, including storage containers, at Plaintiff's warehouse located on 2140 Sackett Road, in Avon, NY, and that Dr. Cordero's property had been stored there some years earlier.

30. When Dr. Cordero next phoned Mr. Carter and learned about it, he requested that Mr. Carter write to Mr. Pusateri of M&T Bank to let him know.

31. M&T Bank launched another investigation. It then found out that Premier had stored at Plaintiff's warehouse assets and storage containers, including some with a label bearing Dr. Cordero's name and a lot number. The Bank informed Dr. Cordero of the name and address of Plaintiff Pfuntner' lawyer, Mr. David MacKnight.

32. Dr. Cordero wrote to Mr. MacKnight, who neither wrote back nor took or returned any of his phone calls.

33. Thus, Dr. Cordero had to contact Plaintiff Pfuntner by phone. Plaintiff expressed his wish to be paid for the storage of his property in his warehouse. On three occasions, Dr. Cordero asked and Plaintiff Pfuntner promised to find out and let him know the number of storage containers in which his property was held and the condition of the property. However, on each occasion Plaintiff failed to provide that information.

34. By contrast, Plaintiff Pfuntner said that he would not release his property because the trustee for Premier, Mr. Gordon, could then sue him. On the last occasion that Dr. Cordero asked him to put that in writing, Plaintiff Pfuntner refused and then hung up on Dr. Cordero.

35. Dr. Cordero called Trustee Gordon, who would not take or return any of his calls. In his last call to his office, on Monday, September 23, Dr. Cordero asked to speak with him. His secretary Brenda put him on hold. When she came back, she said that Mr. Gordon was not taking any more calls concerning Premier. Dr. Cordero asked why and she said that Dr. Cordero could write. He told her that he had copied his letter to Mr. Pfuntner's lawyer to the Trustee, but the latter had not given him any feedback on it. Therefore, Dr. Cordero asked whether Mr. Gordon would reply to any letter from him. Brenda said that she was only a secretary following instructions and hung up on him.

36. Trustee Gordon sent Dr. Cordero a letter dated September 23, in which he accused Dr. Cordero of harassing his staff: "Your continual telephone calls to my office and harassment of my staff must stop immediately." He published his accusation by copying that letter to David D. MacKnight, Esq., Michael Beyma, Esq., and Ray Stilwell, Esq. Other people in his and their offices may have read that letter and its accusation of harassment.

37. Trustee Gordon also wrote there that, "I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again."

38. On September 27, 2002, Dr. Cordero wrote to Trustee Gordon to let him know why his letter of September 23, was unjustified in its content as well as unprofessional in its tone, to request an apology, an assurance that the lines of communication would be opened, and copies of letters concerning him that the Trustee had sent to other parties. Trustee Gordon never replied to Dr. Cordero.

39. Dr. Cordero wrote to Hon. Judge John C. Ninfo, II, on September 27, to complain about Trustee Gordon's refusal to communicate with him about the course of the proceedings, although the importance of being able to do so had increased upon the discovery of other assets of the Debtor. He also applied for a determination of whether Mr. Gordon's performance in this case complied with his duties as trustee and whether he was fit to continue as such.

40. Judge Ninfo referred that application to Assistant United States Trustee Kathleen Dunivin Schmitt.

41. Trustee Gordon wrote to Judge Ninfo on October 1, 2002, and claimed that Dr. Cordero had made more than 20 phone calls to his staff and that because the same message had been repeated to him, he had been belligerent, demanding, and demeaning to the Trustee's staff, and had become very angry at it. The Trustee also portrayed Dr. Cordero as lacking the capacity or good faith to understand the Trustee's role. His own words were these:

    a) "I have instructed my staff to advise former customers of Premier Van Lines that items stored with Premier Van Lines were not property of the bankruptcy estate, were not to be administered by me and could be accessed by contacting either the landlord from whom Premier Van Lines rented its facilities or the attorney's for M&T Bank who held a lien on the assets of Premier Van Lines. Mr. Cordero was so advised when he contacted my office in the early spring of 2002. In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them. I spoke myself with Mr. Cordero on at least one occasion to reemphasize the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys.…Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff. After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets.…I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application."

42. Trustee Gordon published that letter of October 1, by sending it Judge Ninfo, and copying it to Assistant U.S. Trustee Kathleen Dunivin Schmitt, Esq.; David D. MacKnight, Esq.; Michael Beyma, Esq.; Ray Stilwell, Esq.; and Dr. Cordero. Other people in his and their offices may have read that letter.

STATEMENT OF CLAIMS

43. All averments made above are hereby adopted by reference.

A. David Palmer

44. Regardless of how Mr. Palmer may have benefited from his application for protection under the bankruptcy laws, he did not thereby acquire immunity from all his liability to all people for any harm that he did to any person. This is particularly so with respect to those people, such as Dr. Cordero, to whom he failed to give notice of, and from whom he concealed, the financial difficulties of his company.

45. Moreover, having invoked the jurisdiction of the Court to benefit from the application of the bankruptcy laws, Mr. Palmer remains under that jurisdiction until the final disposition of all matters related to the company and his management of it for whose benefit he made such application.

46. Mr. Palmer intentionally misrepresented the condition of Premier when in his conversations with Dr. Cordero beginning on January 9, 2002, he concealed that his company, not only had financial difficulties, but was already in liquidation under Chapter 7, yet pretended that it was in a position to store safely his property. Thereby Mr. Palmer deprived Dr. Cordero of the opportunity to take action to protect his property.

47. Mr. Palmer intentionally, recklessly, or negligently misrepresented the whereabouts of Dr. Cordero's property when in his conversations with Dr. Cordero beginning on January 9, 2002, he affirmed that his property was in the Jefferson-Henrietta warehouse, when in fact either none or only some of his property was there, although [t]he was in a position and had the duty to know where it was since he had collected money to store and insure it.

48. Mr. Palmer failed his duty of due care for Dr. Cordero's property when he intentionally, recklessly, or negligently left all or some of it in Plaintiff Pfuntner's warehouse in Avon; failed to pay Plaintiff under the lease with Plaintiff for warehousing it there; and failed to

disclose in the bankruptcy filings and proceedings his liability for that property and his asset in the storage containers holding such property and in his right to collect fees for its storage.

49. Mr. Palmer breached his contract with Dr. Cordero for the safe storage of his property in exchange for the monthly storage fee as well as insurance fee for which he billed and received payment from Dr. Cordero.

50. Mr. Palmer committed fraud if he billed and received payment from Dr. Cordero for storage of, and insurance for, Dr. Cordero's property although he had lost or abandoned such property.

51. Mr. Palmer committed insurance fraud if he billed and received payment from Dr. Cordero to insure his property but failed to secure insurance coverage for it, and all the more so if he was in no position to secure such coverage because he had lost or abandoned such property.

52. By proceeding so fraudulently, recklessly, or negligently, Mr. Palmer has caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

B. David Dworkin

53. Mr. Dworkin rented warehousing and office space in his Jefferson-Henrietta warehouse to Premier since June 2001 or thereabouts. He had such close business relations to Mr. Palmer that the latter represented him as his associate to Dr. Cordero and Mr. Dworkin for months did not correct Dr. Cordero when the latter made statements to him to the effect that Mr. Dworkin and Mr. Palmer were associates or partners. Thus, Mr. Dworkin must have known the financial condition of Premier and Mr. Palmer.

54. Yet, Mr. Dworkin intentionally concealed and misrepresented that condition when in his conversations with Dr. Cordero beginning in January 2002 and his correspondence to him beginning with his letter of March 1, 2002, he concealed that Premier, not only had financial difficulties, but was already in liquidation under Chapter 7, that Mr. Palmer had taken off,

and gave the impression that Premier was a going concern capable of storing his property safely.

55. Likewise, Mr. Dworkin fraudulently, recklessly, or negligently misrepresented the condition of Dr. Cordero's property when in his conversations with Dr. Cordero beginning in January 2002, he affirmed that his property was in the Jefferson-Henrietta warehouse and was safe, when in fact either none or only some of his property was there.

56. Thereby Mr. Dworkin fraudulently avoided prompting Dr. Cordero into taking action to protect his property and preserved his opportunity to step into the shoes of Premier to bill Dr. Cordero for the storage of his property.

57. When Mr. Dworkin accepted the transfer from Premier of the right to bill Dr. Cordero for the storage of his property, as stated in his letter of March 1, 2002, and did bill him therefor on the invoice dated March 7, 2002, Mr. Dworkin became the party to a contract for storage with Dr. Cordero.

58. But if no such contract existed, Mr. Dworkin had no right to bill Dr. Cordero and committed fraud by pretending that he had such right.

59. Mr. Dworkin was fraudulent, reckless, or negligent when he caused his company Jefferson Henrietta Associates to issue an invoice dated March 7, 2002, billing Dr. Cordero for storage of, and insurance for, his property, although he later admitted that he never even knew for sure whether Mr. Palmer had ever moved Dr. Cordero's property into the Jefferson-Henrietta warehouse.

60. Mr. Dworkin committed insurance fraud when on the March 7, 2002, invoice he billed Dr. Cordero for insurance coverage for his property although he later admitted in his letter of April 25, 2002, that Jefferson Henrietta Associates was not carrying any insurance on his property.

61. Mr. Dworkin was reckless or negligent when, after assuming from Premier the right to bill Dr. Cordero for the storage of his property and the obligation to exercise due care for it, he failed to inventory the property that he allowed Champion Moving & Storage to remove from his Jefferson-Henrietta warehouse and did not monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

62. By proceeding so fraudulently, recklessly, or negligently, Mr. Dworkin has breached his storage contract with Dr. Cordero, caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

C. Jefferson Henrietta Associates

63. When Jefferson Henrietta Associates accepted the transfer from Premier of the right to bill Dr. Cordero for the storage of his property, as stated in the letter of March 1, 2002, and did bill him therefor on the invoice dated March 7, 2002, Jefferson Henrietta Associates became the party to a contract for storage with Dr. Cordero.

64. But if no such contract existed, Jefferson Henrietta Associates had no right to bill Dr. Cordero and committed fraud by pretending that it had such right.

65. Jefferson Henrietta Associates was fraudulent, reckless, or negligent when on its March 7, 2002 invoice it billed Dr. Cordero for storage of, and insurance for, his property, without first ascertaining that the property for which it claimed to be providing storage was in fact in its warehouse or despite its reason to believe that it might never have been there.

66. Jefferson Henrietta Associates committed insurance fraud when on the March 7, 2002, invoice it billed Dr. Cordero for insurance coverage for his property although it later admitted in its letter of April 25, 2002, that it was not carrying any insurance on his property.

67. Jefferson Henrietta Associates was reckless or negligent when, after assuming from Premier the right to bill Dr. Cordero for the storage of his property and the obligation to exercise due care for it, it failed to inventory the property that it allowed Champion Moving & Storage to remove from its Jefferson-Henrietta warehouse and did not monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

68. By proceeding so fraudulently, recklessly, or negligently, Jefferson Henrietta Associates has breached his storage contract with Dr. Cordero, caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

69. Jefferson Henrietta Associates is the employer of Mr. Dworkin and as the principal is liable for the acts of its agent.

D. David Delano

70. Mr. Delano was reckless or negligent when on June 18, 2002, he stated to Dr. Cordero that he had seen storage containers bearing the label 'Cordero' in the Jefferson-Henrietta warehouse, if he did not actually see any such containers there.

71. Mr. Delano, as the M&T Bank officer in charge of the Premier case, was reckless or negligent when he failed to inventory Premier's assets and equipment on which his Bank held a lien and which were stored in the Jefferson-Henrietta warehouse, although he knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of M&T Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for their removal to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

72. By proceeding so recklessly or negligently, Mr. Delano has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

E. M&T Bank

73. M&T Bank was reckless or negligent when it failed to inventory Premier's assets and equipment on which it held a lien and which were stored in the Jefferson-Henrietta warehouse, although it knew that some or all of Premier's storage containers held third-parties' property, such as that of Dr. Cordero; failed to give them notice of the Bank's intended sale of such containers to Champion Moving & Storage and to obtain the consent of those parties, such as Dr. Cordero, for the removal of the container and their property to Champion's warehouse; and failed to monitor such removal so that now Champion can plausibly claim that it never took possession or delivery of Dr. Cordero's property.

74. By proceeding so recklessly or negligently, M&T Bank has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims.

75. M&T Bank is Mr. Delano's employer and as the principal is liable for the acts of its agent.

F. Trustee Kenneth Gordon

76. Trustee Gordon failed to exercise due diligence in finding out whether Premier had assets elsewhere than at the Jefferson-Henrietta warehouse, even though he had access and control of Premier's business files, and he could have done exactly what Mr. Carter did after removing to Champion's warehouse Premier's assets and equipment, including its business files, that is, examine its files to determine whether Premier had assets, including storage containers, elsewhere. By so doing, Mr. Carter was able to discover that Premier had such assets at the Plaintiff's warehouse in Avon. This made it possible to find some such containers labeled "Cordero" and presumably containing property of Dr. Cordero.

77. Trustee Gordon recklessly or negligently abandoned Premier's assets and equipment, including storage containers, to third parties, namely, Mr. Dworkin and Jefferson Henrietta

Associates, without even making an inventory of what he was abandoning, although he knew that the containers held property of Premier's customers, who had substantial claims on Premier for the property that they had entrusted to it for storage.

78. Trustee Gordon recklessly or negligently handled Premier's liquidation under Chapter 7 when he failed to give those customers notice, not only that Premier was in liquidation, but also that he was abandoning such assets and equipment, including the containers with their property, to Mr. Dworkin and Jefferson Henrietta Associates, then allowing yet another party, namely, M&T Bank, to sell them to still another party, that is, Champion Moving & Storage, which would even physically remove the containers with their property to Champion's warehouse; failed to ask the customers to consent to such removal; and failed to monitor it. Thereby he deprived Premier customers, such as Dr. Cordero, of the opportunity to protect their property and their claims against Premier.

79. Trustee Gordon failed to exercise good judgment and due diligence by failing to recognize and discharge his duty so to notify such Premier customers, who formed a class of claimants whose notification was required for the proper liquidation of Premier's assets. Indeed, professional experience or common sense would have told Trustee Gordon that such Premier customers would want to have their property back or know its whereabouts. Therefore, they had claims on Premier, but would run into difficulty with Premier creditors, including those that had possession or control of Premier's storage containers and equipment stored elsewhere. The correctness of this elemental reasoning is shown by Plaintiff Pfuntner's refusal to release to the defendants Premier's assets in his Avon warehouse or even to allow Premier customers, with whom Plaintiff had never entered into any contract, such as Dr. Cordero, to remove their property stored in Premier's storage containers.

80. By proceeding so recklessly or negligently, Trustee Gordon has caused the loss of some or all of Dr. Cordero's property, has for months caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims. What was he thinking!? Is this how a company is liquidated competently under Chapter 7? To end up in this tangle, what need was there for a trustee?

81. Trustee Gordon defamed Dr. Cordero when in the abovementioned letters of September 23 and October 1, 2002, published to, among others, the peers and professionals named above, and in all likelihood their and the Trustee's staff, the Trustee, negligently or with either knowledge that it was false or reckless disregard for the truth, falsely accused him of harassing his staff, demeaning it, becoming very angry at it, behaving unreasonably in his demands of it, and being irrationally stubborn in making more than 20 phone calls to his staff just to be told the same message.

82. This false accusation stated conduct unbecoming of a professional, damaging to the image of a reasonable and well-respected person, and apt to make a person the subject of ridicule. Hence, it cast Dr. Cordero's general character in a false light and impaired his reputation and standing in the community, particularly among his peers, other professionals, and their staff.

83. Trustee Gordon also impugned Dr. Cordero's professional capacity and competency as well as his good faith when, in the above indicated instances, he stated that Dr. Cordero failed or refused to understand the Trustee's limited role and showed poor understanding of it. This impugnment was particularly defamatory and uncalled-for given the facts.

84. Indeed, if Trustee Gordon's role were so unambiguously understandable, there should be no reason:

    a) for Attorney David MacKnight, who represents Plaintiff Pfuntner, to sue him "to determine the obligations and duties of the Trustee…," as Mr. MacKnight stated he would do in his letter to Dr. Cordero of September 19, 2002, with copy to the Trustee;

    b) for Mr. Pfuntner both to refuse to release Dr. Cordero's property in Premier's storage containers for fear that the Trustee may sue him and to refer Dr. Cordero to the Trustee;

    c) for the Trustee to write to Mr. Dworkin, in whose warehouse Premier had leased storage and office space, in April 2002, four months after the conversion of the case from Chapter 11 to Chapter 7, to let him know what the Trustee would be or not be renting or controlling and how Mr. Dworkin should handle Premier's customers;

d) for Mr. Dworkin to deem it necessary to refer Dr. Cordero to the trustee for Premier to find out how to proceed with his respect to his property;

e) for Attorney Raymond Stilwell, who represents Mr. Palmer, to have engaged in conduct that was then objected to by the Trustee, as shown in Mr. Stillwell's letter of May 30, 2002;

f) for Attorney Michael Beyma, who represents M&T Bank, to have referred Dr. Cordero to the Trustee;

g) for Attorneys MacKnight and Beyma to feel compelled to copy the Trustee to letters that they wrote to Dr. Cordero;

h) for M&T Bank Vice President Vince Pusateri and Assistant Vice President David Delano to have referred Dr. Cordero to Trustee Gordon.

85. Is it because Trustee Gordon understands his role as being so limited that he stated in his October 1 letter that he would "soon be issuing a No Distribution Report"?

86. The fact that those parties referred Dr. Cordero to Trustee Gordon shows also that they deemed the Trustee to have information that Dr. Cordero needed to obtain to pursue the search of his property. Thus, the Trustee failed in his duty as such when he enjoined Dr. Cordero not to call his office any more, thereby denying him information and assistance that he had the duty and was in a position to provide to Dr. Cordero.

87. By casting these aspersions on Dr. Cordero's conduct and character, Trustee Gordon intended to make the Hon. John C. Ninfo, II, to whom Dr. Cordero had applied for a review of the Trustee's performance and fitness, as well as Assistant United States Trustee Kathleen Dunivin Schmitt, in whose province remains the supervision of a Chapter 7 trustee, believe that his own conduct was justified so as to obtain a personal benefit, namely, that no action be taken on Dr. Cordero's application. As the Trustee put it in his October 1 letter, "Please accept this letter as my response to the application made by Richard Cordero dated September 27, 2002 in the above-referenced matter [Premier Van Lines, Inc., Case No.: 01-20692, Chapter 7] in which he seeks my removal as Trustee.…Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application."

88. Since Trustee Gordon is both an officer of the court and an appointee under federal law, he knew that such status imposes upon him the duty to be truthful and act in good faith when he makes statements either to the court or the U.S. Trustee. Likewise, ethical considerations applicable to members of the bar and requiring lawyers to conduct themselves with honesty and candor also impose the same duty on him.

89. The peers and professionals and their staff to whom Trustee Gordon published his defamatory statements, aware of the Trustee's status, could reasonably assume that he was properly discharging that duty. Their assumption would have led them to lend even more credence to the Trustee's statements, thereby aggravating the detrimental impact of his statements on Dr. Cordero's reputation and standing.

90. By means of his defamatory statements, Trustee Gordon intended to lead the Judge and the U.S. Trustee to dismiss Dr. Cordero's application as one not to be taken seriously because submitted by just an irascible, verbally abusive man of limited intelligence and little intellectual honesty that had gotten mad because not able or willing to get it however many times he was told while searching for his things: Trustee Gordon could do nothing for him…and neither could the Court nor the U.S. Trustee. This is outrageous!

STATEMENT OF RELIEF

91. All averments made above are hereby adopted by reference.

92. Dr. Cordero respectfully requests that the Court:

A. All cross-defendants and third-party defendants

93. Hold the parties addressed by this pleading, namely, Trustee Gordon and M&T Bank, the cross-defendants, and Mr. Palmer, Mr. Dworkin, Jefferson Henrietta Associates, and Mr. Delano, the third-party defendants, jointly and severally liable to Dr. Cordero for their failure to establish the whereabouts of, and produce, Dr. Cordero's property;

94. Order those parties to establish the whereabouts of, and produce, Dr. Cordero's property;

95. Order those parties jointly and severally to pay compensation to Dr. Cordero for the deterioration, loss, or theft of his property, whose value is estimated at $14,000 incremented

by the capitalized moving, storage, insurance and related fees and taxes that Dr. Cordero has paid since his property went into storage in August 1993;

96. Order the parties jointly and severally to move at their expense and risk Dr. Cordero's property wherever they may find it to an agreed storage place, just as the property of the other Premier customers was moved free of charge to them to another storage place;

97. Hold each of those parties liable for punitive damages to Dr. Cordero for having engaged in fraudulent, reckless, or negligent conduct that for the best part of a year has caused him an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims;

98. Hold the parties jointly and severally liable for any award or prorata share for which Dr. Cordero may be found liable to Plaintiff Pfuntner;

B. David Palmer, David Dworkin, and Jefferson Henrietta Associates

99. Hold Mr. Palmer, Mr. Dworkin, and Jefferson Henrietta Associates liable for breach of contract and order them to pay compensation to Dr. Cordero;

C. Trustee Kenneth Gordon

100. Hold Trustee Gordon liable for defamation to Dr. Cordero and/or for having cast him in a false light, and order him to pay compensation in the amount of $100,000;

101. Order Trustee Gordon to pay Dr. Cordero punitive damages for his malicious and outrageous statements, contained in his September 23 and October 1, 2002, letters, to Judge Ninfo, hearing the case where he was the trustee, and to Assistant U.S. Trustee Schmitt, supervising his performance as trustee, in order to disparage Dr. Cordero and dissuade them from taking any action on Dr. Cordero's application for a review of Trustee Gordon's performance and fitness as trustee;

102. Order Trustee Gordon to issue a retraction of his defamatory and false light statements as well as an apology and publish them to everybody who may have read or otherwise learned of such statements;

103. Hold that Trustee Gordon failed to recognize his duty to provide to Premier customers in general notice and information necessary to protect their property held in Premier's storage containers, and in particular to Dr. Cordero, since he was repeatedly referred to the Trustee by other parties, and order him to pay compensation to Dr. Cordero for not having provided such notice and information;

104. Hold that Trustee Gordon failed in his basic duty of fairness as a fiduciary by having refused to communicate with Dr. Cordero, explicitly enjoining him not to contact his office again, and directing his staff to receive and accept no more telephone calls from Dr. Cordero regarding this subject, although the Trustee provided other parties with information concerning Dr. Cordero, and order him to pay compensation to Dr. Cordero;

105. Order Trustee Gordon to afford Dr. Cordero access to him and his staff and all the information that a competent and responsible trustee would provide to any party in general and to a party similarly situated as Dr. Cordero, including any information that may help in locating and retrieving his property;

106. Hold that Trustee Gordon failed to perform competently as trustee;

107. Hold that Trustee Gordon is not fit to continue as trustee in this case;

108. Award Dr. Cordero reasonable attorney's fees, court costs, and the expense concomitant with litigating this case hundreds of miles from his home, together with such other relief as may seem just and proper.

Dated: November 20, 2002

Dr. Richard Cordero

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

JEFFERSON HENRIETTA ASSOCIATES
415 PARK AVENUE
ROCHESTER, NEW YORK
(585) 244-3575
(585) 473-3555 Fax

March 1, 2002

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

Re: Storage Space Rochester New York

Dear Richard,

As per our conversation the following shall serve as formal written notification that Premier North American Van Lines is no longer receiving payments for your belongings. All payments are to be forwarded to Jefferson Henrietta Associates at the above referenced address.

A statement will be forthcoming which will outline your past due balances and I will follow up with you as soon as I have an answer to the insurance question.

Very truly yours,
Jefferson Henrietta Associates

David M. Dworkin

DMD/lg

JEFFERSON HENRIETTA ASSOCIATES
415 Park Avenue
Rochester, New York 14607
585-244-3575

Date: March 7, 2002

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

Re: Storage Rochester, N.Y.

CODE	EXPLANATION	AMOUNT
1	Storage 11-1-01 to 12-1-01	$ 57.60
1	Storage 12-1-01 to 1-01-02	$ 57.60
1	Storage 1-1-02 to 2-01-02	$ 57.60
1	Storage 2-1-02 to 3-01-02	$ 57.60
1	Storage 3-1-02 to 4-1-02	$ 57.60
3	Insurance from 11-01-01 to 4-1-02 @ $2.72 per month	$ 13.60
	Please make check payable to: **Jefferson Henrietta Associates**	
	AFTER 30 DAYS A 2% LATE FEE WILL BE APPLIED TO ALL OUTSTANDING INVOICES	
	TOTAL	$ 301.60

CODE
1.Storage Rent
2.Late Fee
3.Insurance

JEFFERSON HENRIETTA ASSOCIATES
415 PARK AVENUE
ROCHESTER, NEW YORK
(585) 244-3575
(585) 473-3555 Fax

April 25, 2002

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

Re: Storage Space Rochester New York

Dear Richard,

As per our conversation the following shall serve as a recap of our April 22, 2002 telephone conversation. While you indicated to me that you were paying monthly insurance to Premier North American Van Lines our current insurance policy does not provide for such insurance. Accordingly, the following shall serve as formal written notification that Jefferson Henrietta Associates is **not** carrying any insurance on your personal belongings. Should you wish to insure your belongings I suggest you do at your own expense.

Additionally, while we cannot make any representations as to the status or condition of your belongings prior to the date possession of the premises were given to us, we are able to inform you that no belongings have been removed since that date without being witnessed by me.

M & T Bank located at 255 East Avenue; Rochester New York is the lien holder of all of Premier Van Line's assets. I suggest you contact them with respect to the status of your belongings.

As I indicated to you I will attempt to find the name of the insurance carrier who handled the Premier account. Should I be successful in my search I will follow up with you.

Very truly yours,
Jefferson Henrietta Associates

David M. Dworkin

DMD/pb

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

April 16, 2002

David Dworkin
415 Park Avenue
Rochester, New York 14607

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Mr. Dworkin:

Please be advised that M&T Bank has a blanket lien against the assets of Premier Van Lines. As the Chapter 7 Trustee, I will not be renting or controlling the storage units or any of the assets at the Jefferson Road location. Any issues renters may have regarding their storage units should be handled by yourself and M&T Bank. M&T Bank is represented by Mike Beyma and Tim Johnson of Underberg & Kessler, LLP.

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,

Kenneth W. Gordon

KWG/sem

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (716) 244-1070
Facsimile (716) 244-1085

June 10, 2002

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

RE: Premier Van Lines
900 Jefferson Road, Rochester, New York
Case No: 01-20692
Chapter 7

Dear Dr. Cordero:

Enclosed please find a copy of correspondence dated April 16, 2002 from myself as the Chapter 7 Trustee to Mr. Dworkin, landlord of 900 Jefferson Road, with respect to the above-referenced bankruptcy proceeding. I suggest that you retain counsel to investigate what has happened to your property.

Very truly yours,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/sem
Enclosure

ADAIR, KAUL, MURPHY, AXELROD & SANTORO, LLP
ATTORNEYS AND COUNSELORS AT LAW

Raymond C. Stilwell 300 Linden Oaks • Suite 220 • Rochester, New York 14625-2883
Telephone: 585/248-3800 • Fax: 585/248-4961
E-mail: rcstilwell@adairlaw.com
Please reply to:
Rochester

May 30, 2002

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

VIA FACSIMILE 718/827-9521

Re: Premier Van Lines, Inc.

Dear Dr. Cordero:

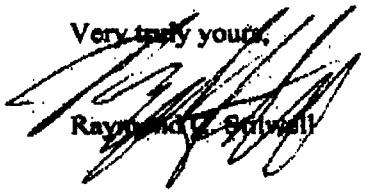
I am in receipt of your May 21 letter and am aware of additional attempts by you to contact this office. While I appreciate your frustration with the way the "system" has failed you in this case, I regret that I am unable to be of either legal or practical assistance to you in trying to solve your problem.

Premier ceased operations at the end of 2001. Our understanding was that the landlord of the 900 Jefferson Road premises, with the trustee's knowledge, had assumed responsibility for, and the right to rentals concerning, the stored belongings. David Palmer has confirmed this fact with Mr. Dworkin as recently as yesterday, and the landlord has been attempting to reach you to confirm that, in fact, his company is in possession of the items you are inquiring about.

I must suggest- in fact insist- that you direct your inquiries to the landlord as the party in a position to be of assistance to you. The trustee for the Premier estate has objected to my having any continuing role in the completion of the affairs of this company (at least to the extent I would be entitled to be compensated for such efforts), and it is not my place to question his judgment on such matters.

You have asked me to attend to your inquiries with a sense of professional responsibility. That is exactly what I am doing. I have an obligation to avoid conflicts of interest, which prevent me from offering you any form of legal advice other than to advise you to seek your own independent counsel. I also have an obligation to maintain the confidences of our own client, which precludes me from putting you in direct contact with Mr. Palmer or assisting in your efforts to do so without his consent. Within these bounds, I have provided you with every permissible courtesy, but I cannot permit continued repeated contacts- particularly to our office staff- which are directed at obtaining things from us which we cannot give you.

Very truly yours,



Raymond C. Stilwell

RCS\

UNDERBERG
& KESSLER LLP

1800 Chase Square
Rochester, New York 14604

Telephone: (585) 258-2800
Facsimile: (585) 258-2821
www.underberg-kessler.com

1100 Main Place Tower
Buffalo, New York 14202

Telephone: (716) 848-9000
Facsimile: (716) 847-6004

Writer's Direct Number:

(585) 258-2890
mbeyma@underberg-kessler.com

Reply to
Rochester Office

August 28, 2002

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

Dear Dr. Cordero:

This letter is in reference to your letter to David MacKnight, Esq. dated August 26, 2002. As I previously advised you, M&T Bank has not sold your cabinets to Champion or any other party. M&T Bank sold only Pyramid cabinets which were located in Rochester. Nevertheless, M&T has no objection to your proceeding to obtain your belongings.

Very truly yours,

Michael J. Beyma

MJB:ds

cc: David G. DeLano, Assistant Vice President, M&T Bank
David D. MacKnight, Esq.
Kenneth W. Gordon, Esq.

G:\UKM\M&TTRUST\Premier\Cordero,Richard 8-28-02.ltr.wpd

Lacy, Katzen, Ryen & Mittleman, LLP

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SUZANNE L. AMICO
KEVIN MORABITO
DANIEL S. BRYSON
LISA C. ARRINGTON°

ALSO ADMITTED IN:
* ILLINOIS
+ NEW JERSEY
° DISTRICT OF COLUMBIA

September 19, 2002

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

Re: Stored Property

Dear Dr. Cordero:

I have drafted a complaint to determine the obligations and duties of the Trustee, M&T Bank, Mr. Pfunter and those claiming on interest in property stored in and around the Sackett Road warehouse. Please look forward to receipt of a summons and complaint.

Very truly yours,

David D. MacKnight°

DDM/cc
Cc: Trustee
Michael Beyma, Esq.

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

September 23, 2002

Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Mr. Cordero:

You have repeatedly contacted my office regarding the property you stored with the debtor Premier Van Lines, Inc. prior to its filing for bankruptcy. I have repeatedly advised you that I do not possess nor control any property which was stored by customers of Premier Van Lines. Assets that were stored by customers of Premier Van Lines are not property of the bankruptcy estate and I have no right nor have I asserted any control over those assets. From the latest communications I have read which have been sent to you by the attorneys for James Pfunter and M&T Bank, it appears as if your property is located at the Sackett Road warehouse in Avon, New York. I have advised all concerned in this case that you should be allowed along with any other former customer of Premier Van Lines to have access to and repossession of your assets.

Further efforts by you to acquire your assets through my office are pointless. Your continual telephone calls to my office and harassment of my staff must stop immediately. I have directed my staff to receive and accept no more telephone calls from you regarding this subject. As I have consistently maintained throughout my administration of this case, your efforts should be directed towards the landlord, his attorney and the bank which has a lien on the assets of Premier Van Lines, Inc. I trust that you will not be contacting my office again.

Very truly yours,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs

pc: David D. MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

Gordon & Schaal, LLP
Attorneys at Law

100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Telephone (585) 244-1070
Facsimile (585) 244-1085

October 1, 2002

Hon. John C. Ninfo, II
U.S. Bankruptcy Justice
100 State Street
Rochester, New York 14614

Re: Premier Van Lines, Inc.
Case No.: 01-20692
Chapter 7

Dear Judge Ninfo:

Please accept this letter as my response to the application made by Richard Cordero dated September 27, 2002 in the above-referenced matter in which he seeks my removal as Trustee. This converted Chapter 11 filing involves a corporation which provided both moving and storage services for its customers. Since conversion of this case to Chapter 7, I have undertaken significant efforts to identify assets to be liquidated for the benefit of creditors. Unfortunately, I have discovered that the assets of the corporation which remained upon conversion are insubstantial or otherwise liened in amounts exceeding the value of the assets. Accordingly, I am in the process of abandoning the remainder of the assets of the corporation and will shortly be filing a No Distribution Report.

Richard Cordero is apparently a former customer of Premier Van Lines whose possessions were stored by the company. It has been my position consistently since my appointment as Trustee in this case that the property owned by customers of Premier Van Lines and stored by it was not property of the bankruptcy estate for administration. Moreover, as the Court is aware, I have not sought to operate the corporation under Chapter 7. Accordingly, I have instructed my staff to advise former customers of Premier Van Lines that items stored with Premier Van Lines were not property of the bankruptcy estate, were not to be administered by me and could be accessed by contacting either the landlord from whom Premier Van Lines rented its facilities or the attorney's for M&T Bank who held a lien on the assets of Premier Van Lines. Mr. Cordero was so advised when he contacted my office in the early spring of 2002. In fact, my staff has received more than 20 telephone calls from Mr. Cordero and my staff has advised me that he has been belligerent in his conversations with them. I spoke myself with Mr. Cordero on at least one occasion to reemphasize

the fact that I did not have possession nor control of his assets and that he would need to seek recovery through the landlord or M&T's attorneys. I wrote to the landlord of the Jefferson Road facility in April of 2002 and later provided a copy of that letter to Mr. Cordero. Copies of my letters dated April 16, 2002 and June 10, 2002 are enclosed herewith. Mr. Cordero continued to contact my office throughout the summer of 2002 and in the face of my staff's consistent message to him that we did not control nor have possession of his assets, he became more demanding and demeaning to my staff. After a final telephone call from Mr. Cordero on September 23, 2002 during which time he became very angry at my staff, I wrote to Mr. Cordero again to advise him of my position with respect to his assets and to insist he no longer contact my office regarding reacquisition of his assets. A copy of my September 23, 2002 letter is also enclosed herewith.

I have tried to explain to Mr. Cordero that I am not his attorney and that he should seek his own legal representation if he is having difficulty reacquiring his assets. Apparently, he has chosen not to seek his own legal counsel. I believe he either fails or refuses to understand the limited role that I play as Trustee in a Chapter 7 proceeding and that poor understanding has given rise to his current application. As I will soon be issuing a No Distribution Report, this case will be closed and my duties as Trustee will come to an end. Accordingly, I do not believe that it is necessary for the Court to take any action on Mr. Cordero's application. However, should the Court desire to calendar this matter, please let me know so that I may appear in Court and answer any questions that the Court may have regarding this matter.

Respectfully submitted,

Kenneth W. Gordon
Chapter 7 Trustee

KWG/brs
Enclosure

pc: Kathleen Dunivin Schmitt, Esq.
Richard Cordero ✓
David MacKnight, Esq.
Michael Beyma, Esq.
Ray Stilwell, Esq.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE: PREMIER VAN LINES, INC,

Debtor.

Chapter 7

Case No: 01-20692

JAMES PFUNTER,

Plaintiff,

A.P. 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.

RICHARD CORDERO,

Third Party Plaintiff,

TRUSTEE'S AFFIRMATION IN SUPPORT OF MOTION TO DISMISS CROSS-CLAIM

vs.

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

Third Party Defendants.

KENNETH W. GORDON affirms under penalties of perjury as follows:

1. I am the Chapter 7 Trustee appointed and designated as such in the above-referenced proceeding. The above-referenced bankruptcy case was commenced as a Chapter 11 case on March

5, 2001. The Chapter 11 proceeding was converted to Chapter 7 on December 20, 2001. I was appointed as Trustee on December 28, 2001.

2. The instant Adversary Proceeding was commenced by James Pfunter through his attorney David MacKnight to seek a declaration of the Court to determine who had the right to possess certain property in Mr. Pfunter's possession and the conditions under which delivery of such property was to be made.

3. Upon information and belief, Richard Cordero was a former customer of the debtor who stored items of personal property with the debtor. Based upon the pleadings and proceedings in this matter, it would appear as if some or all of Mr. Cordero's property was stored by debtor at a facility and on property owned by Mr. Pfunter.

4. Mr. Cordero has filed and served upon the parties an Answer to Mr. Pfunter's Complaint and a Third Party Complaint alleging Cross-Claims including Cross-Claims against me as Trustee. A copy of Mr. Cordero's Amended Answer with Cross-Claims is annexed hereto as Exhibit A. From a review of the Third Party Complaint with Cross-Claims, it would appear as if the allegations set forth in the Cross-Claims against the Trustee are identical in the two separate documents and thus a copy of the Third Party Summons and Complaint is not annexed hereto.

5. This Affirmation is made in support of a Motion to Dismiss the Cross-Claims made by Mr. Cordero against the Trustee.

6. Mr. Cordero's claims against the Trustee fall into two broad categories. First, in paragraphs 76 through 80, Mr. Cordero claims that the Trustee acted recklessly and negligently in failing to notify former customers of the debtor of the location of the stored personal property of such customers and in failing to administer such property and safeguard such property presumably as

as assets of the bankruptcy estate. Second, in paragraphs 81 through 90, Mr. Cordero complains that the Trustee has defamed him in two letters that were sent by the Trustee in connection with the bankruptcy proceeding. For the reasons set forth below, it is respectfully submitted even accepting the allegations of Mr. Cordero's claims as true, such claims are not legally sufficient and must be dismissed against the Trustee.

DEFAMATION CLAIM

7. Mr. Cordero alleges in paragraphs 36 and 37 that the Trustee sent to him a letter dated September 23, 2002 in response to Mr. Cordero's inquiries to the Trustee's office regarding the whereabouts and status of his personal property which he stored with the debtor. Mr. Cordero complains that the statements made by the Trustee in that letter were defamatory in nature. A copy of said letter was annexed to Mr. Cordero's Amended Answer with Cross-Claims and can be found near the end of Exhibit A annexed hereto.

8. Mr. Cordero alleges in paragraphs 41 and 42 that the Trustee wrote to the Court on October 1, 2002 in response to Mr. Cordero's complaint to the Court regarding the Trustee. A copy of the October 1, 2002 letter is also attached to Mr. Cordero's Amended Answer with Cross-Claims and can be found at the end of Exhibit A annexed hereto.

9. In paragraphs 81 through 90, Mr. Cordero alleges that the statements in the September 23, 2002 and October 1, 2002 letters were defamatory.

10. Assuming for the purposes of this Motion that the factual allegations set forth in Mr. Cordero's Amended Answer and Cross-Claim are true, they allege that defamatory statements were made in two letters by the Trustee which were both sent in connection with the bankruptcy proceeding in which the Trustee was appointed. Both letters directly addressed the issues raised by

Mr. Cordero and both related to matters which Mr. Cordero has alleged are involved in the administration of the bankruptcy proceeding.

11. It is well established under New York law that statements made in letters related to legal proceedings cannot form the basis of a defamation complaint unless made for the sole purpose of defamation with express malice. As the Supreme Court, Appellate Division, Third Department summarized in Grasso vs. Mathew, 164 AD2d 476, 479 (3rd Dept. 1990):

> In the context of a legal proceeding, statements by parties and their attorneys are absolutely privileged, if, by any view or under any circumstances, they are pertinent to the litigation (Martirano vs. Frost, 25 NY2d 505, 507). No action for defamation exists unless the statement is so obviously impertinent as not to admit discussion of pertinence, and so needlessly defamatory as to warrant the inference of express malice and a motivation solely to defame (supra, 508). The absolute privilege embraces anything that may possibly or palpably be relative or pertinent, with the barest rationality, divorced from any palpable or pragmatic degree of probability (Dachowitz vs. Kranis, 61 AD2d 783). This test of pertinency is extremely liberal (Klein vs. McGauley, 29 AD2d 418, 420) and encompasses both words and writings (Youmans vs. Smith, 153 NY 214, 219), including correspondence between litigating parties and unsolicited offers of settlement (Klein vs. McGauley, supra at 420) which is the situation here.

12. Taking each of Mr. Cordero's factual allegations in the Cross-Claims as true, he alleges simply that he was defamed in correspondence by the Trustee and that the correspondence was clearly relevant to and in the context of bankruptcy proceedings. As such, the statements made in the correspondence by the Trustee were absolutely privileged and thus no action for defamation exists.

NEGLIGENCE AND RECKLESSNESS CLAIMS

13. Mr. Cordero alleges in paragraph 19 and 21 that the Trustee advised him that the debtor's business was not being operated by the Trustee and that information about Mr. Cordero's personal

property should be obtained by either contacting the landlord in possession of the property or from the lender who held a blanket security interest on all of the debtor's assets. In paragraphs 76 through 80, Mr. Cordero complains that the Trustee failed to locate Mr. Cordero's personal property and failed to notify Mr. Cordero of the whereabouts of Mr. Corder's personal property which was stored with the debtor. Mr. Cordero complains that the Trustee negligently or recklessly performed his duties as Trustee.

14. Assuming the allegations of fact made by Mr. Cordero are true, the "duties" which Mr. Cordero complains were performed negligently or recklessly are outside of the scope of the duties enumerated in the Bankruptcy Code to be performed by a Chapter 7 Trustee. Such duties are set forth in 11 U.S.C. §704. Those duties include collecting, safe guarding and accounting for property of the estate. Those duties do not include taking possession or control of property and items which were owned by third parties and do not constitute property of the estate.

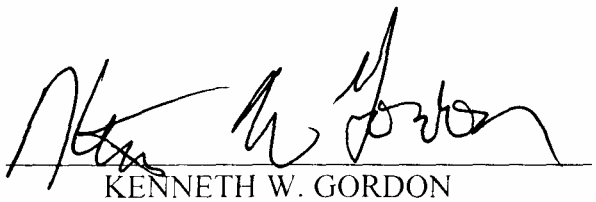
15. It is hornbook law that property held by the debtor under a bailment contract is not property of the estate. Collier's Bankruptcy §541.06 (1)(a). Under a bailment contract, the bailor or principal retains ownership of the property and if the agent or bailee files for bankruptcy, the debtor's estate does not acquire an ownership interest in the property but rather the bailor or principal is entitled to recover the property.

16. It is clear from the claims made by Mr. Cordero that he asserts his right to recover his property. There is no allegation nor is there any dispute that Mr. Cordero's personal property never became property of the debtor's estate. The relief sought by Mr. Cordero as it relates to his personal property as set forth in paragraphs 93 though 98 clearly seeks relief which is outside the scope of the duties of a Chapter 7 Trustee.

17. Thus, even if the factual allegations in the Cross-Claims are deemed true, the duties and the obligations which Mr. Cordero seeks to impose on the Trustee are outside the scope of those duties defined under 11 U.S.C §704. As such, Mr. Cordero's Cross-Claims against the Trustee for recklessness and negligence in performing the Trustee's duties failed to state a cause of action.

WHEREFORE, it is respectfully requested that the Cross-Claims of Mr. Cordero against the Trustee be dismissed and that such other and further relief be granted by the Court as is deemed just and proper.

Dated: Rochester, New York
December 5, 2002



KENNETH W. GORDON
CHAPTER 7 TRUSTEE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

PREMIER VAN LINES, INC.,

Debtor

Chapter 7
Case No: 01-20692

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

Adversary Proceeding
Case No: 02-2230

CORDERO'S MEMORANDUM IN OPPOSITION TO THE TRUSTEE'S MOTION

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. Dr. Cordero, co-defendant, opposes the hearing of Trustee Kenneth Gordon‟s motion on December 18, 2002, on grounds of hardship, lack of urgency, non-dispositive legal grounds invoked, and need for discovery; and submits that its consideration should be deferred until trial, or in the alternative, until the time when Dr. Cordero may have to attend a pre-trial conference.

I. Hardship and lack of urgency

2. Dr. Cordero lives hundreds of miles from the Court. For him to travel thereto to oppose this motion, let alone every motion that any other party may file, would be enormously costly in terms of money and time as well as severely disruptive of his normal activities given that he would have to start his trip the day before and possibly return the following day, all of which

would be inordinately disproportionate to the cost and inconvenience that it would entail or the benefit that it would produce for any parties living in or near Rochester to go to court to argue their motions at this early stage of the proceedings.

3. The Court is justified in protecting Dr. Cordero from such hardship because both Rule 1001 of the Federal Rules of Bankruptcy Procedure and Rule 1 of the Federal Rules of Civil Procedure provide that their „rules must be construed and administered "to secure the just, speedy, and inexpensive determination of every action" and proceeding."

4. By deferring the hearing of this and any such motions until trial, when Dr. Cordero will have to travel to Rochester, the Court will be achieving the aim of making their disposition as inexpensive as possible.

5. It will also be doing so justly by allowing a party -pro se to boot- adequate time to prepare and a reasonable opportunity to present his arguments without the heightened stress of having scrambled to travel to Rochester on such a short notice, particularly at a time significantly worsened by the additional aggravating circumstances of the New York City Metropolitan Transit Authority general strike announced to begin on Monday, December 16, which is likely to turn simply getting to and from the airport or train or bus station into a hassle or even a downright chaotic experience.

6. With such deferment, the Court will not be detracting from a speedy determination of this action because regardless of its ruling, both the Trustee and Dr. Cordero will still remain parties to the action.

7. What is more, not only both of them but also other parties will continue litigating issues germane to those raised by the Trustee"s motion. This point is supported by the letter to the Court of the Plaintiff"s attorney, David MacKnight, Esq., dated December 5, 2002, where he points out that "Dr. Cordero's latest pleading" - the one stating cross-claims and third party complaints- "certainly has cast a different light on events." As a result, now Mr. MacKnight too considers important to obtain additional information from the Trustee.

8. Mr. MacKnight"s statements point to the need for discovery, just as Dr. Cordero does below. Hence, not only is there no urgency to consider now the dismissal of the cross-claims against the Trustee, but it would also be premature to do so before discovery.

II. Non-dispositive legal grounds and need for discovery

9. At the time of the hearing of Trustee Gordon‟s motion to dismiss, Dr. Cordero will argue in greater detail upon adequate research and among other things, the following:

A. The Claim of Defamation

10. Trustee Gordon argues against the cross-claim of defamation that his defense is provided by Grasso vs. Mathew, 164 AD2d 476, 479 (3rd Dept. 1990), which he cites as stating that, "In the context of a legal proceeding, statements by parties and their attorneys are absolutely privileged,…."

11. However, Trustee Gordon‟s invocation of Grasso is inapplicable because neither Dr. Cordero‟s initial statements to the Court nor the Trustee‟s defamatory statements in response thereto were made by „parties to a legal proceeding.‟

12. Moreover, the statements did not remain between "parties and their attorneys," but rather were published by the Trustee to the Court, to an Assistant United States Trustee, and to other people.

13. Indeed, Dr. Cordero was never a party to Debtor Premier Van Lines‟ bankruptcy case no. No: 01-20692.

14. What is more, the Trustee never even gave Dr. Cordero notice of that bankruptcy proceeding, not deeming him to be a party entitled thereto, let alone a creditor in such case.

15. Far from it, in response to Dr. Cordero‟s request for information useful to locate and retrieve his property held in storage by the Debtor, Trustee Gordon sent Dr. Cordero a copy of his letter of April 16, 2002, to Mr. David Dworkin,[1] the owner/manager of the Jefferson-Henrietta warehouse[2] used by the Debtor for his storage business. In that letter, the Trustee wrote to Mr. Dworkin, "Any issues renters may have regarding their storage units should be

[1] David Dworkin, manager of the Jefferson-Henrietta warehouse and of Simply Storage, tel. (585) 442-8820; officer also of LLD Enterprises, tel. (585) 244-3575; fax 716-647-3555.

[2] Thus, the Jefferson-Henrietta warehouse has the same address as Premier. It is owned by Jefferson Henrietta Associates, at 415 Park Avenue, Rochester, NY 14607; tel. (585) 442-8820; fax (585) 473-3555.

handled by yourself and M&T Bank." Thereby the Trustee gave Dr. Cordero notice that he considered Dr. Cordero to be just a „renter" whose problems were none of the Trustee"s concerns and were to be handled by third parties.

16. So unappealably the Trustee considered Dr. Cordero not to be any of his concern, let alone a party to the bankruptcy case, that in his cover letter to Dr. Cordero of June 10, 2002, accompanying that April 16 letter to Mr. Dworkin, the Trustee did not even care to provide either the address or phone number of M&T Bank, not even the Bank"s full name, or the phone number of Mr. Dworkin, none of which were stated in the April 16 letter either. Thereby the Trustee clearly revealed his attitude that „let non-party Dr. Cordero fend for himself;" and if the Trustee"s failure to provide even that basic information to Dr. Cordero, who lives hundreds of miles away, causes him enormous waste of time, effort, money, and aggravation and further deprives him of the enjoyment of his property…„may that be the problem of non-party Dr. Cordero!"

17. To make that attitude absolutely clear, Trustee Gordon went as far as to state in his letter of September 23, 2002, to Dr. Cordero that, "I have directed my staff to receive and accept no more telephone calls from you regarding this subject," and to enjoin him „not to contact my office again." No doubt, the Trustee did not want to have anything to do whatsoever with non-party Dr. Cordero.

18. Likewise, on September 23, 2002, when Trustee Gordon wrote his first letter with defamatory statements and published it to people other than Dr. Cordero; on September 27, 2002, when Dr. Cordero sent to the Hon. Judge John C. Ninfo, II, his Statement of Facts and Application for a Determination; and on October 1, 2002, when Trustee Gordon sent Judge Ninfo a response to that Application, which response contained more defamatory statements, neither Dr. Cordero nor Trustee Gordon could possibly have been a party to Mr. James Pfuntner"s Adversarial Proceeding, case No: 02-2230, which had not yet been even filed.

19. Even after the Adversarial Proceeding was filed on October 3, 2002, and named both Dr. Cordero and Trustee Gordon defendants, Judge Ninfo in his letter to Dr. Cordero of October 8, 2002, declined to take action on Dr. Cordero"s Application because, "Such a determination, however, is not appropriate for the Court to make at this time." Hence, Judge Ninfo referred it to Assistant United States Trustee Kathleen Dunivin Schmitt, Esq., for her, as

supervisor of Trustee Gordon within the Office of the United States Trustee to "make thorough inquiry and assist you in reconciling this matter." Thereby, Judge Ninfo indicated that he did not consider Dr. Cordero"s Application to be a matter for determination in the context of either the bankruptcy case or the Adversarial Proceeding.

20. Moreover, the Grasso case cited by Trustee Gordon states that the privilege is not applicable if "the statement is…so needlessly defamatory as to warrant the inference of express malice and a motivation solely to defame."

21. To the extent that Grasso might be applicable at all, Trustee Gordon"s „malice and sole defamatory motivation" can only be ascertained after adequate discovery has shown whether he made those defamatory statements in order to disparage Dr. Cordero and gain support for his view that "Accordingly, I do not believe that it is necessary for the Court [and Assistant Schmitt to whom he copied his October 1 letter] to take any action on Dr. Cordero's application" for a review of Trustee Gordon"s performance and fitness as trustee.

22. Malice and defamatory motivation concern the state of mind of the defendant and a claim that puts them in issue in a succinct plaintiff"s notice pleading is not suitable for dismissal before the development of the facts through discovery, and thus solely on defendant"s allegation that "no action for defamation exits," that is, a 12(b)(6) motion; see the Trustee"s paragraph 12 and Pryor v. National Collegiate Athletic Association, 288 F.3d 548, 565 (3d Cir. 2002).

23. This „state of mind" point is particularly pertinent in this case because only discovery will make it possible to ascertain whether Trustee Gordon made false statements to both the Court and the United States Trustee in his effort to dissuade them from taking any action on Dr. Cordero"s application in order to insulate himself from scrutiny and obtain the personal benefit of remaining as trustee. The finding that the Trustee, although an officer of the court and a sworn federal appointee, went as far as to make such false statements, would indicate his malice and sole defamatory motivation in his statements about Dr. Cordero.

B. The Claim of Recklessness or Negligence

24. In his defense against the cross-claim of recklessly or negligently handling the liquidation of Premier Van Lines under Chapter 7 as its trustee, Trustee Gordon alleges in paragraph 17 that

"the duties and the obligations which Mr. Cordero seeks to impose on the Trustee are outside the scope of those duties defined under 11 U.S.C. §704."

25. A Chapter 7 trustee is duty bound under 11 U.S.C. §704(4) to "investigate the financial affairs of the debtor."

26. Trustee Gordon failed to perform that duty when he failed to examine, either competently or at all, the Debtor"s business files, which were in Premier"s office inside the Jefferson-Henrietta warehouse. Trustee Gordon had access to those files given that, according to the manager/owner of that warehouse, Mr. Dworkin, it was Trustee Gordon who gave Mr. Dworkin the key to that office.

27. Trustee Gordon had a duty to examine those files. Under §2-2.2.1 of the Trustee Manual, Chapter 7 Case Administration, "A trustee must also ensure that a debtor surrenders non-exempt property of the estate to the trustee, and that records and books are properly turned over to the trustee." One obvious use of those "records and books" is to find out where debtor"s assets may be located.

28. Had the Trustee examined those business files, he would have found out that Premier, the Debtor, which operated out of the Jefferson-Henrietta warehouse, also had assets stored elsewhere, namely, in the Avon warehouse.[3] Trustee Gordon should have found those assets just as did Mr. Christopher Carter, the owner of Champion,[4] after he bought Premier"s assets, which contained its business files, from their lienholder, M&T Bank[5].

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[3] The Avon warehouse is located at 2140 Sackett Road, Avon, NY 14414. It is owned by Mr. James Pfuntner, tel. (585) 738-3105, the Plaintiff in the Adversarial Proceeding No. 02-2230.

[4] Christopher Carter, cellphone (585) 820-4645, owner of Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624; tel. (585) 235-3500; fax (585) 235-2105.

[5] M&T Bank is Manufacturers & Traders Trust Bank, at 255 East Avenue, Rochester, NY 14604. It holds a general lien on all Debtor Premier's assets, known at the time to be only at the Jefferson-Henrietta warehouse. These assets consisted of storage containers, each of which was packed with the property belonging presumably to a single Premier customer, and office equipment, including business files. M&T Bank sold these assets at an auction, but not the property in the storage containers, to Champion. Since the Bank officer in charge of Premier, Assistant Vice President David Delano, tel. (585) 258-8475; (800) 724-2440, had said to have seen containers labeled Cordero, he referred Dr. Cordero to Champion. Dr. Cordero requested Mr. Carter to let him know the condition of his belongings. However, Mr. Carter informed him that no storage container bore his name. Then Mr. Carter looked in Premier's business files and found that Premier had assets, including storage containers, in the

29. Had the Trustee found the Debtor‟s assets in the Avon warehouse, which were undoubtedly part the estate and which included storage containers, he would have found the property of Premier‟s clients, such as Dr. Cordero, held in those storage containers. His failure to perform that duty has decisively frustrated Dr. Cordero‟s effort to locate and retrieve his property and given rise to a substantial part of the issues forming the Adversarial Proceeding.

30. Therefore, the Trustee errs when he argues in paragraph 14 that his "duties do not include taking possession or control of property and items which were owned by third parties and do not constitute property of the estate." The Debtor‟s customers, such as Dr. Cordero, were not just third parties: They were and are "parties in interest" whom the Trustee had to protect within the scope of his duties as trustee for the Debtor.

31. Thus, 11 U.S.C. §704 sets forth as the first duty of the trustee: "(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interest of the parties in interest."

32. By failing to locate the property held and owed by the Debtor to its clients, the Trustee also failed to find assets of the estate in the form of storage containers and maybe other types of assets. The proof of this statement is that when Champion‟s Mr. Carter looked for Dr. Cordero‟s property, he did find other assets of the Debtor in the Avon warehouse.

33. The result of this failure of Trustee Gordon to take into account "the best interest of the parties in interest" has led to these Adversarial Proceedings in which so many parties are now embroiled and has prevented the Trustee from closing the estate up to now and will continue preventing him from doing so for the foreseeable future.

34. Once more, only discovery will allow a determination of the full extent of Trustee Gordon‟s failure to perform his duties and his liability for the harm that he has caused to the parties that have ended up dragged into this proceeding.

Avon warehouse. He informed M&T Bank thereof. In turn, the attorney for M&T Bank, Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604, tel. (585) 258-2800, fax (585) 258-282, informed Dr. Cordero of this by letter with copy to Trustee Gordon.

III. Order sought

35. Therefore, considering that:

    a) Dr. Cordero, who lives hundreds of miles from the Court, will be put to substantial expense and caused significant hardship disproportionately greater than that which might be experienced by any party living in or near Rochester were he required to attend the Court to oppose this or any similar motions;

    b) The law invoked by Trustee Gordon does not support his position;

    c) There are significant issues of fact that need to be ascertained through discovery;

36. Dr. Cordero respectfully requests that the Court order that:

37. In particular, the motion made by Trustee Kenneth Gordon will be heard at trial;

38. In general, motions affecting Dr. Cordero will be heard at trial;

39. In the alternative, such motions will be heard at the time that Dr. Cordero may have to travel to Rochester to attend the pre-trial conference.

40. Dr. Cordero requests that the Court award him reasonable attorney‟s fees, court costs, and the expense concomitant with handling such motions hundreds of miles from his home, together with such other relief as may seem just and proper.

Dr. Richard Cordero

Dated: December 10, 2002
Brooklyn, New York
tel. (718) 827-9521

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

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

COPY

January 23, 2003

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445

Dear Ms. Dianetti,

As discussed earlier over the phone, I am interested in obtaining from you for the purpose of gathering the record on appeal, a transcript of the hearing held by the Hon. Judge John C. Ninfo, II, on December 18, 2002, of the motion brought by Kenneth Gordon, Esq., Chapter 7 Trustee, in Adversary Proceeding no. 02-2230, to dismiss my cross-claims.

After having checked your notes, you indicated that the transcript would run to some 25 pages, that each page costs $3, and that the total cost would be between $75 and $80. I accept that estimate and would pay that amount upon your transferring the transcript to the clerk of court and your sending me a copy of it.

I thank you in advance for your efforts on my behalf and remain,

yours sincerely,
Dr. Richard Cordero

cc: Clerk of Court

Blank

SUGGESTED FORM D-1

DOCKETED

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

PREMIER VAN LINES, INC

Debtor

APPLICATION FOR ENTRY OF DEFAULT

Bankruptcy Case No. 01-20692

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Third-party Plaintiff,

Adversary Proceeding No. 02-2230

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

SUGGESTED FORM D-2

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, Clerk of Court

SUGGESTED FORM D-4

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

PREMIER VAN LINES, INC

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

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

AFFIDAVIT OF
NON-MILITARY SERVICE

Bankruptcy Case No. 01-20692

Adversary Proceeding No. 02-2230

I, Dr. Richard Cordero, am Plaintiff pro se in the above action. When I spoke with Defendant Palmer early this year, he presented himself to me as a businessman and never mentioned that he was or intended to be in the military. After Mr. Palmer would not take or return any of my phone calls, I communicated with his attorney, Raymond Stilwell, Esq., in an effort to get Mr. Palmer to honor his word concerning the retrievability of my property, which his company, Premier Van Lines, Inc., the Debtor, held in storage for me. Mr. Stilwell invoked a confidentiality privilege and refused to provide any information concerning Mr. Palmer's whereabouts. Mr. Stilwell never alleged that Mr. Palmer's unavailability was due to his being in military service. The above stated address of Mr. Palmer appeared in the certificate of service that the attorneys at Underberg & Kessler for M&T Bank, the lienholder of Premier's assets, attached to a paper that they have just served in this action, in which M&T Bank is a defendant.

I learned from M&T Bank and its attorneys that M&T Bank obtained a judgment against Mr. Palmer that at the time it could not enforce because it had not been able to find Mr. Palmer.

Thus, I affirm that to the best of my knowledge it is my good faith belief that Defendant Palmer is not in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940.

Dated: December 26, 2002

Dr. Richard Cordero

(Affirmed under penalty of perjury)

SUGGESTED FORM D-5

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

PREMIER VAN LINES, INC

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

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
TO DISTRICT COURT

Bankruptcy Case No. 01-20692

Adversary Proceeding No. 02-2230

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.

[X] 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 _____.

CONCLUSIONS

The Plaintiff is entitled under applicable law to entry of judgment by default.

RECOMMENDAT ION

Wherefore, it is 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.

Date:_____

_____

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

SUGGESTED FORM D-6

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re: AFFIDAVIT OF AMOUNT DUE

PREMIER VAN LINES, INC Bankruptcy Case No. 01-20692

Debtor

Richard Cordero Adversary Proceeding No. 02-2230
59 Crescent Street
Brooklyn, NY 11208

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

In support of the Plaintiff's request that the Bankruptcy Court recommend and the District Court enter default judgment against David Palmer, the above named Defendant, the Plaintiff submits the following itemization of damages sought:

Principal amount prayed for:	1
1) property in storage	4,000.00
2) capitalized moving, storage, insurance and related fees and taxes that Plaintiff has paid since his property went into storage in August 1993.....	9,887.15
Pre-judgment interest at the rate of 5% from November 22 through December 26, 2002	4 4.93
Costs (for copying, phone, and postage).....	100.00
Attorney's fees (See § 1923, Title 28 United States Code).....	+0.00
TOTAL DAMAGES	$24,032.08

Plus per diem of $3.40 since the date of the filing plaintiff's request for default

Date: December 26, 2002 Dr. Richard Cordero

Plaintiff pro se

SUGGESTED FORM D-7

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re: ORDER

PREMIER VAN LINES, INC Bankruptcy Case No. 01-20692

Debtor

Richard Cordero Adversary Proceeding No. 02-2230
59 Crescent Street
Brooklyn, NY 11208

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

Based on the annexed Recommendation and Certification, it is

ORDERED, ADJUDGED AND DECREED that a default judgment be entered against David Palmer, the above named Defendant, in the amount of $24,032.08.

Date: _____ _____
U.S. D. J.

Certificate of Service

I, Dr. Richard Cordero, served a copy of my letter to Judge Ninfo, a Pre-trial Option Form, and my application to enter a default judgment against Mr. David Palmer, all dated December 26, 2002, on the parties listed below.

Dated: December 26, 2002

Dr. Richard Cordero

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

David D. MacKnight, Esq.
Lacy, Katzen, Ryen & Mittleman, LLP
130 East Main Street
Rochester, New York 14604-1686

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604

Raymond C. Stilwell, Esq.
Adair, Kaul, Murphy, Axelrod &
Santoro, LLP
300 Linden Oaks, Suite 220
Rochester, NY 14625-2883

Mr. David Dworkin
415 Park Avenue
Rochester, New York 14607

Jefferson Henrietta Associates
415 Park Avenue
Rochester, New York 14607

Kenneth W. Gordon, Esq.

Chapter 7 Trustee
Gordon & Schaal, LLP
100 Meridian Centre Blvd., Suite 120
Rochester, New York 14618

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

The President
Rochester Americans Hockey Club
Office of the President
100 Exchange Blvd.
Rochester, New York 14614

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

COPY

December 26, 2002

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,

I was informed by Case Administrator Karen S. Tacy that I should disregard the Request of the United States Trustee for Status Conference, which sets down such conference for January 8, and concern myself only with the Pre-trial conference scheduled for January 10. Since I must inform the Court of my choice by December 27, I am sending herewith a Pre-Trial Option Form where I have stated, among other things, my preference for a telephone conference.

I would like to note that it is not the case as yet that "all parties to the action agree that a conference by telephone will serve to expedite a final settlement of this matter." That could hardly be the case because two parties, namely, Mr. David Dworkin and Jefferson-Henrietta Associates have not even answered my third party complaints. Their attorneys at Underberg & Kessler, who represent co-defendant M&T Bank and third-party defendant David Delano, have conflicted themselves out and requested on their behalf that the deadline to file an answer be extended from December 19 to December 31. This means that I do not even know their names and, consequently, cannot undertake with them any negotiation that may lead to their agreement to hold a phone pre-trial conference. Moreover, once their answers are mailed from Rochester, they might not reach me in Brooklyn until January 6. That will give very little time to engage in negotiations before the Pre-trial Conference scheduled for the 10th. Therefore, I believe that it would be more appropriate to adjourn that Conference.

This goes along the line of the request for adjournment made by Raymond C. Stilwell, Esq., the attorney who represented David Palmer, who is now a third-party defendant. In his letter to the Clerk of Court of December 20, he stated a previous judicial commitment in support of his request.

Mr. Stilwell has therein also questioned the need for him to appear at that Conference given that 'Mr. Palmer has not retained him relative to this suit.' In this vein, I note that early in January 2002, I spoke with Mr. Palmer in an effort to find out the condition of my property in storage with his company, Premier Van Lines, Inc., which he never told me was a bankrupt Debtor or in liquidation. Nevertheless, Mr. Palmer assured me that my property was safe and available. When that began to appear not to be the case, Mr. Palmer would neither take nor return my calls. I appealed to Mr. Stilwell as his lawyer. In his letter to me of May 30, 2002, Mr. Stilwell wrote that, "I also have an obligation to maintain the confidences of our own client, which precludes me from putting you in direct contact with Mr. Palmer or assisting in your efforts to do so without his consent."

I respectfully submit to the Court that Mr. Stilwell should be required to attend the conference and provide all the information in his possession and state his good faith belief about where Mr. Palmer is or may be and how to get him to appear in Court. Indeed, through Mr. Stilwell, as officer of the court, Mr. Palmer invoked, and benefited from, the provisions of the bankruptcy law. Thereby Mr. Palmer submitted himself to the jurisdiction of the Court and Mr. Stilwell assisted him in securing the most

advantageous application of the law. Both should be deemed to remain under the jurisdiction of the Court until at least the liquidation of the company for the protection of whose rights they first came to Court, whereby they also agreed to assume the concomitant of rights, namely, obligations.

Mr. Palmer must not be allowed to secure a discharge in bankruptcy of his company's debts and then to evade the obligations imposed upon him by the judicial system whose benefit he sought. To let him cut and run when the time comes for him to deal with his obligations would make a mockery of the Court and the judicial system that it helps to administer. The Court can only be respected when it respects itself by making sure that he who asks its intervention to solve his problems does not exploit it for its benefits but dumps it to escape his obligations. Only thus can its system dispense justice, for imposing obligations upon one party also means protecting the rights of one or even many other parties who are the intended beneficiaries of those obligations.

Yet, Mr. Palmer has already failed to bear his obligation to answer my complaint in the adversary proceeding. That is why I have applied for default judgment against him. However, by entering default judgment according to law the Court would not ensure respect for the judicial system if it did not also take steps to ensure that Mr. Palmer complies with it. In this regard, the evidence is not encouraging. 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.

Thus, as the very first step in insuring that Mr. Palmer does comply with the default judgment, the Court should require that Mr. Stilwell, who in his dealings with me held himself out as Mr. Palmer's attorney, attend the pre-trial conference. Mr. Stilwell is first and foremost an officer of the Court; only because of that status is he allowed to represent clients in court. As such, he has the obligation to uphold the proper functioning of the court by ensuring that his clients appear before it for both the rights and the obligations phases of court proceedings, particularly those proceedings that they have set in motion or participated in. He must not be allowed to invoke any client-attorney privilege to shield Mr. Palmer from the reach of the Court under whose jurisdiction both Mr. Palmer and Mr. Stilwell placed themselves. Far from it, Mr. Stilwell must be required not only to state upon information and belief Mr. Palmer's whereabouts, but also accompany his statements with his best efforts to make Mr. Palmer appear in Court. That is part of his responsibilities as an officer of the court.

The address that I have indicated for Mr. Palmer in my application for default judgment appeared in the certificate of service that M&T Bank's attorneys attached to a paper that they have just served in this action. Mr. Palmer's disregard of my complaint gives rise to the concern that he will also disregard the copy of my application for default judgment that I am mailing him to that address. It is for the Court to ensure that its handling of this application is not contemptuously turned into an exercise in futility.

Therefore, I respectfully request that the Court:

1. take notice that I have opted to conduct a telephone conference as soon as that is possible;
2. consequently adjourn the conference;
3. require Mr. Stilwell to attend and participate in that conference; and
4. order Mr. Stilwell to provide all information useful to establish Mr. Palmer's whereabouts and fully assist the Court in bringing Mr. Palmer before it.

Yours sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

COPY

January 29, 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,

At the pre-trial conference you requested that I submit to you three dates when I can travel to Rochester to participate in the inspection of my property in storage at the Avon warehouse of Plaintiff James Pfuntner. I am now in a position to do so and am submitting the following six dates:

1) Wednesday, February 19 3) Wednesday, February 26 *5)* Wednesday, March 5
2) Thursday, February 20 4) Thursday, February 27 6) Thursday, March 6

In order for a flight ticket —non-refundable and non-reschedulable- for one of these dates to be available for me to buy, it is important that at least 14 days in advance I receive the date chosen by you and the other parties. At the conference you indicated that within two days of your receipt of my proposed dates you could let me know and I confirm that such timeframe is acceptable and that it is important to stick to it.

Please note that I neither know where the Avon warehouse is located nor will have transportation to get there. Hence, will I be able to ride to and from the warehouse with you or your representative? Upon arriving at the Rochester airport, I will take public transportation to downtown and go to the Courthouse to ask for you at the Clerk's office. If the plane arrives on time at 10:45 am. —the airline assures me that nationally its flights have an 85.6% on-time rate-, is it reasonable to estimate, given the distance between the airport and the Courthouse and the time of day, that I can be at the Courthouse by 12 noon? Considering the distance between the Courthouse and the Avon warehouse and taking into account what you want the parties to do there, is it realistic to plan that I will be back at the airport by 6:30p.m.?

Since it is at your request that this site inspection is been organized, I respectfully suggest that you might wish to make sure with Mr. Pfuntner that the storage containers in question will be accessible. This may sound obvious, but if the containers are stacked on top of others, as storage containers are in a warehouse, there must be an appropriate means, such as a forklift, to quickly bring them down to the floor where they can be opened. Likewise, the forklift must have gasoline and somebody must have the key to it and know how to operate it. It goes without saying that Mr. Pfuntner must insure that he has the keys or other tools necessary to open the warehouse and the storage containers.

These observations are justified because from what I have found out, the Avon warehouse has been closed for a long time and is not being actively used. I make them in the interest of conducting an inspection smoothly, efficiently, and with optimal use of time. After all, this trip may cost me hundreds of out-of-pocket dollars, not to mention the opportunity cost of being away from my desk.

In the same vein, one must insure that there will be electricity to turn the lights on so that we can see the condition of the property. Flashlights won't do. This is a very important point, for if the warehouse has been closed for a long time and nobody fumigated against vermin or repaired a leaky roof or kept the temperature at an adequate level, my property may be worm-eaten, rat-gnawed, and moldy. Since Mr. Pfuntner is in the warehousing business and was dealing with a storage company, he must certainly have been aware of the conditions that the warehouse had to meet for the intended use. To protect my property against these types of damage, among others, Premier had me pay for the highest type of insurance, namely, replacement insurance.., and I have paid for it since 1993! Likewise, Mr. Dworkin and Jefferson Henrietta Associates billed me for it.

Please note that I intend to take pictures during the inspection of the warehouse, inside and outside, as well as of the storage containers and of my property.

Attached hereto, I am sending you a copy of the receipt of items of property of mine of which the moving company took possession for storage. It was sent to me by Mr. Christopher Carter of Champion Moving & Storage, the company that bought Premier's assets, together with its business files, when they were auctioned by M&T Bank, the holder of a general lien on the assets of Premier. Mr. Carter found the receipt in the business files of Premier Van Lines. I requested that he copy it and send me the copy; he did so. I also asked him to keep in a safe place the original and all other papers in the Premier's files that he has.

Since those files constitute evidence in this case, it would be appropriate for the court to issue a conservatory order so that Champion's Mr. Carter may not to give away those files to anybody or dispose of them otherwise. You may remember that I made this request at the pretrial conference.

It should be noted here that had Trustee Kenneth Gordon examined those files, he too would have found that receipt. Not only are Premier's customers, such as myself, parties in interest to whom he owes duties as trustee, but their property was in storage with Premier under contract, each of which constitutes an income generating asset. Now those contracts are generating income for Champion. A Chapter 7 trustee is duty bound under 11 U.S.C. §704(4) to "investigate the financial affairs of the debtor," and under §2-2.2.1 of the Trustee Manual, Chapter 7 Case Administration, "A trustee must also ensure that a debtor surrenders non-exempt property of the estate to the trustee, and that records and books are properly turned over to the trustee." One obvious use of those "records and books" is to find out where debtor's assets may be located. Only after finding the Debtor's assets can the Chapter 7 trustee proceed to liquidate them for the benefit of the creditors and the parties in interest. Trustee Gordon failed to do so. He should be held accountable for it.

Can you imagine how much of all this legal entanglement could have been avoided if the Trustee, back in December 2001 when he was appointed trustee of Premier, had given notice to Premier's customers that the company holding their property had gone bankrupt and was in liquidation? Instead, he abandoned all the assets to Mr. David Dworkin and Jefferson Henrietta Associates, the company running the warehouse out of which Premier operated its business. These two parties too had an obligation to notify Premier's customers, such as me, for they knew since much earlier, that is, March 2001, that Premier had filed for bankruptcy. Far from it, they kept that information from me -even though I asked Mr. Dworkin about the condition of my property and the insurance covering it- and just billed me for the storage and insurance of storage containers that were not even in their warehouse.

For their part, M&T Bank and its officer, Mr. David Delano, should have made sure that my storage containers were at the Jefferson Henrietta warehouse before telling me so and should have notified all customers before conducting the auction and allowing a third party, namely, Champion, to come in and take everything away, and that without M&T Bank or Mr. Delano making an inventory or monitoring the removal.

If these parties had only cared a little for others! Now I end up paying the consequences of their acts and omissions. How would they like it if due to what they did or failed to do, they had to travel to New York City, at their expense of time, money, and effort, or for more than a year had to learn how to handle or hire somebody to handle a case in a New York City court?

Thus, it should be understandable why, as I stated at the pre-trial conference, I will participate in this court-organized inspection without prejudice to any of my rights or claims to compensation asserted in my pleadings. Indeed, the negligence, recklessness, or fraudulent acts of the opposing parties have for more than a year now caused me an enormous waste of time, effort, and money as well as tremendous aggravation while searching for my property. I have appealed for justice to redress these wrongs. I remain committed to obtaining such justice together with the compensation through which it finds practical expression.

Looking forward to hearing from you at your earliest convenience, I remain,

yours sincerely,

Dr. Richard Cordero

Cc to:

Kenneth W. Gordon, Esq. Chapter 7 Trustee Gordon & Schaal, LLP 100 Meridian Centre Blvd., Suite 120 Rochester, New York 14618 tel. (585) 244-1070 fax (585) 244-1085	Michael J. Beyma, Esq. Underberg & Kessler, LLP 1800 Chase Square Rochester, NY 14604 tel. (585) 258-2890 fax (585) 258-2821
Raymond C. Stilwell, Esq. Adair, Kaul, Murphy, Axelrod & Santoro, LLP 300 Linden Oaks, Suite 220 Rochester, NY 14625-2883 tel. (585) 248-3800 fax (585) 248-4961 David D. MacKnight, Esq. Lacy, Katzen, Ryen & Mittleman, LLP 130 East Main Street Rochester, New York 14604-1686 tel. (585) 454-5650 fax (585) 454-6525	Karl S. Essler, Esq. Fix Spindelman Brovitz & Goldman, P.C. 2 State Street, Suite 1400 Rochester, NY 14614 tel. (585) 232-1660 fax (585) 232-4791 Kathleen Dunivin Schmitt, Esq. Assistant U.S. Trustee 100 State Street, Room 6090 Rochester, New York 14614 tel. (585) 263-5706 fax (585) 263-5862

Dr. Richard Cordero

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COPY

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

SUGGESTED FORM D-5

UNITED STATES BANKRUPTCY COURT
Western District of New York

In Re:

PREMIER VAN LINES, INC

Debtor

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

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
TO DISTRICT COURT

Bankruptcy Case No. 01-20692

Adversary Proceeding No. 02-2230

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.

[X] 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/NOT entitled under applicable law to entry of judgment by default.

RECOMMENDAT ION

Wherefore, it is/NOT 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, for 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 Pfuntner to have the Court determine proper ownership and responsibilities for various storage containers previously stored by Premier, of which James Pfuntner was the successor storage entity;

5. At least one of the storage containers now under the control of James Pfuntner 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;

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. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dr. Richard Cordero

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

59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-0821; 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

46

Dr. Richard Cordero

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M.B.A., University of Michigan Business School
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59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

COPY

March 2, 2003

Hon. David G. Larimer
United States District Judge
United States District Court
2120 U.S. Courthouse
100 State Street
Rochester, NY 14614-1387

Dear Judge Larimer,

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

I trust this warning grabbed your attention. So it was written in the summons, in bold capital letters from one margin to the other, that I, a defendant appearing pro se, served together with the complaint on Mr. David Palmer to bring him as third party defendant into Adversary Proceeding no. 02-2230 in the bankruptcy court for the Western District. That warning must also have grabbed his attention. This is particularly likely since the summons was properly served on his lawyer, Raymond Stilwell, Esq. given that Mr. Palmer is the owner of the debtor company in the bankruptcy case in chief no. 01-20692. However, Mr. Palmer failed to appear, whether personally or through his lawyer, let alone file any answer. So I timely applied for entry of default judgment in December.

For reasons and under circumstances that I cannot explain under any provisions of law that I have so far researched, the Honorable Judge John C. Ninfo, II, has recommended to your court that the application be denied. That is so even though there is no doubt whatsoever that Defendant Palmer received that stark warning and chose to ignore it, thereby consenting to the entry of default judgment. Hence, the clerk of the bankruptcy court already entered his default, though belatedly.

The negative recommendation is predicated on the contention that I, the plaintiff, failed to demonstrate what I was never required to demonstrate either by law or by Judge Ninfo, namely, a loss of property and the amount of damages. Nor was I given notice of such recommendation. Yet, I have managed to secure a copy of it. I respectfully object thereto.

Consequently, on the grounds stated in my motion, I respectfully request that you enter and carry into effect judgment by default against Mr. Palmer, ascertain the circumstances of the recommendation, and withdraw the Adversary Proceeding to the district court.

Yours sincerely,

Dr. Richard Cordero

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In re:
PREMIER VAN LINES, INC.,
Debtor
bankruptcy case no: 01-20692

JAMES PFUNTNER,
Plaintiff
-vs-
Adversary proceeding no. 02-2230

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

RICHARD CORDERO,
Third party plaintiff
-vs-

DAVID PALMER, DAVID DWORKIN, DAVID DELANO, and JEFFERSON HENRIETTA ASSOCIATES,
Third party defendants

RICHARD CORDERO,
Applicant
03-MBK-6001
-vs-

DAVID PALMER,
Respondent

CORDERO'S MOTION TO ENTER DEFAULT JUDGMENT AGAINST DAVID PALMER AND WITHDRAW PROCEEDING

I, Dr. Richard Cordero, affirm under penalty of perjury the following:

1. I appeared as a pro se defendant in the above-captioned Adversary Proceeding filed in the bankruptcy court for the Western District of New York. Subsequently I served Mr. David Palmer, the owner of the Debtor, with a third party complaint, which he failed to answer. I timely applied for default judgment on December 26, 2002.

2. Not until February did the Hon. John C. Ninfo, II, Bankruptcy Judge, make to the district court a negative recommendation on my application for default judgment, of which I was not given notice. Only through my own initiative did I learn about it. I requested a copy of it from the clerks of both the district and the bankruptcy court. No copy was sent. I had to contact again Deputy Clerk Karen Tacy at the bankruptcy court, who then sent it to me.

3. Hence, as timely as possible, I am moving the district court pursuant to Rule 8011(a) of the Federal Rules of Bankruptcy Procedure (hereinafter F.R.Bankr.P.) and 28 U.S.C. §157(d) to enter and carry into force default judgment against Mr. David Palmer and withdraw the Adversary Proceeding.

TABLE OF CONTENTS

I. Statement of Facts

4. Beginning in January 2002, I spoke on the phone with Mr. David Palmer, the owner of Premier Van Lines, the moving and storage company that was storing my property. While concealing from me that he had filed for bankruptcy and that Premier was already in liquidation, he told me that my property was safe in the Jefferson Henrietta warehouse.[35]

[35] Premier Van Lines operated out of the warehouse located at 900 Jefferson Road, Rochester, NY 14623, known as the Jefferson-Henrietta warehouse.

5. I also had occasion to communicate about this with his lawyer, Raymond Stilwell, Esq.[36].

6. Subsequently, it became obvious that Mr. Palmer had intentionally mislead me and that even the whereabouts of my property, let alone its condition, was unknown, which is the case even today.

7. Through my efforts in searching my property it turned out that Mr. Palmer had abandoned it together with property of other parties at a warehouse in Avon,[37] owned by Mr. James Pfuntner. The latter instituted an adversary proceeding and sued me, among others, for storage fees.

8. Thereupon, I served a third-party complaint on his lawyer, Mr. Stilwell, to bring in Mr. Palmer into that proceeding. I claimed that:

> "fraudulently, recklessly, or negligently, Mr. Palmer has caused the loss of some or all of Dr. Cordero's property, has for the best part of a year caused Dr. Cordero an enormous waste of time, effort, and money as well as an enormous amount of aggravation in his as yet unsuccessful search for his property, has deprived him of the enjoyment of his property, and has caused him to be dragged into these most confusing adversary proceedings among multiple parties with a welter of claims."

9. The summons accompanying the complaint carried this warning in large capital bold letters from one margin to the other of page:

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

[36] Raymond Stilwell, Esq., at Adair, Kaul, Murphy, Axelrod & Santoro, LLP, 300 Linden Oaks, Suite 220, Rochester, NY 14625-2883, tel. (585) 248-3800; fax (585) 248-4961; attorney for Mr. David Palmer.

[37] This warehouse is located at 2140 Sackett Road, Avon, NY 14414; it is referred to as the Avon warehouse.

10. Although by filing for bankruptcy Mr. Palmer had benefited from the debt discharging provisions of the Bankruptcy Code and was aware of being subject to the jurisdiction of the court, he ignored that warning completely and never cared to appear in court, let alone answer the complaint.

11. Consequently, last December 26 I timely applied for default judgment against him. Yet, nothing happened, that is, I received no communication whatsoever as to what course my application was taking. I called the district court and was told that it had received nothing in that matter from the bankruptcy court. So I called that court. There a deputy clerk, Ms. Karen Tacy, Case Administrator, told me that my application was just in the chambers of the Hon. John C. Ninfo, II, who had not taken action on it because he considered the issue of damages premature.

12. I then wrote to Judge Ninfo stating the grounds why the application should be granted and requesting that to that end he transmit it to the district court. Till this day I have not received any reply from Judge Ninfo to that letter. What is more, I was not notified of any course of action taken in the matter.

13. So I had to call again and was told that my application had been transmitted, but nobody would tell me whether the recommendation was positive or negative. I requested that a copy be sent to me. Ms. Tacy said that she would send it, but it never arrived. So I had to call again and ask for it once more. Only then did I get it.

14. To my surprise, I learned from it that even the clerk of court, Mr. Paul R. Warren, did not enter the default for more than a month after I mailed the application and only did so after I wrote to Judge Ninfo. I must confess that, for the reasons discussed below, I found his failure to fulfill a legal obligation strange, to put it mildly.

15. The tenor of the recommendation is that no default should be entered because I have not demonstrated that I have suffered any damages or, if I have, that they are recoverable. Now I am baffled! Who ever required me to demonstrate anything in order to be entitled to default judgment?!

II. Conditions for entry of default judgment

16. Default judgment is predicated on the defendant not having appeared and participated in the proceedings. The summons clearly state that the condition precedent for entry of default judgment is the defendant's failure to respond to the summons. That condition was fulfilled because Mr. Palmer did fail to answer. There is no other condition anywhere in the official forms for the defendant to render himself liable to default judgment, nor in the F.R.Bankr.P., for that matter.

17. As to the plaintiff, the only condition for him to become entitled to default judgment is that he apply timely for it. That I did.

18. Consequently, I am now entitled to have the default judgment entered. It is not now that a condition subsequent can be imposed for me to receive the benefit which I am reasonably entitled to receive. To do so amount to changing the rules in the middle of the game. That is unfair surprise and inequitable.

19. But why would the bankruptcy court on its own initiative impose conditions subsequent on me to protect the interests of Mr. Palmer, the party that has only shown contempt for the court by ignoring the summons as well as my application for default judgment, which I served on him, not to mention all the contempt that Mr. Palmer has shown to me?

III. Lack of basis in fact for the recommendation

20. In his recommendation, Judge Ninfo contends the following:

> "9. Therefore, since Cordero has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment, in this Courts' opinion, the entry of the Default Judgment would be premature;"

A. The facts point to the loss of my property

21. Last January 10, the first and only pre-trial conference in the Adversary Proceeding was held. In preparation for it, I requested by letter of December 26 to Judge Ninfo that he require Mr. Palmer's lawyer, Mr. Stilwell, to attend or postpone the conference until he could. I grounded the request in the need to demand of Mr. Stilwell to help the court locate where Mr. Palmer was and to bring him to court, whose protection he had requested for his bankrupt company and where he should now answer my claims. In this vein, I stated the following:

> "Thus, as the very first step in insuring that Mr. Palmer does comply with the default judgment, the Court should require that Mr. Stilwell, who in his dealings with me held himself out as Mr. Palmer's attorney, attend the pre-trial conference."

22. I never received any answer to that letter. Mr. Stilwell did not attend the conference, not to mention Mr. Palmer. As a result, the subject of my application for default judgment against Mr. Palmer, which by all accounts is of no interest to anybody else, was not discussed.

23. I attended that conference telephonically and during the time between when I was brought in and was abruptly cut off, the discussion centered on my property at Plaintiff Pfuntner's Avon warehouse. Judge

Ninfo ordered that the parties inspect it there. Mr. Pfuntner's lawyer, David MacKnight, Esq.,[38] agreed to the inspection. I agreed to go to Rochester from New York City, where I live, for that purpose, and was asked to provide three dates when I could do so. Judge Ninfo indicated that within two days of the receipt of those dates, the court would inform me of the date chosen.

24. On January 29, I provided not three, but rather six dates when I could travel to Rochester, and communicated them not only to Judge Ninfo, but also to each of the parties. However, not two days, but rather over a month has gone by and I am still waiting to hear from the Judge about this date, and that despite my bringing it to his attention at a hearing on February 12.

25. Here it should be pointed out that since Judge Ninfo did not respond to my December 26 letter accompanying the application, did not give me any feedback on the application, did not discuss either with me, whether at the pre-trial conference or at any time in January, it is factually inaccurate to state in paragraph 10 of his recommendation that, "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 pro se litigant, has respectfully requested that the Court forward his Default Judgment Application to the District Court."

26. On February 11, I called Mr. MacKnight to ask him about the date for the inspection. His secretary Cindy said that he might be "on the other line" and was unavailable. I left a message with her for him to call me about this matter. He never returned my call. This shows that Mr. Pfuntner is unwilling or unable to allow my property to be inspected, even though he sued me for storage fees for storing my property and would reasonably be expected to be eager to show the court and me my property in order to establish his claim.

27. Hence, there is no basis in fact for Judge Ninfo to state that it is I who "has failed to demonstrate that he has incurred the loss for which he requests a Default Judgment." What has been demonstrated to date is that my property is nowhere to be seen. The only thing known is that at the Avon warehouse where Mr. Palmer abandoned my property there is a storage container with a label bearing my name. That is all that has been identified of my property: a label named Cordero!

B. Recommendation reveals unwarranted dismissal of my claims

28. At the pre-trial conference on January 10, I raised the objection and expressly saved it as such that my participation in the court-ordered inspection of my property and my finding it would not put and end

[38] David MacKnight, Esq., at Lacy, Katzen, Ryen & Mittleman, 130 East Main Street, Rochester, NY 14604, tel. (585) 454-5650, fax 585-454-6525.

to my claims. Weeks later I still maintained that position and restated it in my letter of January 29 to Judge Ninfo with copies to the other parties:

> "Thus, it should be understandable why, as I stated at the pre-trial conference, I will participate in this court-organized inspection without prejudice to any of my rights or claims to compensation asserted in my pleadings. Indeed, the negligence, recklessness, or fraudulent acts of the opposing parties have for more than a year now caused me an enormous waste of time, effort, and money as well as tremendous aggravation while searching for my property. I have appealed for justice to redress these wrongs. I remain committed to obtaining such justice together with the compensation through which it finds practical expression."

29. Why then, in spite of this unambiguous restatement of what I had already stated at the conference, does Judge Ninfo consider that I am entitled only to compensation for the damage to the property rather than to what I claimed in my pleadings? His position amounts to already having on his own motion ruled on the claims in my pleadings and dismissed all save one. Indeed, he states in paragraph 8 that:

> "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."

30. How can Judge Ninfo know when Premier became responsible for the storage of my property and under what circumstances it assumed liability given that discovery in this case has not even begun at all and Mr. Palmer failed to appear, let alone file an answer?!

31. Unfortunately, there is objective evidence to support the inference from that paragraph that in his mind Judge Ninfo has already dismissed those claims of mine: Last December 18, he held a hearing of Trustee Gordon's motion to dismiss my cross-claims of defamation and of reckless and negligent performance of his duties as trustee of Premier…and the Judge dismissed them!

    1) even though no discovery or disclosure had even begun;

    2) even though the other parties would assert the same or similar claims and defenses;

    3) even though there were genuine questions of material fact involving the Trustee's defamatory motivation when he made false written statements to both Judge Ninfo and Trustee Gordon's

supervisor at the United States Trustee in an effort to dissuade them from taking any action on my initial application of September 27, 2002, for a review of his performance and fitness to serve as trustee and thereby secure the personal benefit of remaining as trustee;

4) even though the Trustee had abandoned income-generating assets of Premier at the Jefferson-Henrietta warehouse, failed in his duty to examine Premier's "records and books"39 in that warehouse, which would have enabled him to find other Premier assets located elsewhere,40 and when others were actually found by third parties and me at the Avon warehouse, and the Trustee abandoned them too! No wonder the Trustee ended up with nothing but a No Distribution Report.

32. How could these facts, which went undisputed by Trustee Gordon, not elicit Judge Ninfo's curiosity to the point of causing him to want to know more through at least discovery, if not trial itself? For whatever reason these disturbing facts failed to do so and Judge Ninfo ordered, without findings of fact or discussion of applicable law, my cross-claims against Trustee Gordon dismissed. His order was filed on December 30, 2002. It is now pending on appeal in district court; see case no: 03cv6021L.

33. If Judge Ninfo can dismiss before discovery claims arising out of such egregious conduct on the part of an officer of the court and federal appointee, such as Trustee Gordon, can one reasonably expect that he will not dismiss claims that he has already so pre-judged as to dismiss through his negative recommendation my application for default judgment against a defendant who contemptuously ignored the warning in the summons by not appearing in his court or answering my complaint?

34. Whether there is the will or the method for examining rather than dismissing my claims, and even any others, for that matter, in this Adversary Proceeding, is a pertinent question in light of these facts:

---

[39] See §2-2.2.1 of the Trustee Manual, Chapter 7 Case Administration.

[40] This is precisely what did Mr. Christopher Carter, cellphone (585) 820-4645, owner of Champion Moving & Storage, located at 795 Beahan Road, Rochester, NY 14624; tel. (585) 235-3500; fax (585) 235-2105. At an auction held by M&T Bank, Premier's blanket lien holder, Mr. Carter bought Premier's income-generating assets in the form of storage contracts. Thereby he obtained the right to remove to his storage facility Premier's physical assets at the Jefferson-Henrietta warehouse consisting of storage containers, each of which was packed with the property belonging presumably to a single Premier customer, and office equipment, including Premier's business files, to which the Trustee had had access all along. I requested Mr. Carter to let me know the condition of my property. However, Mr. Carter informed me that no storage container bore my name. Then Mr. Carter looked in Premier's business files and found that Premier had assets, including storage containers, in the Avon warehouse. At my instigation, Mr. Carter informed M&T Bank thereof. In turn, the attorney for M&T Bank, Michael J. Beyma, Esq., tel. (585)-258-2890, at Underberg & Kessler, LLP, 1800 Chase Square, Rochester, NY 14604, tel. (585) 258-2800, fax (585) 258-282, informed me of this by letter with copy to Trustee Gordon.

Although the Proceeding was filed last October 3,[41] and the pre-trial conference was held on January 10, there has been no scheduling or planning of any disclosure or any discovery except the so far unenforced requirement to inspect my property. None of the objectives of a Rule 16 pre-trial conference was attained. Was any really sought? Nobody could be seriously expecting that with the sole inspection of my property all the claims, counterclaims, cross-claims, and third-party claims among nine parties would disappear by art of magic. What reason could possibly explain such counter-intuitive expectation?

C. Default judgment application is not premature since failure to appear is complete

35. Judge Ninfo writes in paragraph 9 that "the entry of the Default Judgment would be premature." Is that what is really premature here?

36. In paragraph 6 of his recommendation, Judge Ninfo writes as follows"

> "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 damage, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993;"

37. Now compare that formulation with the following:

> '…it may be determined whether Cordero has incurred any loss or damage based on whether all the property is accounted for and, if so, whether it is in the same condition as when delivered in 1993'

---

[41] Paragraph 4 of Judge Ninfo's recommendation states that "On September 27, 2002, an Adversary Proceeding was commenced by James Pfuntner…." Only the Adversary Proceeding Cover Sheet and the complaint bear that date. The summons bears the date of October 3, 2002, written by Deputy Clerk Karen Tacy as well as the rubber stamp mark "RECEIVED OCT 04 2002," presumably placed there when the summons was received at the office of Mr. MacKnight.
It should also be noted that the same paragraph mentions the following: "4….various storage containers previously stored by Premier, of which James Pfuntner was the successor storage entity." However, Mr. Pfuntner identifies himself in his complaint as just the lessor. In paragraph 12 he writes as follows: "Before the filing of the Debtor's Petition in reorganization, Plaintiff and Debtor [Mr. Palmer] entered into a lease providing for monthly rent of $2,170 in respect to the Property [the warehouse at Avon]…14. Debtor defaulted in making monthly payments before the filing of its Petition."

38. Which of the two formulations would convey to a reasonable person the impression that the court has not already reached a "premature" finding as to the extent to which and the condition in which the property will be found and the element of liability?

39. Given that Mr. Palmer led his company into bankruptcy and liquidation, did not provide for insurance that he nevertheless charged me for –thus providing the basis for the claim of insurance fraud-, abandoned my property in a warehouse, did not dare list in the bankruptcy or the liquidation forms either my property or even assets of his company in that warehouse, and given that this warehouse had been closed down and that it was not in active use, what would a person who had reached no "premature" decision think more likely to be the case: that the property in question was in the same condition as it was in 1993 or in a worse condition?

40. Now add to that what I brought to the attention of Judge Ninfo and the parties at the pre-trail conference and in my January 29 letter:

> "if the warehouse has been closed for a long time and nobody fumigated against vermin or repaired a leaky roof or kept the temperature at an adequate level, my property may be worm-eaten, rat-gnawed, and moldy."

41. Would it not be "premature" to dismiss out of hand, before discovery or disclosure had even begun, that the property abandoned under such circumstances in a closed-down warehouse might likely have sustained some damage?

42. And how probable is it that "all of the Cordero Property is accounted for?" I sent to Judge Ninfo and all the parties the list of items of showing that my property includes the following items, inter alia:

1) Queen bed mattress and box spring
2) a leather recliner
3) a pull-out-bed sofa
4) a mahogany dresser and its large mirror
5) a center table with chiseled glass top
6) a corner table
7) a TV cabinet with rotating top
8) metal lamp stands
9) two large metal trunks
10) a framed picture
11) wall-to-wall pieces of carpet
12) bed and personal clothing
13) more than 30 cardboard boxes, some described as "large" and containing, among other things
14) lots of professional books
15) Tiffany lamps
16) a large microwave oven
17) lamp shades
18) cooking utensils
19) serving tableware, etc.

43. There are so many items in that property because I left all my household belongings in storage when I went to live in a student residence at the University of Michigan Business School.

44. It is quite unlikely that all of it would fit in the single storage container that is said to be labeled with my name and found in the Avon warehouse. This is so because for storage, as opposed to transportation, objects cannot be placed on the furniture lest they warp it or cause a discoloration mark. Hence, is it not "premature" for Judge Ninfo, against the weight of the evidence available and in the absence of the unenforced required inspection, to raise the expectation that "all of the Cordero Property is accounted for"?

45. In the same vein, this is the expensive and practically new property bought in Rochester within a period of 21 months by a professional without children and living alone who spent most of his time away at the office. Mr. Palmer, the irresponsible owner of the storage company that went bankrupt, abandoned it only to be found in the closed down warehouse of Lessor Pfuntner, who although not getting paid rent for over a year did not sue for fees from the defendants, including me, until through my search he became aware of the property there or of the possibility of sticking the unpaid bills on those whom he never cared to inform that their property had been left there. How likely is it that the lessor spent his own money to keep the warehouse at warehouse standards? Therefore, would it be "premature" and imprudent to fear that the property, in the hands of those people, could have been damaged?

46. Judge Ninfo also had reason to consider the possibility that my property had been stolen, for Mr. Pfuntner himself wrote in his complaint as follows"

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

47. Although Trustee Gordon[42] denies this allegation in paragraph 1 of his answer, the fact remains that until discovery –which has not even begun- has taken place, the trial is conducted, and findings are made, that allegation remains in dispute and thus, as a possible fact in the open mind of a cautious person.

[42] Kenneth Gordon, Esq., of Gordon & Schaal, 100 Meridian Center Blvd., Suite 120, Rochester, NY 14618, tel. (585) 244-1070, fax (585) 244-1085.

48. Hence, would it have been well-founded or rather "premature" as a pre-conceived idea to consider and even express the possibility that thieves might have walked in and out of that warehouse with some of that property so that upon inspection not "all of the Cordero Property is accounted for"?

49. Under these circumstances, it is beyond comprehension why Judge Ninfo has volunteered to oppose my application for default judgment…and to do so when Mr. Palmer, the party directly affected by it, failed to oppose himself or through his lawyer, Mr. Stilwell, both my claims in the pleadings and my application for default! *MIND-BOGGLING!*

50. Whether my application is "premature" is an argument that Mr. Palmer should be making, not Judge Ninfo. How can I reasonably expect him to examine my application impartially when he has already decided on his own initiative what I am not entitled to and since when Mr. Palmer is liable to me, if he is?

IV. No grounds in law for requiring applicant to demonstrate anything

51. Indeed, how open-minded does Judge Ninfo sound when he writes thus:

> "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." (emphasis added)

A. Pleadings only require to state a claim and demand judgment

52. How could I possibly have "failed to demonstrate" anything when Judge Ninfo has not even scheduled any discovery or disclosure, the trial has not taken place, and I am not required by law to demonstrate anything? All the law requires me to do in order to apply for default judgment is this:

> F.R.Civ.P. "Rule 8. [made applicable by F.R.Bankr.P. Rule 7008(a)] General Rules of Pleading
>
> (a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain…(2) **a short and plain statement of the claim** showing that the pleader is entitled to relief, and (3) **a demand for judgment for the relief** the pleader seeks. Relief in the alternative or of several different types my be demanded.

(e) Pleadings to be Concise and Direct; Consistency

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense **alternatively** or **hypothetically**…**regardless of consistency** and whether based on legal, equitable, or maritime grounds…" (emphasis added)

53. If I, as a pleader, could under the law make 'alternative, hypothetical, and even inconsistent claims' and still be entitled to default judgment if the defendant failed to appear and defend –see Rule 7003 and Rule 3- how can Judge Ninfo require that I "demonstrate," not to mention affirm that I have "failed to demonstrate," what I am entitled to?

B. Rule 55 only requires showing Defendant's failure to plead

1) The clerk's legal obligation to enter default and judgment

54. The only failure that I had to make "appear by affidavit or otherwise" in order to be entitled to default judgment was Mr. Palmer's. This follows from F.R.Bankr.P. Rule 7055, which makes applicable Rule 55 of the F.R.Civ.P. The latter provides that:

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend** as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

55. This provision applies squarely to the instant situation. Thus, in my December 26 Application for Entry of Default, I made the necessary request and averment:

"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."

56. Yet, the clerk failed to fulfill his obligation to enter –"shall enter"- the default. Why did he not do so until February -although he timely received my application in December- and only after I had to make

all those phone calls and even wrote to Judge Ninfo in this matter? On "Page 4 of 6" of the recommendation Judge Ninfo writes "that the Clerk certified and entered the Fact of Default on 2/4/2003." That fact was such back on the day when the Clerk received the application. He did not have to wait for any recommendation or any further action on my part to enter the fact of Mr. Palmer's default.

57. Likewise, as to the default judgment and even if under 28 U.S.C. §157(c)(1) it is for the district, not the bankruptcy, court to enter it, the provisions of Rule 55 are clear as to the requirements for it:

> (b) Judgment. Judgment by default may be entered as follows:
>
> (1) When the plaintiff's claim against a defendant is for a sum certain or for a **sum which can by computation be made certain**, the clerk upon request of the plaintiff and upon affidavit of the amount due **shall** enter judgment for that amount and costs against the defendant, if the defendant has been **defaulted for failure to appear** and is not an infant or incompetent person." (emphasis added)

58. There is no requirement that the plaintiff "demonstrate" the extent of his loss or what fees he is entitled to recover. Once the defendant has been "defaulted for failure to appear," the plaintiff only has to request a sum certain, which here is $24,032.08, and the clerk has the legal obligation "to enter judgment for that amount."

2) The court's legal obligation "in all other cases"

59. Rule 55(b)(2) applies only "In all other cases," that means, when the defendant has appeared, but has failed to defend. That is not the instant case given that (b)(1) applies squarely. Likewise, if the amount of plaintiff's claim is for a sum certain, as is here, $24,032.08, then "it is [not] necessary to take an account or to determine the amount of damages."

60. Indeed, if even when the plaintiff's claim is for a sum certain and the defendant has been defaulted for failure to appear the court could still decide on its own initiative that it nevertheless wants to take an account or determine the amount of damages, then there would be no case where (b)(1) would find application. Under such construction, "the claim for a sum certain or for a sum which can **by computation** be made certain" (emphasis added) would never give rise to the legal obligation that "the clerk upon request of the plaintiff…shall enter the judgment for that amount." Such a construction of (b)(2) would render (b)(1) inoperative by making the clerk enter judgment only at the will of the court.

61. But in the instant case Judge Ninfo has not even invoked the provisions of (b)(2). He simply has created an obligation, nowhere to be found in Rule 55 or elsewhere, for the plaintiff to "demonstrate" that he is entitled to damages, to what type of them, and in what amount.

62. If the clerk and the court failed to fulfill their legal obligations under Rule 55, that can have serious implications. During the time that the entry of default and judgment have been delayed, I have been prevented from taking whatever action I could to enforce the judgment. That is additional time during which Mr. Palmer could spend, disperse, or otherwise dispose of assets with which to satisfy the judgment. He could also have used them to pay the judgment obtained by M&T Bank,[43] the holder of a blanket lien against Premier, thereby reducing the pool of funds from which to satisfy my judgment. Likewise, I have also been forced to further litigate this matter, which costs me an enormous amount of time, effort, and aggravation.

C. No notice and opportunity to object afforded under 28 U.S.C. §157

63. Judge Ninfo not only imposed this obligation before discovery, let alone the trial, has even begun, but he has also done so without affording me a fundamental constitutional due process right, namely, that of notice and opportunity to be heard before his recommendation, a judicial act aimed at depriving me of a right, is acted upon by the district court. That he had an obligation to do so flows from 28 U.S.C. §157(c)(1):

> 28 U.S.C. §157(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which **any party has timely and specifically objected.**" (emphasis added)

64. How could any party 'specifically object' to a recommendation if the bankruptcy judge does not give the party at least notice that he is making any recommendation at all?

65. This is all the more obvious because neither the law nor the rules of procedure impose upon the district court the obligation to serve a copy of the recommendation on all the parties and ask them "Do you want to object to anything here?" Far from it, the district court would understand the non-

[43] M&T Bank, Manufacturers & Traders Trust Bank, 255 East Avenue, Rochester, NY 14604.

receipt of any objection as the decision of each of the parties to accept the recommendation, even though the only reason why they did not object was the bankruptcy court's failure to give them notice thereof.

66. In the instant case, even though I sent my application for default in December, Judge Ninfo did not inform me that he was taking no action on it, and even when I had to phone both the district and the bankruptcy courts to inquire about the matter and finally had to write to him, the Judge neither answered the letter nor sent me a copy of his recommendation…and even when I found out on my own initiative that he had made a recommendation and asked the clerk of the bankruptcy court to send me a copy, it was not sent, so I had to ask for it again!

67. The due process concept of notice and opportunity to be heard can also be found in Rule 55(b)(2) itself:

> Rule 55(b)
>
> "(2) By the court
>
> "In all other cases the party entitled to a judgment by default shall apply to the court therefor…If, in order **to enable the court to enter judgment** or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, **the court may conduct such hearings** or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States." (emphasis added)

68. If the court does not give notice that it will do nothing about an application for default, and does not give notice of the requirement to "demonstrate" that it has come up with, and does not give notice that the plaintiff has "failed to demonstrate" what he did not know he had to, and does not give notice of its recommendation not to enter default judgment, and does not give notice of the plaintiff's right to object to its recommendations, under what circumstances would the court deem "necessary and proper" to conduct such hearings?

1) Unequal application of the notion of timeliness

69. In this context, note that §157(c)(1) requires the objection to be made timely. Now, how can a party not only object, but also do so timely when he does not even know that a recommendation was made,

let alone when it was made? Had I not insisted on obtaining a copy of the recommendation, the district court could make or could already have made a decision along the lines of Judge Ninfo's recommendation and then, if anybody notified me of it, post-mortem as it were, could I object timely?

70. This issue of timeliness acquires special significance in the instant case. Although I timely mailed last January 27 a motion under Rule 8002(c)(2) to extend time to file a notice of appeal, and the opposing party, Trustee Kenneth Gordon, Esq., acknowledged on page 2 of his Memorandum of Opposition that it had been timely filed on January 29, Judge Ninfo found that it had been untimely filed on January 30, and without discussing at the hearing my objection to this discrepancy, or making any findings thereon in the order, denied the motion…because of its disputed untimeliness of one day! Similarly, my arguments that the complete-on-mailing and the three additional days rules of F.R.Bankr.P. Rule9006(e) and (f), respectively, were applicable to Rule 8002 were summarily denied.

71. Given the paramount importance that Judge Ninfo attaches to timeliness, which in his view trumps the right of appeal even in the case of a pro se litigant such as I am, one would reasonably expect him to give notice of his recommendations -when he finally decided to make them- on the application to enter default judgment to the parties, and particularly to the applicant, so that they could timely object to them if they deemed it warranted.

V. Implications that the recommendation has for the parties

72. What Rule 55 in conjunction with Rule 60 provides is for default judgment to be entered and then for the defendant to take the trouble to come to court to show cause why the judgment should be vacated.

73. Judge Ninfo's recommendation immunizes the defendant against any adverse consequences of failing to appear and defend, thereby rendering the concept of judgment by default meaningless in theory and ineffective in practice. It amounts to advocating that the district court vacate the judgment before it was ever entered. What is so disconcerting, in addition to sweeping aside the applicable provisions of law, he volunteers his advocacy on behalf of a defendant that never showed respect for the court and its rules and never even cared whether default and judgment were entered against him. We should all be so lucky if we ever showed contempt for the court!

74. If his recommendation were followed and no default were entered, the most ironic and unjustifiable situation would arise where the defaulting party would be held harmless from the consequences of his contemptuous non-appearance in the court whose protection he had initially applied for and he would have time to spend, disperse, or otherwise make his assets unreachable, while I, who complied with all the requirements of answering to the Plaintiff as well as claiming against Mr. Palmer and applying

for default against him, through the pre-trial imposition of a non-statutory burden to "demonstrate," would be deprived of my right to obtain judgment against a defaulted defendant

VI. Order sought

75. On the strength of the foregoing, I respectfully request that the District Court:

1) find Judge Ninfo's recommendation lacking foundation in fact and in law, reject it, and enter default judgment against Mr. David Palmer as I applied for it;

2) vacate any order or decision that it may have already taken that denies or limits my application for default judgment, and grant the request in 1) above;

3) investigate and determine the circumstances under which the clerk of the bankruptcy court failed to enter default upon the application therefor that I timely mailed to him on December 26, 2002, and which he only entered on February 4, 2003;

4) as provided under 28 U.S.C. §157(d) and for cause shown, including the disregard of the facts, the imposition of obligations with no foundation in law, the questions about impartiality, the pre-judgment and apparent dismissal of issues, the lack of any progress in this case, the dismissal of my claims against Trustee Gordon even before any discovery was had although other parties will assert the same or similar claims and defenses, etc., withdraw the entry and the carrying into effect of said default judgment and of the rest of the Adversary Proceeding from the bankruptcy court and bring it to itself.

Dated: March 2, 2003

Dr. Richard Cordero

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE: PREMIER VAN LINES, INC,

Debtor.

Chapter 7

Case No: 01-20692

JAMES PFUNTER,

Plaintiff,

A.P. 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.

RICHARD CORDERO,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

TRUSTEE'S MEMORANDUM OF LAW IN OPPOSITION TO CORDERO'S MOTION TO EXTEND TIME FOR APPEAL

PROCEDURAL HISTORY

By Notice of Motion dated December 5, 2002, the Trustee, Kenneth W. Gordon (hereafter "Trustee"), sought dismissal of the cross-claims asserted by Richard Cordero (hereafter "Cordero") against the Trustee. The motion to dismiss was opposed in writing by Cordero's submission to the Court dated December 10, 2002. Argument on the motion was heard by Bankruptcy Court on December 18, 2002. The Court ruled from the bench on December 18, 2002 that Cordero's cross-claims against the Trustee would be dismissed.

On December 23, 2002, Bankruptcy Court (Hon. John C. Ninfo, II), granted the Trustee's motion to dismiss the cross-claims against the Trustee alleged by Cordero. The Order dismissing the cross-claims was entered in the Bankruptcy Court Clerk's Office on December 30, 2002, and notice of its entry together with the Order itself was mailed to Cordero and the Trustee. Cordero filed a Notice of Appeal with the Bankruptcy Court Clerk on January 13, 2003, fourteen days after the entry of the Order appealed from. The Trustee has pending before the United States District Court for the Western District of New York a motion to dismiss the appeal as untimely. District Court (Larimer, J.) has issued a motion scheduling order requiring any responding papers to be filed with District Court no later than February 14, 2003. On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal.

THE TIME LIMITS OF 8002 MUST BE STRICTLY APPLIED

Bankruptcy Rule 8002(a) provides that "[t]he notice of appeal shall be filed with the clerk within 10 days of the date of the entry of the judgment, order, or decree appealed from." It is well settled that the ten day rule is jurisdictional and requires strict compliance with its terms. Twins Roller Corp. v. Roxy Roller Rink Joint Venture, 70 B.R. 308, 310 (USDC SDNY 1987). Strict adherence to the ten day requirement serves the dual purpose of assuring prompt appellate review and providing a definite point at which, in the absence of a notice of appeal, litigation will come to and end. In re Mowers, 160 B.R. 720, 724 (USBC NDNY 1993). Cordero's notice of appeal was filed fourteen days after the Order appealed from was entered. As such, it was filed late. Cordero's argument to the Court that it should excuse his late filing of his Notice of Appeal simply on general public policy grounds by not strictly applying the ten day rule flies in the face of established precedent.

Cordero argues also that permission to file late should be allowed because of "excusable neglect." While Cordero never details for the Court what constitutes the "excusable neglect" he attempts to rely on, it is clear from Cordero's papers that he acknowledges having received notice of the entry of the Court's Order by January 2, 2003, a full week before his Notice of Appeal was due to be filed. Instead of taking steps to timely file his Notice of Appeal by January 9, 2003, Cordero chose to mail his Notice of Appeal to the Court on January 9, 2003 which resulted in its filing on January 13, 2003. Cordero offers as excuses for his late filing the following: 1) Mailing the Notice of Appeal on January 9, 2003 was sufficient; 2) Rule 9006 extended his time to file the Notice of Appeal because the Order was mailed to him; 3) he was mistaken or ignorant as a pro se debtor as to how the ten day rule applied; 4) the Clerk's office did not provide him with forms and instructions; 5) no prejudice would result to the Trustee.

CORDERO OFFERS NO ACCEPTABLE "EXCUSABLE NEGLECT"

Bankruptcy Rule 8002(c)(2) allows the Court on a showing of "excusable neglect" to extend the time within which to file a notice of appeal. "Case law from the Second Circuit reveals that the 'excusable neglect' standard under 8002(c) is strict and must be narrowly applied. [citations omitted] The standard is summarized as follows:

> The requirement of a timely notice of appeal is 'mandatory and jurisdictional.' ... [A] finding of 'excusable neglect' must be based on either acts of someone other than appellant or his or her counsel, or some extraordinary event. ...

[citations omitted]." In re Mowers, supra. at 725.

Delay caused by the U.S. mail, whether in sending the Order or in filing the notice of appeal, does not constitute "excusable neglect." In re Schmidt, 34 B.R. 284, 286 (USBC MN 1983). Cordero argues that the mere mailing of the notice of appeal on the last day to file it made it timely. Acceptance of Cordero's argument would be tantamount to judicially amending Rule 8002(a) by inserting 'mailed to' for 'filed.' See, In re Schmidt, supra. Cordero also argues that his filing late by mail should be excused by the fact that the Order appealed from was mailed to him by the clerk's office. "The fact that the order is served by mail does not entitle the parties to any additional time." Id. See also, In re Sanders, 59 B.R. 414, 416 (USDC MT, 1986).

Cordero's professed ignorance or mistake as a pro se debtor is equally unavailing as "excusable neglect." The fact that a party is pursuing a matter pro se does not constitute excusable neglect under Bankruptcy Rule 8002. In re Ghosh, 47 B.R. 374, 375 (USDC EDNY 1984). The standard for determining "excusable neglect" is strict and must be applied narrowly. Id. Even if the Court were not to narrowly apply the "excusable neglect" provisions and instead adopted a more liberal standard looking at the totality of the circumstances (see e.g., In re HML,II, Inc., 234 B.R. 67, 71-72 (USBAP 6th Cir. 1999)), Cordero's proffered excuse would not

merit extension of time for his filing of the notice of appeal. Under Bankruptcy Rule 8002, it is well established that the misreading, ignorance or misinterpretation of a procedural rule does not constitute "excusable neglect" for the purpose of allowing a late filed notice of appeal under Rule 8002. Id.

Cordero admits he received the Order appealed from on January 2, 2003, a full week before his appellate rights expired. He chose to mail the notice of appeal to the Court, and then did not even mail the notice of appeal until January 9, 2003, the day on which his right of appeal expired. He could have had no reasonable expectation that his notice of appeal would be timely filed. His complaint that the clerk's office did not provide him with instructions or forms to file his appeal are of no moment as there is neither a statutory duty nor any case law that would suggest that the clerk's office was in any way obligated to provide him such documents or information. Moreover, by Cordero's own admission, he knew on December 18, 2002, when the Court issued its decision from the bench, that he intended to appeal. Cordero simply failed to follow the requirements of the Bankruptcy Rules, and now he seeks to blame others for his failure. Cordero offers no extraordinary circumstances to excuse his neglect for his late filing, and it would appear that the causes of his late filing were all within his control.

In the absence of any facts that would constitute "excusable neglect", Cordero instead suggests to the Court that a late filing should be allowed because no prejudice would result to the Trustee. Lack of prejudice alone would be insufficient to allow the late filing, but, moreover there would in fact be substantial continued prejudice to the Trustee if the late filing were allowed. The underlying Chapter 7 proceeding is a "no asset" case in which the estate has no funds to pay creditors and no funds to pay for administrative expenses incurred by the Trustee. As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is

$60.00.

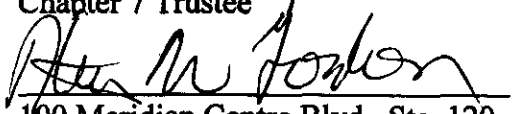
Rule 8002(a) exists in part to bring finality to litigation. To allow Cordero to continue to proceed with the untimely appeal would prejudice the Trustee by causing the continued expenditure of time and money without any hope of recovering the expenses through the estate. Conversely, it is hard to understand how Cordero has truly been prejudiced by the dismissal of his claims against the Trustee. Cordero's professed goal in his efforts throughout this case has been to recover his assets from the debtor. That goal has been preserved and arrangements are now being made between Cordero and the landlord in possession of Cordero's property for the inspection and return of the property to Cordero. If the equities are to be weighed by the Court, the scales should tip in favor of the Trustee on the issue of prejudice.

CONCLUSION

Cordero has failed to demonstrate any "excusable neglect" under Rule 8002 that would compel the Court to extend his time to file his notice of appeal. Accordingly, Cordero's motion should be denied.

DATED: Rochester, New York
February 5, 2003

KENNETH W. GORDON
Chapter 7 Trustee



100 Meridian Centre Blvd., Ste. 120
Rochester, New York 14618
(585) 244-1070

01-20692

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE PREMIER VAN LINES, INC.,

Debtor.

RICHARD CORDERO,

Third-Party Plaintiff,

DECISION AND ORDER

03-MBK-6001L

v.

DAVID PALMER,

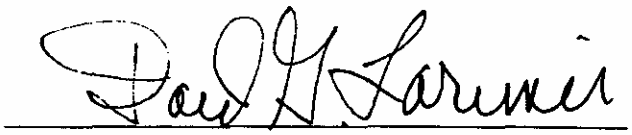
Third-Party Defendant.

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.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
March 11, 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 Cresent St.
Brooklyn, NY 11208

U.S. Bankruptcy Court

Western District of New York (Rochester)

- *Bankruptcy Petition #:* 01-20692 *Date filed:* 3/5/01
- *Assigned to:* Hon. John C. Ninfo, II
- Chapter 7, voluntary, no asset

* Parties *	* Attorneys *
PREMIER VAN LINES, INC., A CORPORATION dba North American Van Lines c/o 1829 Middle Road Rush, NY 14543 *Tax ID:* 16-1542181 * debtor *	**Raymond C. Stilwell** The Law Center at Williamsville 17 Beresford Court Williamsville, NY 14221 716-565-2000
KENNETH W. GORDON Chapter 7 Trustee 100 Meridian Centre Blvd. Suite 120 Rochester, NY 14618 * trustee *	
BONADIO & CO. LLP Corporate Crossings 171 Sully's Trail Suite 201 Pittsford, NY 14534-4557 * Accountant *	
WILLIAM E. BRUECKNER Ernstrom & Dreste, LLP 2000 Winton Road South Building One, Suite 300 Rochester, NY 14618-3922 * Attorney for Trustee *	
ROY TEITSWORTH 6502 Barber Hill Road Geneseo, NY 14454 * Auctioneer *	

Docket Proceedings

Date	Doc. No.	Docket Entry
3/5/01	1	Voluntary petition; [1-1] missing documents: Schedule A - J Exhibit A List of Equity Security Holders Statement of *Affairs:* business Statement of Executory Contracts Disclosure statement of counsel Summary of debts & property *Documents due:* 3/20/01 (gw) [EOD 03/07/01] [01-20692]
3/5/01	2	Filing fee paid; Receipt No.: 22039647 [2-1] (gw) [EOD 03/07/01] [01-20692]
3/7/01	3	Deficiency Notice and Designation of David J. Palmer as principal. [3-1] (gw) [01-20692]
3/7/01	4	Clerk's Note: DIP Information Sheet mailed to debtor and attorney and Chapter 11 Monograph mailed to Debtor's Attorney (gw) [01-20692]
3/8/01	5	Notice of Section 341 Meeting [5-1] 2:00 4/3/01 at Rochester Room 6080 (gw) [01-20692]
3/8/01	6	Order authorizing method of compensation or remuneration to debtor or insider of debtor for 30 days from date of Order for Relief and requiring Court approval for any compensation after 30 days; [6-1] Notices Mailed: 3 on 3/9/01 (gw) [EOD 03/09/01] [01-20692]
3/10/01	7	Court's BNC Certificate of Service re: Ch. 11 341 notice [5-1] . # of Notices: 38 were sent. (auto) [EOD 03/12/01] [01-20692]
3/16/01	8	Letter to debtor's attorney re returned 341 notices; 1 return [8-1] NYS Workers Compensation Board (gw) [01-20692]
3/20/01	9	Filed [9-1] missing documents: Summary of debts & property Schedule A - I Statement of affairs: non-business Disclosure statement of counsel. Case caption: dba. Supp. mailing matrix. Fee paid: #22040006. (rh) [01-20692]
3/22/01	10	US Trustee statement [10-1] re: Inability to Appoint Committee of

		Unsecured Creditors. (gw) [01-20692]
4/2/01	11	Order and Application to Employ Raymond C. Stilwell, Adair Law Firm, as Attorney for the DIP [11-1] (gw) [EOD 04/04/01] [01-20692] INTERNAL USE ONLY:
4/3/01	12	Notice of Motion for approval of salary to David Palmer, President [12-1] Hearing date and time: 9:30 4/11/01 at Rochester Courtroom. Filed by: Raymond Stilwell, Atty for DIP. Affidavit of service: Not Filed (gw) [EOD 04/04/01] [01-20692]
4/3/01	13	MINUTES [13-1] Section 341 Meeting - Adj. to 10:30 7/10/01 at Rochester Room 6080. Debtor, David Palmer, Pres. and atty for debtor appeared. D.L. Rasmussen for Primus Automotive Finance appeared. Debtor sworn & examined. Need to amend for pre-petition taxes IRS; Schedule E. Need to resolve landlord claims & reduce rental costs to turn to profitability. No plan available until tenancy issues are crystalized. (gw) [EOD 04/04/01] [01-20692]
4/5/01	14	Affidavit of US Trustee's Office in Opposition [14-1] re: motion for approval of salary to David Palmer, President [12-1] (gw) [01-20692]
4/11/01	15	Minutes [15-1] re: motion for approval of salary to David Palmer, President - granted. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; Trudy Nowak, U.S. Trustee, objections withdrawn. (lp) [01-20692]
4/11/01	16	Notice of Motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for deb Affidavit of service: filed (pz) [EOD 04/12/01] [01-20692]
4/11/01	17	Notice of Motion for turnover of property from Jim Pfutner, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] Hearing date and time: 9:30 4/18/01 at Rochester Courtroom Filed by: Raymond Stilwell, atty for debtor. Affidavit of service: filed (pz) [EOD 04/12/01] [01-20692]
4/12/01	18	Affidavit of Mailing re: motion for approval of salary to David Palmer, President [12-1] [18-1] (pz) [EOD 04/16/01] [01-20692]

4/16/01	19	Affidavit filed by David MacKnight for James Pfuntner in Opposition [19-1] re: motion for turnover of property from Jim Pfutner, for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (gw) [EOD 04/17/01] [01-20692] INTERNAL USE ONLY:
4/17/01	20	Order [20-1] granting motion for approval of salary to David Palmer, President. ORDERED that provided debtor is current on all other post-petition payables at the time of issuance of payroll, said debtor may compensate David Palmer in the sum of $334 per week pending further Order of this Court. [12-1] (pz) [01-20692]
4/18/01	21	Order [21-1] granting motion for turnover of property from Jim Pfutner no later than 4/18/01 @8:00 pm, punishment for contempt of Court; injunction against continued efforts to collect a debt in violation of the automatic stay [17-1] (gw) [01-20692]
4/18/01	22	Minutes [22-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. to 9:30 4/26/01 at Rochester Courtroom. If there is no objection to the motion by the U.S. Trustee, the motion will be granted and will be removed from the calendar. (lp) [EOD 04/19/01] [01-20692]
4/18/01	23	Minutes [23-1]Turnover of property and contempt: Motion granted. Restraints on the property are to be removed by today. Reserve on the request for attorney's fees. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Raymond Stilwell, Atty. for Debtor. Appearing in opposition: David MacKnight, Atty. for James Pfuntner. (lp) [EOD 04/19/01] [01-20692]
4/18/01	24	Amendment [24-1] re: Schedules D, E and G. Supplemental Matrix filed. FEE PAID #22040750 (gw) [EOD 04/19/01] [01-20692]
4/19/01	25	Notice of motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] Hearing Date and Time: 9:30 5/2/01 at Rochester Courtroom; Filed by: Ingrid Palermo, Atty for Harry & Gretchen Voss; Receipt No.: 22040773. Affidavit of Service Filed. (gw) [01-20692]
4/26/01	26	Minutes [26-1] motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] Adj. prior to calendara call to 9:30 5/2/01 at Rochester Courtroom. No appearances. (lp) [01-20692]

4/30/01	27	Letter filed by Raymond Stilwell confirming adjournment to 5/2/01 [27-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (gw) [01-20692] INTERNAL USE ONLY:
5/2/01	28	Minutes [28-1] re: motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta - granted effective on the close of business on 5/11/01 provided that the rent, pro-rated taxes and utilities for ten days are paid by the close of business on 5/3/01. If they are not paid the stay will be lifted. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: John Weider of counsel to Ingrid Palermo, Atty. for Harry and Gretchen Voss.; Trudy Nowak, US Trustee. Appearing in opposition: Raymond Stilwell, Atty. for Debtor. (lp) [EOD 05/03/01] [Edit date 05/04/01] [01-20692]
5/2/01	29	Minutes [29-1] re: motion To employ Accounting Firm of Bonadio & Co., LLP - granted. A statement that Harry and Gretchen Voss are not taking a position on the motion is to be in the order. Order to be submitted. Appearances: Raymond Stilwell, Atty. for Debtor; John Weider, Atty. for Harry and Gretchen Voss; Trudy Nowak, U.S. Trustee. (lp) [EOD 05/03/01] [01-20692]
5/7/01	30	Order [30-1] granting motion To employ Accounting Firm of Bonadio & Co., LLP [16-1] (gw) [EOD 05/09/01] [01-20692]
5/11/01	31	Order [31-1] granting motion for relief from stay (Sec. 362) re: leaseshold property at 10 Thruway Park, West Henrietta [25-1] (see order for details) NOTICE OF ENTRY ISSUED TO: John Weider, Raymond Stilwell and US Trustee on 5/14/01 (gw) [EOD 05/14/01] [01-20692]
7/11/01	32	MINUTES [32-1] Section 341 Meeting - Adj. to 1:00 10/2/01 at Rochester Room 6080. Debtor appeared and examined - Dave Palmer. Atty for Debtor appeared. Debtor has effectuated move, will save considerable expense ($9K). O/S Financials and UST fees to be paid by 7/17/01 or UST to move to convert. Dentor expects plan to be filed in late fall. (gw) [01-20692]
7/12/01	33	Address change for Debtor (gw) [01-20692]
7/12/01	37	Application for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of $9,176.44 plus disbursements of $895.84 for the period 1/26/01 - 7/10/01 [37-1] Filed by: Raymond Stilwell (gw) [EOD 07/19/01] [01-20692]

7/12/01	39	Application for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of $1,923.00 for the period 5/15/01 - 6/19/01 [39-1] Filed by: Raymond Stilwell, Atty for DIP. (gw) [EOD 07/19/01] [01-20692]
7/16/01	34	Monthly report of operation for March 2001 [34-1] (gw) [01-20692] INTERNAL USE ONLY:
7/16/01	35	Monthly report of operation for April 2001 [35-1] (gw) [01-20692]
7/16/01	36	Monthly report of operation for May 2001 [36-1] (gw) [01-20692]
7/19/01	38	Notice to creditors [38-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of $9,176.44 plus disbursements of $895.84 [37-1] : Last day to file objections: 8/13/01 ; (gw) [01-20692]
7/19/01	40	Notice to creditors [40-1] re: motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of $1,923.00 [39-1] : Last day to file objections: 8/13/01 ; (gw) [01-20692]
7/21/01	41	Court's BNC Certificate of Service re: default notice [38-1] . # of Notices: 50 were sent. (auto) [EOD 07/23/01] [01-20692]
7/21/01	42	Court's BNC Certificate of Service re: default notice [40-1] . # of Notices: 50 were sent. (auto) [EOD 07/23/01] [01-20692]
7/24/01	43	Amended Notice to creditors [43-1] re: motion for payment of professional fees to Raymond C. Stilwell as Attorney for in the amount of $9,176.44 plus disbursements of $895.84 [37-1]: Last day to file objections: 8/13/01; (Amended to clearly identify name of Attorney) (gw) [01-20692]
7/25/01	44	Affidavit of US Trustee's Office Supporting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of $1,923.00 [39-1] (gw) [01-20692]
7/25/01	45	Affidavit of U.S. Trustee's Office Supporting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of $9,176.44 plus disbursements of $895.84 [37-1] (gw) [01-

		20692]
7/27/01	46	Certificate of mailing from BNC with original notice re: Amended default notice [43-1] ; [46-1] (gw) [EOD 07/30/01] [01-20692]
9/17/01	47	Monthly report of operation for June 2001 [47-1] (gw) [01-20692]
10/2/01	56	MINUTES [56-1] Section 341 Meeting - Adjourned to 10/23/01 @1:00 Room 6080. Hearing canceled. (gw) [EOD 11/09/01] [01-20692] INTERNAL USE ONLY:
10/11/01	48	Order [48-1] granting motion for payment of professional fees to Raymond C. Stilwell as Attorney for DIP in the amount of $9,176.44 plus disbursements of $895.84 [37-1] (gw) [EOD 10/12/01] [01-20692]
10/11/01	49	Order [49-1] granting motion for payment of professional fees to Bonadio & Co. as Accountants to DIP in the amount of $1,923.00 [39-1] (gw) [EOD 10/12/01] [01-20692]
10/22/01	50	Ex Parte Application & Order [50-1], shortening time for hearing on sale of debtor's base business and to employ its principal Returnable 10/29/01 @11:00 am Rochester Courtroom. (gw) [01-20692]
10/23/01	51	MINUTES [51-1] Section 341 Meeting - Adj. to 1:00 10/30/01 at Rochester Room 6080. No appearances. Counsel for debtor requested adjournment. (gw) [EOD 10/24/01] [01-20692]
10/29/01	52	Minutes [52-1] Sale of property outside the ordinary course of business for the debtor's base of business: Motion withdrawn. The buyer does not want to go forward. Appearances: Raymond Stilwell, Atty. for Debtor; David MacKnight, Atty. for James Pfuntner, landlord; Trudy Nowak, U.S. Trustee. (lp) [EOD 11/01/01] [01-20692]
11/6/01	55	MINUTES [55-1] Section 341 Meeting - Adj. to 1:00 2/26/02 at Rochester Room 6080. Debtor, David Palmer, appeared and examined. Atty for Debtor appeared. Business ceased trucking operations. F/S not filed. UST fees not current. Debtor to consent to conversion upon UST motion unless buyer can be located in the interim. (gw) [EOD 11/08/01] [01-20692]

11/8/01	53	Motion re: for conversion to Chapter 7 and in the alternative, for dismissal of case Returnable 12/20/01 @9:30 Rochester Courtroom [53-1] Filed by: US Trustee's Office. No Fee Required. (gw) [01-20692]
11/8/01	54	Letter to debtor and debtor's attorney advising that they must both appear on the return date of the Motion to Dismiss or Convert in the event written opposition is filed. [54-1] (gw) [01-20692]
11/13/01	57	Certificate of mailing from BNC with original notice re: motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] ; [57-1] (gw) [EOD 11/14/01] [01-20692]
12/18/01	58	Affidavit of Ingrid Palermo, Atty for Harry and Gretchen Voss in Support [58-1] of motion for conversion to Chapter 7 and in the alternative, for dismissal of case [53-1] (gw) [01-20692] INTERNAL USE ONLY:
12/18/01	59	Affidavit of Mailing re: affidavit/in support of motion to Dismiss or Convert [58-1] [59-1] (gw) [01-20692]
12/20/01	60	Order [60-1] granting motion for conversion to Chapter 7 [53-1] (gw) [01-20692]
12/21/01	--	Utility event to update the Estimated Number of Employees, Estimated Number of Equity Security Holders and the Small Business fields after conversion to a Chapter 7 . (gw) [01-20692]
12/21/01	61	Clerk's Note: Copy of petition, schedules and amendments sent to US Trustee's office on 12/21/01 [61-1] (gw) [01-20692]
12/27/01	62	Order [62-1] directing debtor to file final report and account within 15 days; and directing the attorney for debtor to file a fee application within 60 days (See Order for further details.) Copy mailed to Debtor, Debtor's Attorney and U.S. Trustee. (cc) [01-20692]
12/28/01	63	Notice of Sec. 341 Meeting : Meeting set for: 11:00 1/24/02 at Rochester Room 6080 Government Claim Deadline: 7/1/02 Last day to file claims: 4/24/02 . Kenneth Gordon appointed trustee (asf) [01-20692]
12/30/01	64	Court's BNC Certificate of Service re: 341 notice [63-1] . # of Notices: 51 were sent. (auto) [EOD 12/31/01] [01-20692]

1/14/02	65	Letter to debtor's attorney re returned 341 notices; 1 returns [65-1]Premier Van Lines Inc. (pf) [01-20692]
1/18/02	66	Order [66-1], to extend time to file DIP Final Report and account Time extended to:1/22/02 (pf) [EOD 01/22/02] [01-20692]
1/24/02	67	Final report and account [67-1] with statement as to additional creditors. Amendment cover sheet filed also Amending Schedule E. (pf) [EOD 01/25/02] [01-20692]
1/25/02	68	Administrative Claims Bar Notice under Rule 1019: [68-1] Administrative Claims Deadline: 3/29/02 (pf) [01-20692]
1/26/02	70	MINUTES [70-1] 341 Mtg. - Adj. to: 2:00 2/8/02 at Rochester Courtroom. Asset Case. Need Completer List of all assets at both locations. Payroll info and W2, Corp. Tax return for 2000., Revenue & Expense reports and disk masters and bank records. Accts Receivable details and Closeout Corp. accts. (pf) [EOD 01/30/02] [01-20692]
1/27/02	69	Court's BNC Certificate of Service re: administrative claims bar notice [68-1] . # of Notices: 39 were sent. INTERNAL USE ONLY: (auto) [EOD 01/28/02] [01-20692]
2/6/02	--	Debtor's home address:Premier Van Lines c/o 1829 Middle Road, Rush, NY 14543 (pf) [01-20692]
2/8/02	71	MINUTES [71-1] 341 Mtg. - Debtor(s) sworn,examined; MC; Tr, db atty appeared. Debtor to produce 1999 and 2000 Corp. Tax Returns, Receipts for expenses not shown in Quicken, Registration information for vehicles, invoices for A/R and details on jobs still needing invoicing, info on $4000.00 security deposit held by Ryder, Franchise agreement from Jeff Rd. and Quicken printout, CNB register and M & T Equity Loan by 2/28/02. ASSET CASE. Appearance by debtor and President of Corporation David Palmer. (pf) [EOD 02/14/02] [01-20692]
2/28/02	73	Application re: for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] Filed by: Raymond C. Stilwell, Esq. Afdt of service filed. Period of Services: 7/16/01-2/26/02. (pf) [EOD 03/05/02] [Edit date 04/05/02] [01-20692]

3/4/02	72	Order [72-1], To employ Attorney for Trustee William E. Brueckner (pf) [01-20692]
3/8/02	74	Notice to creditors [74-1] re: motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of $3957.92 [73-1] : Period of servieces 7/16/01-2/26/02 Last day to file objections: 4/1/02 ; (pf) [01-20692]
3/10/02	75	Court's BNC Certificate of Service re: default notice [74-1] . # of Notices: 91 were sent. (auto) [EOD 03/11/02] [01-20692]
3/19/02	76	Objection - No hearing requested. Filed by Kenneth W. Gordon, chapter 7 t opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of 3957.92 [73-1] (pf) [EOD 03/21/02] [Edit date 03/21/02] [01-20692]
3/20/02	77	Statement of the United States Trustee regarding Application for Fees filed by Trudy Nowak, UST not opposing motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of $3957.92 [73-1] (pf) [EOD 03/21/02] [Edit date 04/05/02] [01-20692]
3/25/02	78	Application for payment of professional fees to Bonoadio & Co as Accountants in the amount of $4699.50 [78-1]for the period 7/1/02-12/20/01. Filed by: Raymond C. Stilwell as atty for debtor (pf) [EOD 04/03/02] [01-20692] INTERNAL USE ONLY:
3/29/02	80	Motion re: Request for payment to pay landlords the sum of $40,001.32Sec. 503 (b) [80-1] Filed by: John Weider, Esq. (Clerk's note: called atty to send in Notice of Motion to set hearing date). (pf) [EOD 04/05/02] [01-20692]
4/3/02	79	Notice to creditors [79-1] re: motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of $4699.50 [78-1] : Last day to file objections: 4/26/02 ; (pf) [01-20692]
4/5/02	81	Court's BNC Certificate of Service re: default notice [79-1] . # of Notices: 91 were sent. (auto) [01-20692]
4/8/02	82	Certificate of mailing from BNC with original notice re: motion for payment of professional fees to Bonoadio & Co as Accountants in the

		amount of $4699.50 [78-1] ; [82-1] (pf) [EOD 04/10/02] [01-20692]
4/10/02	83	Statement of the United States Trustee regarding Application of Fees filed by, Trudy Nowak, Esq, supporting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of $4699.50 [78-1] No objection. (pf) [01-20692]
4/15/02	84	Notice of Motion Sec. 503 (b) directing payment of an administrative expensefor base rent, taxes, and interest related to Premier Van Lines Inc. occupancy of 10 Thruway Park, West Henrietta, NY for landlords Harry F & Gretchen A. Voss. [84-1] Hearing date and time: 9:30 5/8/02 at Rochester Courtroom Filed by: John R. Weider, Esq. Affidavit of service: filed. (Clerk's note: called atty to amend time to 11:00 a.m.). (pf) [EOD 04/17/02] [01-20692]
4/29/02	85	Amended Notice [85-1]re: Motion for an Order pursuant to Sec. 503(b) directing payment of an administrative expense for base rent, taxes and interest related to Premier Van Lines, Inc.'s occupancy of 10 Thruway Park, West Henrietta, NY [84-1] Hearing Date & Time: 11:00 5/8/02 at Rochester Courtroom. Filed by John R. Weider, Atty for Harry F. and Gretchen A. Voss. Affidavit of service filed. (cc) [01-20692]
5/8/02	86	Minutes [86-1] re: motion Sec. 503 (b) directing payment of an administrative expense - granted. Order to be submitted. Appearances: John Weider, Atty. for Harry & Gretchen Voss; Kenneth Gordon, Trustee. (lp) [EOD 05/09/02] [01-20692] INTERNAL USE ONLY:
5/8/02	87	Motion re: by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] Filed by: Timothy P. Johnson, Esq of Underberg & Kessler. Affidavit of service: Filed. FEE PAID #22049708. Returnable 5/15/02 at 11:30, Rochester Courtroom. (asf) [EOD 05/09/02] [01-20692]
5/10/02	88	Order [88-1] granting motion Sec. 503 (b) directing payment of an administrative expense [84-1] (pf) [EOD 05/13/02] [01-20692]
5/17/02	89	Order [89-1] granting motion by Manufacturers and Traders Trust Company for relief from stay (Sec. 362) re: Accounts, inventory, equipment and general intangibles (excluding titled vehicles) [87-1] (cc) [EOD 05/20/02] [01-20692]

5/29/02	90	Order [90-1] granting motion for payment of professional fees to Bonoadio & Co as Accountants in the amount of $4699.50 [78-1] (pf) [01-20692]
6/13/02	91	Notice to creditors [91-1] re: Trustee's Intent to abanon Property: All assets of Premier Van Lines, Inc. ; Deadline for objections: 7/2/02 Scheduled date: 7/3/02 at 11:00, Rochester Courtroom. (asf) [EOD 06/14/02] [01-20692]
6/18/02	92	Certificate of mailing from BNC with original notice re: abandonment notice [91-1] ; [92-1] (asf) [01-20692]
6/18/02	93	Affidavit of Mailing re: order [89-1] [93-1] (pf) [EOD 06/24/02] [01-20692]
7/23/02	94	Notice to creditors [94-1] re: Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentuckey trailer ; Deadline for objections: 8/16/02. Returnable: 8/28/02 11:00 a.m.at Rochester Courtroom. (pf) [01-20692]
7/24/02	95	Letter from trustee stating that this is now an asset case and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set). (pf) [01-20692]
7/26/02	96	Certificate of mailing from BNC with original notice re: sale notice [94-1] ; [96-1] (pf) [EOD 08/12/02] [01-20692]
8/28/02	97	Order [97-1], To employ Auctioneer Roy Teitsworth (pf) [EOD 08/29/02] [01-20692] INTERNAL USE ONLY:
9/26/02	98	Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately $139.00 for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankrupcy estate. Deadline for objections: 10/15/02. Returnable: 10/16/02 @11:00 a.m. @ Rochester Courtroom. (pf) [01-20692]

9/27/02	--	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. (kt) [02-2230]
9/30/02	99	Letter [99-1]from Dr. Cordero re: his conerns about his assets in storage, and other matters in this case. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/03/02] [01-20692]
9/30/02	101	Certificate of mailing from BNC with original notice re: abandonment notice [98-1] ; [101-1] (pf) [EOD 10/07/02] [01-20692]
10/3/02	100	Letter [100-1]in response to Dr. Richard Cordero's letter of filed 9/30/02. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/04/02] [01-20692]
10/8/02	102	Letter [102-1]to Dr. Richard Cordero, in response to his letter of 9/27/02, requesting that the Court make a determination as to whether the Chapter 7 Trustee, is satisfacorily administering this estate. The Court advised Dr. Cordero that the appointment of a Chapter 7 trustee is a function of the Department of Justice, Office of the U.S. Trustee. Accordingly, any concerns that Dr. Cordero may have regarding the Chapter 7 Trustee in this case should first be addressed to Kathleen Dunivin Schmitt, Esq.,Assistant U.S. Trustee. SEE LETTER FOR FURTHER DETAILS. (kt) [01-20692]
10/10/02	103	Letter [103-1]from Kathleen Dunivin Schmitt, U.S. Trustee, advising that the Office of the U.S. Trustee is currently conducting an investigation re: the allegations made by Dr. Cordero of the Trustee. SEE LETTER FOR FURTHER DETAILS. (kt) [01-20692]
10/17/02	104	Letter [104-1]from Dr. Richard Cordero, Esq., regarding the matter with Kenneth Gordon, Tr. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/23/02] [01-20692] INTERNAL USE ONLY:
10/23/02	105	Letter [105-1]from Kathleen Dunivin Schmitt, U.S. Trustee, to Dr. Richard Cordero, Esquire, in response to Dr. Cordero's concerns re: regaining possession of items that he paid to store with the debtors and various parties involved in this matter. SEE LETTER FOR FURTHER DETAILS. (kt) [EOD 10/24/02] [01-20692]

11/5/02	106	Order [106-1] granting motion for payment of professional fees to Raymond C. Stilwell, Esq. as atty for debtor-in-Possession in the amount of $2,380.92 for services between 7/16/01 and December 21, 2001 as a Chapter 11 administrative expenses; and the sum of $1577.00 for service between January 1, 2002 and February 26, 2002 as a Chapter 7 administrative expense, for a total of 3957.92 [73-1] (kt) [EOD 11/06/02] [01-20692]
11/18/02	--	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] (kt) [EOD 11/21/02] [Edit date 11/26/02] [02-2230]
12/16/02	107	Trustee's report of no assets (kt) [EOD 12/18/02]
1/13/03	--	Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (kt) [02-2230]

Report Criteria

Case Num: 01-20692
Filed between: 01/01/31 and 03/21/03

End of Report

Dr. Richard Cordero, Esq.

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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April 8, 2003

Citizens Correspondence Unit
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

202-514-1152-2
faxed to 202-616-0762

Dear Madam or Sir,

Further to our conversation today with several Correspondence Analysts, I am faxing to you the letter dated March 24, 2003, that I sent to Attorney General John Ashcroft, as the supervisory head of the Executive Office for U.S. Trustees. In it I complain about the unresponsiveness and indifference to official misconduct of the Director of that Office, Mr. Lawrence Friedman, and its General Counsel, Mr. Joseph Guzinski. The complaint also concerns the suspect conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York. An investigation can determine whether that conduct is so pervasive and unlawful as to be criminal.

I have tried to find out what course of action has been taken with this complaint, which at present would at least consist of logging it as received and assigning it to a certain DoJ component. However, I have only been frustrated by being incessantly transferred from one phone to another, cut off, and even told that the letter must have been forwarded to the Trustees Office! How can any officer at the DoJ who reads the first sentence of my letter to Attorney General Ashcroft and understands that it deals with a complaint about Mr. Friedman and Mr. Guzinski consider for a single moment forwarding it to them? It is an elementary principle of investigation that a complained-about person cannot investigate himself with any zeal and impartiality.

Thus, I respectfully request that you find out where my letter to Attorney General Ashcroft went. As a matter of fact, what I sent him was a file consisting of the 11 pages that I have just faxed to you herewith as well as all their supporting exhibits. Indeed, you will see that those exhibits are referred to with the device (see page #) in both the accompanying Statement of Subsequent Facts and the copy of my letter of January 10 to Executive Director Friedman (of which his Office has never so much as acknowledged receipt). If you should ascertain that the file was actually sent to the Trustees Office, I request that you retrieve it since the officers complained-about in it, Director. Friedman and General Counsel Guzinski, cannot reasonably be expected to deal with my complaint about them sent to Mr. Ashcroft since they have done nothing with any of the complaints that I have already brought to their attention during the past three months.

Meantime, the material that I am faxing you herewith contains sufficient facts for the Criminal Division to open an investigation into my complaint. If you need me to send you a copy of the whole file, please let me know. I also respectfully request that you let me know what course of action you have decided to take. My phone number is (718) 827-9521.

I thank you in advance and look forward to hearing from you soon.

Sincerely,

Dr. Richard Cordero

JA:190

Dr. Richard Cordero

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April 8, 2003

Mr. Peter Keisler
Principal Deputy to the Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

faxed to 202-514-0238; tel. 202-514-9500 Marleen

Dear Mr. Keisler,

Last March 24, I sent a complaint to Attorney General John Ashcroft, as the supervisory head of the U.S. Trustee Program, about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski of the U.S. Trustee Program. The complaint also concerns the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

I have tried to find out what course of action has been given to this complaint, which at this time would at least consist of logging it as received and assigning it to a certain DoJ component. However, I have only been frustrated by being incessantly transferred from one phone to another, cut off, and even told that the letter must have been forwarded to the Trustee Program! How can any officer at the DoJ who reads the first sentence of my letter to Attorney General Ashcroft and understands that it deals with a complaint about Mr. Friedman and Mr. Guzinski consider for a single moment forwarding it to them? It is an elementary principle of investigation that a complained-about person cannot investigate himself with any zeal and impartiality.

Since the DoJ organizational chart places the Executive Office for U.S. Trustees directly under the supervision of the Associate Attorney General, I am appealing to you and to Acting Associate Attorney General Robert McCallun to investigate this complaint. To begin with, you might wish to locate the file of March 24 that I sent to Attorney General Ashcroft. One could hardly imagine that it got lost so soon after it was received at the DoJ, of which I have a U.S. Postal confirmation.

That file consists of the 11 pages that I have just faxed to you herewith as well as all their supporting exhibits. Indeed, you will see that those exhibits are referred to with the device (see page #) in both the accompanying Statement of Subsequent Facts and my letter of January 10 to Executive Director Friedman (of which his Office has never so much as acknowledged receipt). Should you want me to send you the whole set of exhibits, please just let me know.

I thank you and Mr. McCallun in advance and look forward to hearing from you soon.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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April 7, 2003

Att.: Mr. Thomas Bondurant
Head of the Investigations Division of the DoJ Inspector General,
I faxed 12 pgs to (202)616-9881
Mr. Glenn Fine 12 pgs faxed to (202)616-9884
Inspector General
U.S. Department of Justice
1425 New York Avenue, NW
Washington, DC 20530

Office of the Attorney General 1-202-514-2001
faxed to (202)616-9884

Dear Mr. Inspector General,

Last March 24, I sent a complaint to Attorney General John Ashcroft, as the supervisory head of the U.S. Trustee Program, about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski of the U.S. Trustee Program. The complaint also concerns the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

I have tried to find out what course of action has been given to this complaint, which at this time would at least consist of logging it as received and assigning it to a certain DoJ component. However, I have only been frustrated by being incessantly transferred from one phone to another, cut off, and even told that the letter must have been forwarded to the Trustee Program! How can any officer in the DoJ who understands that my letter is a complaint about Mr. Friedman and Mr. Guzinski consider for a single moment forwarding it to them? It is an elementary principle of investigation that a complained-about person cannot investigate himself with any zeal and impartiality.

Therefore, I would be grateful to you, Mr. Fine, if you would examine the cover letter and supporting statement that I sent to the Attorney General and determine what course of action should have been or be taken with my complaint. Should you want me to send you the whole file, I can certainly do so.

I thank you in advance and look forward to hearing from you soon.

Sincerely,

Dr. Richard Cordero

JA:192

Dr. Richard Cordero

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M.B.A., University of Michigan Business School
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Brooklyn, NY 11208-1515
tel. (718) 827-9521; CorderoRic@yahoo.com

March 24, 2003

Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General,

I hereby submit to you, as the supervisory head of the U.S. Trustee Program, a complaint about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski. I also bring to your attention the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Indeed, last January 10, I submitted to Director Friedman a complaint accompanied by documentary evidence about the false and defamatory statements and the negligent and reckless performance of Trustee Kenneth Gordon, and the pro forma, substandard review of him by Assistant U.S. Trustee Kathleen Dunivin Schmitt, both in the Western District of New York; as well as the unresponsiveness to my complaint about them of U.S. Trustee for Region 2 Carolyn S. Schwartz. Although more than two months have gone by, I have not yet received even a letter of acknowledgment of my complaint, despite my phone calls to Mr. Friedman and Mr. Guzinski, to the latter of whom my complaint was internally transferred, and even though I wrote to him and again to Mr. Friedman on February 20 and March. 11.

The triggering events of misconduct and the substantive issues at stake are set out in detail in my January 10 letter to Director Friedman. To spare you reading them twice, I refer you to the copy on page ix. What you will find in the attached Statement of Subsequent Facts are some events among those that have occurred since in this ever compounding series of disturbing events. It runs for only EIGHT pages, whose reading is facilitated by page references to supporting documents in the Exhibits. After reading them, you may end up asking yourself how could it possibly be that so many officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal. Does this happen by coincidence or by concert? Did everybody fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? Why? What's in it for them?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of the courts and the justice that its officers are supposed to dispense. Likewise, if trust is not elicited by officers that carry that notion in their professional designation, in whom can it be placed? I much hope that trust can be placed in you, who according to the description in your DoJ webpage are "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Meantime, I would be most grateful if you would acknowledge receipt of this complaint and let me know how you have decided to proceed.

Yours sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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M.B.A., University of Michigan Business School
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March 24, 2003

STATEMENT OF SUBSEQUENT FACTS*

in support of an application to

Attorney General John Ashcroft

to Open an Investigation
into certain events and officers at
the United States Trustee Program and
the U.S. Bankruptcy and District Courts for the Western District of NY

submitted by

Dr. Richard Cordero

Kenneth Gordon, Esq., was appointed in December 2001, trustee to liquidate Premier Van Lines, a moving and storage company in Rochester, NY, that had gone bankrupt in March of that year and had become the Debtor in case 01-20692 in the U.S. Bankruptcy Court of the Western District of NY. In January 2002, he determined[1] that Premier was an asset case. Premier was storing under contract the property of many clients, including that of Dr. Richard Cordero.

A. Trustee Gordon's negligent and reckless performance

Neither Premier nor Trustee Gordon gave notice to Dr. Cordero that Premier was in bankruptcy, let alone liquidation. On the contrary, the owner of Premier, Mr. David Palmer, and a principal of the Jefferson-Henrietta warehouse out of which Premier operated, Mr. David Dworkin, intentionally misled Dr. Cordero by telling him for months that his property was safe in that warehouse. However, they would not state so in writing. Finally, Mr. Palmer disappeared and Mr. Dworkin had to admit that Premier was in liquidation and that he was not even sure whether Dr. Cordero's property was in his warehouse.

Eventually, Mr. Dworkin referred Dr. Cordero to the holder of a blanket lien on Premier's assets, namely, Manufacturers & Traders Trust Bank, which in turn referred him to Trustee Gordon to find out

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* These are facts subsequent to those related in the letter of January 10, 2003, to Mr. Lawrence Friedman, Director of the Executive Office of the United States Trustee (see page ix) and the Statement of Facts in Dr. Cordero's Amended Answer with Cross-claims of November 20, 2002 (see page 60).

[1] This determination is the responsibility of the trustee, as provided in §2-2.1. of Chapter 7 Case Administration of the United States Trustee Manual, adopted by the Department of Justice and its United States Trustee Program. It requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**;" (emphasis added).

how to locate and retrieve his property. Dr. Cordero contacted the Trustee to request such information, but the Trustee would not take or return his calls, and after he did, he would not send an agreed upon letter of information. Dr. Cordero had to write to him and then even call him to ask for the letter.

When a letter dated June 10, 2002, arrived (see page 55, and page 12, heading 11), it was only to "suggest that you retain counsel to investigate what has happened to your property," and to address Dr. Cordero's attention to the attached copy of the Trustee's letter to Mr. Dworkin, dated April 16, 2002 (see page 56), wherein the Trustee informed Mr. Dworkin that he had abandoned Premier's assets in the Jefferson-Henrietta warehouse and "any issues renters may have regarding their storage units should be handled by yourself and M&T Bank.".

As a result of Dr. Cordero's search for his property, a third party (see footnotes 33 and 34 and referring text on page 101), by just reading Premier's business files that had been under the Trustee's control, found at the end of July 2002 other assets of Premier in a warehouse in Avon, NY, belonging to Mr. James Pfuntner (see pages 41 and 42). Dr. Cordero's property was supposed to be there, but Mr. Pfuntner would not release it to him for fear that the Trustee would sue him. Thus, Mr. Pfuntner referred Dr. Cordero to Trustee Gordon. Dr. Cordero tried to contact the Trustee, but the latter would not talk to him to the point that by letter of September 23, 2002, even enjoined him not to contact his office again (see page 29).

Consequently, Dr. Cordero wrote to the Bankruptcy Judge assigned to this case, the Hon. John C. Ninfo, II, and requested a review of the Trustee's performance and fitness to serve as trustee (see pages 46-49). Judge Ninfo referred the complaint to Assistant U.S. Trustee Schmitt. In an effort to dissuade them from launching that review, in a letter of October 1, 2002, the Trustee submitted to them statements that were false and defamatory of Dr. Cordero (see pages 27-28 and their analysis on pages 31-37).

B. The withholding of the transcript of the December 18 hearing

Thereafter Mr. Pfuntner sued, among others, the Trustee and Dr. Cordero in Adversary Proceeding no. 02-2230, with summons issued on October 3, 2002. Dr. Cordero cross-claimed the Trustee for defamation as well as negligent and reckless performance as trustee (see page 71). The Trustee moved to dismiss (see page 89). At the hearing last December 18, Judge Ninfo dismissed Dr. Cordero's cross-claims despite the fact that not even disclosure, let alone discovery, had begun and that other parties in this 10-party case could assert claims and defenses equal or similar to Dr. Cordero's.

Dr. Cordero appealed to the District Court. As part of the record on appeal, he needed the transcript of the hearing. So he contacted the Court Reporter, Ms. Mary Dianetti, at (585)586-6392, and asked her how much it would cost. After reviewing her notes, she called him and let him know that there could be some 27 pages and at $3 each, the transcript could cost some $80. By letter of January 23, with copy to the Bankruptcy Clerk, he agreed to her estimate and requested the transcript (see page 103).

However, weeks went by, but the transcript would not arrive. Dr. Cordero called Ms. Dianetti, but she would neither take nor return his calls despite his leaving voice messages for her inquiring about the transcript. He also called the Bankruptcy Clerk's office, but they said that they could not put him in touch with her because her office was not in that building.

On Monday, March 10, Dr. Cordero called Ms. Dianetti again. Once more he left a voice message explaining that there had been an offer and an acceptance between them for the transcript; that he had left messages for her because neither the transcript had been filed nor he had received a copy; that she had not responded to any of his voice messages; that he found the situation most strange because…she picked up the phone, she had been screening Dr. Cordero's call! She said that she had been sick, that she never got sick but this time she had been sick, and that her typists had not typed the transcript. He reminded her that

back in January she had told him that it would take some 10 days for the transcript to be ready. Again she said that she had been sick (for well over a month but nobody at the Clerk's office knew anything about it?!) Then she added that she would get the transcript out by the end of that week and 'you want it from the moment you came in on the phone.' A chill went down Dr. Cordero's spine, for what a remarkable comment to make!

A hearing begins when both parties can be heard by the judge in open court. Judge Ninfo had allowed Dr. Cordero, who lives in New York City, to attend the hearing in Rochester by phone. Ms. Dianetti was implying that the hearing had begun before Dr. Cordero was brought in. But why would she even assume that he wanted only that part of the transcript in which he had appeared? How could she possibly remember that a hearing that had taken place almost three months earlier had one party attending by phone, a fact never before discussed between them? Why would she care?

Dr. Cordero told her that he wanted everything and asked her whether something had occurred before he had come in on the phone. She replied that nothing had occurred before that moment. So why did she make that comment? (Had she tried to obtain his implicit assent to her sending him only part of the transcript?) Now she began to fumble. She put him on hold twice to consult her notes. She said that at the hearing, after she had called the case, Dr. Cordero had been brought in on the phone. She read passages from 'her notes' (that is, those that she had said her typists had not typed).

Dr. Cordero asked how many pages there would be in the transcript. She said some 15. How come? Dr. Cordero reminded her that she had told him that it would be some 27 pages long and cost some $80. She said that she always estimated more pages and if it came out to fewer, then the client was satisfied. (How many repeat clients does a court reporter have? Does she have competitors to which an appellant could go if dissatisfied with a page estimate? Given her experience, why did she have to overestimate at all, and why from 15 to 27, that is, by 80%? How many more clients does she dissatisfy with similar over-blown estimates? Would her repeat clients be satisfied if they came to realize that her estimates were so unreliable?). Finally, she assured him that he would have a copy of the transcript by the end of the week…but he is still waiting, two weeks later, for 15 pages double spaced?!

It is most unlikely that a court reporter that cared so much about satisfying clients by coming up with transcripts with page counts drastically below her own estimates would care so little about dissatisfying them by not taking their calls, ignoring their recorded messages, and keeping them waiting for well over a month and a half for transcripts without which their appeal records cannot even be filed, let alone their appeals begin. There is hardly any reason why Ms. Dianetti would take it upon herself to prevent an appeal from going forward. Rather, could it be that the whole transcript contained portions before or after Dr. Cordero was allowed to be on the phone and that such portions, constituting in effect ex parte exchanges, were incriminating? Who would benefit from the transcript not being prepared in its entirety and submitted?

C. Other components of the totality of circumstances to be assessed

It is said that a situation should be assessed on the basis of the totality of circumstances. In this case, the withholding of the transcript is only one of many disconcerting events. They are all the more disconcerting because they all happen to have the same effect of not reviewing in court Dr. Cordero's claims. But how likely is it that those events just by coincidence had the same effect? Or is it more likely that it is by concert that they have been aimed to achieve the same objective? To determine whether these questions are the fruit of paranoiac speculation or rather are grounded on a reasonable interpretation of the facts, let's examine some of those events.

1. Failed to review docket that could have led to discovery of Premier assets: The docket of the Premier bankruptcy case (see page 150) reveals that a Jim Pfuntner (entry 17) was involved in the case in connection with "efforts to collect a debt," and (entry 19) with "James Pfuntner re: motion to turnover property from Jim Pfutner." In December 2001, Trustee Gordon was appointed trustee (entry 63) to find and liquidate Premier's assets. However, it was not until eight months later that a third party, at Dr. Cordero's instigation, examined the Premier business files to which the Trustee had had the key and access and found that more Premier assets were in James Pfuntner's warehouse in Avon, NY. Could Trustee Gordon, by reading the docket and exercising due diligence, have found out the nature of Mr. Pfuntner's involvement in Premier's case and that Mr. Pfuntner was owed rent for storing in his warehouse assets of Premier and property of its clients?

2. Mishandled assets but complained about minimal compensation: Within a month of his appointment as trustee, Trustee Gordon knew on January 26, 2002, that the liquidation of Premier was an asset case (entry 70), meaning that there were assets to warrant and pay for his services (see footnote 1, supra, and accompanying text). However, only on July 23, 2002, is there a statement (entry 94) of:

> "Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentuckey trailer."

For the following day the docket states (entry 95):

> "Letter from trustee stating that this is **now** an **asset case** and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set)" (emphasis added)

It was not until September 26, 2002, (entry 98; see also page 17, heading 19) that the Trustee gave:

> "Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately **$139.00** for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankrupcy estate." (emphasis added; DIP= Debtor in Possession)

However, Trustee Gordon had already abandoned Premier's assets by letter of April 16, 2002, to Mr. Dworkin (see page 56), the owner of that Jefferson Road warehouse. That is the Jefferson-Henrietta warehouse where Premier had its office and kept in storage its clients' property. Thus, among the abandoned assets were office equipment and storage containers as well as income-generating storage contracts, for example, the contract to store Dr. Cordero's property on which the Jefferson Road warehouse billed him $301.60 on March 7, 2002 (see page 79).

Then, in his Memorandum of Law in Opposition to Cordero's Motion to Extend Time for Appeal, dated February 5, 2003, page 5, the Trustee submits to Judge Ninfo the following statement:

> "The underlying Chapter 7 proceeding is a **"no asset" case** in which the estate has no funds to pay creditors and no funds to pay for administrative expenses incurred by the Trustee. **As the Court is aware**, the sum total of compensation to be paid to the Trustee in this case is **$60.00**." (emphasis added)

These passages raise many troubling questions:

a. Was the case an "Asset Case" or was it a "„no asset‟ case""?

b. Since Trustee Gordon abandoned the assets in the Jefferson Road warehouse and those subsequently found, in spite of his inactivity, in the Pfuntner warehouse at Avon, could the estate have been expected to have funds to pay anything?

c. Why did Trustee Gordon give notice of such abandonment of Premier assets months after he had actually abandoned all the assets and the income-generating storage contracts to one single person? Was that person a creditor for warehousing rent? What happened with all those contracts and their stream of monthly income?

d. When was the Court made "aware" that the sum total of compensation for the Trustee was $60? It certainly was at a time when Dr. Cordero was not within hearing distance.

e. What happened with the assets that the Trustee intended to sell on July 23, 2002? Could and should notice have been given sooner after his appointment as trustee?

f. What happened to the "approximately $139.00" that as of September 26, 2002, the Trustee "plans to abandon" for the Debtor in Possession, Mr. David Palmer, the owner of Premier? Indeed, Mr. Palmer had become unreachable by phone from the end of February 2002, and what is even more telling, his own lawyer, Mr. Stilwell, had occasion to write to Judge Ninfo on December 20, 2002, that Mr. Palmer:

> "has not retained me relative to the suit, or even contacted me in over six months about anything. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them."

g. Did the Trustee perform negligently and recklessly precisely because he knew that he was going to be paid just "$60.00"?

h. Judge Ninfo received Dr. Cordero's letter of September 27, 2002, requesting a review of Trustee Gordon's performance and fitness to serve as trustee (see page 46), and referred it for a "thorough inquiry" to Assistant U.S. Trustee Schmitt. Did she ever ask herself or the Trustee any of these questions when she conducted her 'investigation' by establishing 'contact' -possibly only over the phone- with just the Trustee and one single other person? Did she get any answer? Not open to question is the fact that she did not give even a hint of either such questions, let alone any answers, in her letter of October 22, 2002, to Dr. Cordero with copy to Judge Ninfo and the Trustee (see page 22).

3. Summary dismissal of same or similar cross-claims as those of other parties: The docket reveals that Trustee Gordon abandoned the assets that Premier had at the time of his appointment and did not find other assets that the docket entries for James Pfuntner could have led him to discover had he exercised some curiosity and due diligence. Yet, the Trustee had the cheek to assert in his letter of October 1, 2002, to Judge Ninfo (see page 27) that:

> "Since conversion of this case to Chapter 7, I have undertaken **significant efforts to identify assets** to be liquidated for the benefit of creditors;" (emphasis added)

However, not only did Judge Ninfo not demand that the Trustee substantiate that assertion, as Dr. Cordero requested (see pages 71 and 31), but also the Judge dismissed, even before disclosure or discovery had started for any of the many litigants, his cross-claim that charged the Trustee with having submitted false statements to the Judge as well as to Assistant Schmitt with the intent of dissuading them

from undertaking the review that Dr. Cordero had requested of the Trustee's performance and fitness. Why would the Judge be indifferent, or even condone, the submission of falsehood by an officer of the court who in addition was a federal appointee?

4. Dismissal of claims even disregarding opposing party's statement against legal interest: On Trustee Gordon's motion, at the hearing on December 18, 2002, Judge Ninfo dismissed Dr. Cordero's cross-claims against the Trustee for defamation and negligent and reckless performance as Premier's trustee. The Judge told Dr. Cordero, who is appearing pro se, that he could appeal if he wanted. Dr. Cordero asked about any appeal forms and instructions and the Judge replied that they would be sent with the order of dismissal. That order was entered on December 30, 2002, and was mailed from Rochester. But when it arrived in New York City, it had no appeal forms or instructions, although in four previous occasions Dr. Cordero had received forms and instructions from the Court. Dr. Cordero had to call the clerk's office and ask for the forms to be mailed.

Time was running short since Dr. Cordero had learned that he had only 10 days to give notice of appeal. So he prepared the forms as soon as he could and mailed them timely on Thursday, January 9, 2003, reasonably relying that the complete-on-mailing rule of Rule 9006(e) and the three additional days to act after papers have been served by mail of Rule 9006(f) F.R.Bankr.P. were applicable. His notice of appeal was filed on Monday, January 13. To his astonishment, Trustee Gordon subsequently filed a motion in the U.S. District Court for the Western District of New York to dismiss the appeal on grounds that it had been filed untimely! After Dr. Cordero received that motion, he scrambled to prepare a motion to extend time to file the notice of appeal under 8002(c)(2) F.R.Bankr.P. Once more he mailed it timely on Monday, January 27, 2003. What is more, Trustee Gordon acknowledged that it had been also filed timely, for on page 2 of his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time for Appeal (see page 143) he wrote that:

> "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal."

The return day for the motion was February 12, 2003. Dr. Cordero attended by phone. This time, to his bafflement, Judge Ninfo ruled that the motion had been filed untimely on January 30 and therefore, he denied it! Dr. Cordero protested and brought to his attention that the Trustee himself had written in his responsive pleading that Dr. Cordero had filed it on January 29. Judge Ninfo disregarded that fact just as he did the squarely on point statement of the Supreme Court In re Pioneer, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993):

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

Judge Ninfo stated that Dr. Cordero did not get to keep talking after he had made a ruling. Dr. Cordero said that he wanted to preserve for the record the objection that page 2 of Trustee Gordon's papers in opposition stated that Dr. Cordero had filed his motion to extend on January 29 so that the…Dr. Cordero's phone connection was cut off abruptly.

5. Default judgment application handled contrary to law and facts: In this effort to consider the totality of circumstances, one should also consider what has happened with Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Premier. The latter never answered the third-party complaint against him (see page 66), nor did he oppose the default application, which Dr. Cordero not only served on his lawyer, Mr. Stilwell, but also on him directly.

Dr. Cordero submitted the default judgment application, as required, to the Bankruptcy Court, which was supposed to make a recommendation on it to the United States District Court, the one that would then make the decision on whether to enter the default judgment. But first, the bankruptcy clerk must act according to the unconditional legal obligation imposed on him by Rule 55 F.R.Civ.P., made applicable by Rule 7055 F.R.Bankr.P.:

> "When a party…has failed to plead or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

Dr. Cordero timely submitted the required Application for Entry of Default on December 26, 2002 (see page 104). That Mr. Palmer had failed to plead or defend was undisputable and undisputed. The application was accompanied by an Affidavit of Amount Due requesting that $24,032.08 be entered against Mr. Palmer (see page 108) as per the relief requested in the summons and complaint served on him. Nevertheless, for weeks nothing happened with the application and Dr. Cordero received no feedback either.

When Dr. Cordero began to inquire into this, he was bandied between the District Court and the Bankruptcy Court. Finally, he found out from a bankruptcy clerk that the application had been transferred to Judge Ninfo, who was holding it until Dr. Cordero's property could be inspected and he could demonstrate what damages he had sustained. But there is absolutely no legal basis under Rule 55 for requiring a plaintiff to have to demonstrate anything when applying for default judgment for a sum certain! In such a case, default judgment is predicated on the defendant's failure to appear and contest the sum certain claimed in the complaint, not on the plaintiff's loss.

Dr. Cordero had to write to Judge Ninfo, which he did by letter of January 30, 2003 (see page 116). The Judge never replied to that letter. Instead, on February 4, the Bankruptcy Clerk Paul Warren entered default, a fact that he had the unconditional legal obligation to enter back in December upon receiving the application. For his part, Judge Ninfo recommended to the District Court that default not be entered. His recommendation shows an astonishingly undisguised lack of impartiality and pre-judgment of the issues (see page 119).

Among other things, Judge Ninfo stated that Dr. Cordero had not demonstrated damages and that upon inspection of his property it would be shown that he had sustained no loss. UN-BE-LIVE-A-BLE! What could possibly give him grounds to make such assertion since no disclosure or discovery has taken place even now when this Adversary Proceeding no. 02-2230 is nearing the end of the six month after it was filed. Not only that, but Dr. Cordero's property has not been actually seen by anybody; the only thing that has been seen is a label bearing his name affixed to a container left behind in Mr. James Pfuntner's warehouse since who knows when. This is so even though Judge Ninfo required last January 10, at the only pre-trial meeting held so far, that this property be made available for inspection. Nevertheless, Mr. Pfuntner, the plaintiff who filed the Adversary Proceeding and sued Dr. Cordero for storage fees, has not yet held that inspection despite the fact that he has every interest in its taking place in order to establish his claim.

To top this off, the Hon. David G. Larimer, United States District Court Judge, who received the recommendation of his next door colleague Judge Ninfo, had a decision entered last March 12 (see page 147). Therein Judge Larimer concurred with the recommendation to "deny entry of default judgment…since the matter does not involve a sum certain." WHAT?! It does! Dr. Cordero's Affidavit of Sum Due clearly stated that the sum certain is $24,032.08. So does paragraph 59 of his Motion to Enter Default Judgment Against David Palmer and Withdraw Proceeding, which he submitted together with a letter addressed to Judge Larimer and dated March 2, 2003 (see pages 122 and 123).

However, Judge Larimer made no reference whatsoever to that motion, or the letter to him for that matter, in his decision entered 10 days later.

D. Conclusion: Is so much contempt for law and facts mere coincidence?

How could it possibly be that so many court officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal? How could this have happened by coincidence rather than by concert? Did everybody just fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? What's for them in this case and how much higher were and are the stakes in those other cases?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of those courts and the justice that its officers are supposed to dispense. So does the question of to what extent the reluctance or refusal of Trustee Program officers all the way to the top to investigate this matter results from a critical or worse problem in the Program's functioning. If trust is not elicited by officers that in their professional designation as trustees carry that notion, in whom can it be placed?

Dr. Cordero very much hopes that trust can be placed in Attorney General Ashcroft, who according to the description in his DoJ webpage is "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." This case cries for justice, particularly since Dr. Cordero's only fault in it has been that of having paid for years on end storage and insurance fees to store his property and then having tried to find it only to be sucked into this maelstrom of Kafkian non-sense and arbitrariness.

E. Action requested

Therefore, Dr. Cordero respectfully requests that Attorney General Ashcroft open a two prong investigation into the totality of circumstance forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Perhaps the Attorney General might wish to start by requesting Director Friedman and General Counsel Guzinski what they have done since receiving over two and a half months ago Dr. Cordero's letter of last January 10 (see page ix). As to the Courts, the Attorney General might wish to begin by requesting the transcript of the hearing of Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims held before Judge Ninfo on December 18, 2002, in Adversarial Proceeding no. 02-2230, which will make it possible to find out what went on between the participants physically present in court before or after Dr. Cordero was brought in on the phone. To that end, a list is submitted with the names, addresses, and phone numbers of all the parties (see page xx).

Dated: March 24, 2002

Dr. Richard Cordero

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

Dr. Richard Cordero, Esq.

Ph.D., University of Cambridge, England
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COPY

January 10, 2003

Mr. Lawrence A. Friedman
Director
Executive Office for United States Trustees
20 MASSACHUSETTS AVE, N.W., Room 8000F
Washington, D.C. 20530

Dear Mr. Friedman,

The Overview of the United States Trustee Program states that, "The primary role of the U.S. Trustee Program is to serve as the "watchdog over the bankruptcy process."" The material attached hereto brings to your attention the case of two watchdogs, namely, Ms. Carolyn S. Schwartz, United States Trustee for Region 2, and her subordinate, Ms. Kathleen Dunivin Schmitt, Assistant United States Trustee in the Western District of New York, who have shown unacceptable indifference to the egregious conduct of a Chapter 7 Trustee, Kenneth Gordon, Esq. The three of them have failed to "act[ ] in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system," as it was their duty to do according to your Mission Statement. I am appealing to you to investigate and correct this situation.

Indeed, I complained about Trustee Gordon's performance and fitness to serve as trustee in case no. 01-20692, to the judge assigned to that case, the Hon. John C. Ninfo, II, Bankruptcy Judge in the Western District of New York (see page 46). Judge Ninfo referred my complaint to Assistant U.S. Trustee Schmitt for her to conduct a "thorough inquiry" into it (see page 26). However, what Assistant Schmitt did was merely to 'contact' Trustee Gordon and one single other person, both apparently on the phone, review the docket and some indeterminate "papers" (see page 22), and then write a two-page and a sentence letter riddled with 22 specific failures (see page 3) that are detailed in the accompanying brief and discussed in light of facts and legal requirements applicable to trustees and their supervisors (see pages 7-21).

Hence, I appealed to Region 2 U.S. Trustee Carolyn Schwartz by writing and submitting to her the accompanying brief last November 25 (see page 1a and brief in pages 1-29). Her failure to act, let alone to act as a watchdog, is even greater: To date, over a month and a half later, Trustee Schwartz has not deigned to send even a letter of acknowledgment of receipt of my appeal or take any of my calls or answer any of my messages left on her voice mail and with her secretary. On several occasions I have brought her inexplicable silence to the attention of a member of her own office here in New York City, namely, Bankruptcy Analyst John Segretto. On December 18, I managed to speak with Mr. Segretto on the phone. He assured me that within 5 to 10 days I would receive a written reply from the Trustee herself. When that proved not to be true, I called back. Neither would take my call and although I also left messages on their voice mails and with the receptionist, neither called me back.

Is it through such insensitive unresponsiveness that top officers of the Trustee Program 'act in the public interest'? If it is through such inaction how U.S. Trustee Schwartz "monitors the conduct of parties" on her own team, what kind of example as watchdog does she set for Assistant Schmitt to supervise her trustees, such as Trustee Gordon? If Ms. Schwartz were to send me a letter now, how could I reasonably not think that it was merely pro forma just to get rid of a complainant that would not go

away? If you were in my position, would you feel assured that she had cast anything but a reluctant look at your complaint about people under her supervision?

Laxness in the application of ethical, as opposed to legal, standards, by no means promotes integrity. By contrast, it does foster the kind of outrageous response of Trustee Gordon to my cross-claim in Adversary Proceeding No: 02-2230, (see the Statement of Facts, page 60). In my Amended Answer with Cross-claims (see page 58), I charged him, among other things, with making defamatory statements about me and false statements to Judge Ninfo and Assistant Schmitt in an effort to dissuade them from taking action on my application to review his performance and fitness to serve as trustee (see page 64, para. 34 to page 66, para. 42). In his motion to dismiss that charge (see page 89), Trustee Gordon found no better justification than to say that, "Assuming for the purposes of this Motion that the factual allegations set forth in Mr. Cordero's Amended Answer and Cross-Claim are true…the statements made in the correspondence by the Trustee were absolutely privileged and thus no action for defamation exists," (see page 91, para. 10, and page 92, para. 12; see my answer on page 97)

Does the Executive Office condone one of its trustees resorting to defamation of 'a party in interest' and to making false statements to federal judicial and Trustee Program officers in order to avoid a performance review because he counts on a privilege under state law? Is this the toe-high ethical standard to which a trustee is held? Do you think that the way to promote the public's confidence in your Program is by allowing a regional trustee, such as Ms. Schwartz, and an assistant trustee, such as Ms. Schmitt, to blatantly ignore such blamable conduct on the part of a trustee? I trust you do not.

Trustee Gordon has also moved to dismiss the other charge in my cross-complaint, to wit, negligent or reckless performance of his duties to liquidate the debtor efficiently and speedily. He has alleged that the duties in question were outside the scope of his duties (see page 92). Thereby he has tried to avoid the fundamental question that I posed from the beginning to the court and then to Assistant Schmitt for determination: What is it that Trustee Gordon has done to liquidate the debtor AT ALL!? (See Failure 20, page 18, and page 100)

Consequently, I respectfully request that you conduct a 'thorough inquiry' into Trustee Gordon's performance and fitness to serve; Assistant Schmitt's supervisory failures; and Trustee Schwartz' contemptuous disregard for a complaint about both of them. I would also appreciate your views on the questions that I have raised here.

I look forward to hearing from you, and meantime remain,

sincerely yours,

Dr. Richard Cordero

cc: Hon. John C. Ninfo, II

U. S. Department of Justice

Office of the Inspector General

April 16, 2003

Richard Cordero
59 Crescent Street
Brookyln, NY 11208-1515

Dear Dr. Cordero:

The purpose of this letter is to acknowledge receipt of your correspondence dated January 10, 2003. The matters that you raised are more appropriate for review by another office or Agency. Therefore, your complaint has been forwarded to:

Federal Bureau of Investigation
Criminal Investigation Division
935 Pennsylvania Avenue, NW
Washington, DC 20535

And

Executive Office for U.S. Trustees
901 E Street, NW
Washington, DC 20530

Any further correspondence regarding this matter should be directed to that office.

I hope this answers any questions you have relative to this matter.

Sincerely,

Roger M. Williams
Special Agent in Charge
of Operations
Investigations Division

JA:204

U.S. Department of Justice

Criminal Division

Washington, DC 20530-0001

April 18, 2003

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

Dear Dr. Cordero:

Thank you for your letter to the Attorney General requesting a two prong investigation into circumstances surrounding cases at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. He has asked me to respond to you on his behalf.

Please be advised that we have forwarded your materials to the United States Attorney's Office in the Western District, which will determine the proper course of action.

Sincerely,

Correspondence Management Staff
Office of Administration

[206-207 reserved]

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

To Duty Agent: DO NOT forward this letter to Off. for U.S. Trustees; if need be, forward it to the FBI

April 21, 2003

Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

faxed to (202) 307-6777

Dear Mr. Attorney General,

Last March 24, I sent a documented complaint to you, as the supervisory head of the Executive Office for U.S. Trustees, about Director Lawrence Friedman's and General Counsel Joseph Guzinski's unresponsiveness and indifference to the evidence of trustees' misconduct that I had submitted to them. The complaint also concerns the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Since by April 7 I had not received even an acknowledgment of receipt –which is still the case-, I called the Justice Department. Because nobody could find my complaint, I faxed my March 24 letter to you together with a Statement of Facts and a copy of a letter to Director Friedman. My complaint was referred for investigation to the complained-about entity, that is, the Trustees' Office. Its Deputy Director, Mr. Clifford White, called me on April 9 and we discussed the conduct of the trustees in Rochester, NY, that triggered the complaint as well as the indifference of Director Friedman and General Counsel Guzinski to my letters of January 10, February 20, and March 11, to which they never sent an acknowledgment of receipt either. Mr. White said he would call me the next week, but failed to do so.

Today I called him. To my dismay, he does not yet understand what it is that I requested of Mr. Friedman more than three months ago. Blatantly revealing his unwillingness to deal with this complaint with any degree of seriousness is that 12 days after our conversation, he still has not read my complaint! He does not even know what it is that I sent to his office, let alone what I sent to trustees elsewhere. Indeed, I complaint to Mr. Guzinski in my February 20 letter about Mr. Bridenhagen self-demeaning call to ask me what to read of my file, although an 'investigator' unable to decide for himself what to read of a bound file with sequentially numbered pages –a hint: begin with the first pages- can hardly be expected to be able to make evaluative decisions about people's conduct and events. With that precedent, one would imagine that Mr. White would not dare ask me to send him a letter to tell him what it is that I wanted him to do. Against that background, the copy that I am sending you herewith of the letter that Mr. White did ask me to send him will become more meaningful to you.

Mr. White's conduct, just as Mr. Friedman's and Mr. Guzinski's, point out an elementary principle of investigation: An entity cannot investigate itself, and when one attempts to do so, what results is a sham. I trust that you do not want to be part of such an exercise or allow your referral to them to be treated with contemptuous perfunctoriness, which casts doubts on the good-faith intentions and competence of all those involved.

Therefore, I respectfully request that you withdraw my complaint and supporting file to you from the hands of Mr. White and his colleagues at the Office for U.S. Trustees and launch your own investigation into the conduct of the trustees and judicial officers in question. If you refer the investigation of the judicial officers to the FBI, please let me know the agent's name and phone number. Meanwhile, I look forward to hearing from you, and remain,

sincerely yours,

Dr. Richard Cordero

JA:208

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COPY

April 21, 2003

Mr. Clifford White
Deputy Director
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

faxed to (202)307-2397

Dear Mr. White,

In our phone conversation today you stated that you are a lawyer and that you needed to know what relief I wanted, but that you were confused by my prolific writing. You requested that I fax to you a letter setting out what I want. What does your failure to find the following material clear enough to understand reveal, which your DoJ superiors referred to you for action and we discussed on April 9?:

1. Next to last sentence of my one-page letter to Attorney General J. Ashcroft of March 24, 2003:
   "Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York."
2. Next to last paragraph of my two-page letter to Director L. Friedman of January 10, 2003:
   "Consequently, I respectfully request that you conduct a „thorough inquiry" into Trustee Gordon"s performance and fitness to serve [file page 17]; Assistant Schmitt"s supervisory failures [file page 3]; and Trustee Schwartz" contemptuous disregard for a complaint about both of them."
3. First sentence of my letter to General Counsel Guzinski of March 11, 2003:
   "I hereby invoke the Freedom of Information Act to request that you send me copies of all documents –…- concerning the matter discussed in the accompanying letters and involving, among others, Trustees Schwartz, Schmitt, and Gordon, and Mr. Bridenhagen."

Your unfamiliarity with these basic letters together with your impatient insistence nevertheless that I "cut to the chase" and your claim that since I know where my property is I can retrieve it and get what I wanted, reveal that you treat my complaint as a nuisance foisted upon you by your superiors so that you are reluctant to waste time reading the complaint. Hence, you take the easy way out of listening to your complained-about colleagues as they claim that my complaint is about trustees not searching for my property, whereby they deflect your attention from my complaint about their performance. As a result, there is no reasonable expectation that you will conduct anything but a pro-forma 'investigation' that cannot possibly be responsive to a complaint whose details you cannot be bothered to learn. It all proves the axiom that a complained-about entity cannot investigate itself with zeal, candor, and objectivity.

While you hammer together some reply, which I will analyze with rigor and professionalism in light of the evidence, the law, and common sense, as I did Trustees Gordon's and Schmitt's, I request that you send me copies of the documents that your Office, as alleged by your colleague Mr. Bridenhagen, has been gathering since shortly after my January 10 letter to Mr. Friedman.

sincerely yours,

Dr. Richard Cordero

cc: Messrs. John Ashcroft, Glenn Fine, Robert McCallun, and Peter Keisler

Dr. Richard Cordero

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COPY

March 24, 2003

Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General,

I hereby submit to you, as the supervisory head of the U.S. Trustee Program, a complaint about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski. I also bring to your attention the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Indeed, last January 10, I submitted to Director Friedman a complaint accompanied by documentary evidence about the false and defamatory statements and the negligent and reckless performance of Trustee Kenneth Gordon, and the pro forma, substandard review of him by Assistant U.S. Trustee Kathleen Dunivin Schmitt, both in the Western District of New York; as well as the unresponsiveness to my complaint about them of U.S. Trustee for Region 2 Carolyn S. Schwartz. Although more than two months have gone by, I have not yet received even a letter of acknowledgment of my complaint, despite my phone calls to Mr. Friedman and Mr. Guzinski, to the latter of whom my complaint was internally transferred, and even though I wrote to him and again to Mr. Friedman on February 20 and March. 11.

The triggering events of misconduct and the substantive issues at stake are set out in detail in my January 10 letter to Director Friedman. To spare you reading them twice, I refer you to the copy on page ix. What you will find in the attached Statement of Subsequent Facts are some events among those that have occurred since in this ever compounding series of disturbing events. It runs for only EIGHT pages, whose reading is facilitated by page references to supporting documents in the Exhibits. After reading them, you may end up asking yourself how could it possibly be that so many officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal. Does this happen by coincidence or by concert? Did everybody fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? Why? What's in it for them?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of the courts and the justice that its officers are supposed to dispense. Likewise, if trust is not elicited by officers that carry that notion in their professional designation, in whom can it be placed? I much hope that trust can be placed in you, who according to the description in your DoJ webpage are "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Meantime, I would be most grateful if you would acknowledge receipt of this complaint and let me know how you have decided to proceed.

Yours sincerely,

Dr. Richard Cordero

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COPY

March 24, 2003

STATEMENT OF SUBSEQUENT FACTS*

in support of an application to

Attorney General John Ashcroft

to Open an Investigation
into certain events and officers at
the United States Trustee Program and
the U.S. Bankruptcy and District Courts for the Western District of NY

submitted by

Dr. Richard Cordero

Kenneth Gordon, Esq., was appointed in December 2001, trustee to liquidate Premier Van Lines, a moving and storage company in Rochester, NY, that had gone bankrupt in March of that year and had become the Debtor in case 01-20692 in the U.S. Bankruptcy Court of the Western District of NY. In January 2002, he determined[1] that Premier was an asset case. Premier was storing under contract the property of many clients, including that of Dr. Richard Cordero.

A. Trustee Gordon's negligent and reckless performance

Neither Premier nor Trustee Gordon gave notice to Dr. Cordero that Premier was in bankruptcy, let alone liquidation. On the contrary, the owner of Premier, Mr. David Palmer, and a principal of the Jefferson-Henrietta warehouse out of which Premier operated, Mr. David Dworkin, intentionally misled Dr. Cordero by telling him for months that his property was safe in that warehouse. However, they would not state so in writing. Finally, Mr. Palmer disappeared and Mr. Dworkin had to admit that Premier was in liquidation and that he was not even sure whether Dr. Cordero's property was in his warehouse.

Eventually, Mr. Dworkin referred Dr. Cordero to the holder of a blanket lien on Premier's assets, namely, Manufacturers & Traders Trust Bank, which in turn referred him to Trustee Gordon to find out

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* These are facts subsequent to those related in the letter of January 10, 2003, to Mr. Lawrence Friedman, Director of the Executive Office of the United States Trustee (see page ix) and the Statement of Facts in Dr. Cordero's Amended Answer with Cross-claims of November 20, 2002 (see page 60).

[1] This determination is the responsibility of the trustee, as provided in §2-2.1. of Chapter 7 Case Administration of the United States Trustee Manual, adopted by the Department of Justice and its United States Trustee Program. It requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**;" (emphasis added).

how to locate and retrieve his property. Dr. Cordero contacted the Trustee to request such information, but the Trustee would not take or return his calls, and after he did, he would not send an agreed upon letter of information. Dr. Cordero had to write to him and then even call him to ask for the letter.

When a letter dated June 10, 2002, arrived (see page 55, and page 12, heading 11 [of the file with exhibits accompanying this Statement]), it was only to "suggest that you retain counsel to investigate what has happened to your property," and to address Dr. Cordero's attention to the attached copy of the Trustee's letter to Mr. Dworkin, dated April 16, 2002 (see page 56), wherein the Trustee informed Mr. Dworkin that he had abandoned Premier's assets in the Jefferson-Henrietta warehouse and "any issues renters may have regarding their storage units should be handled by yourself and M&T Bank.".

As a result of Dr. Cordero's search for his property, a third party (see footnotes 33 and 34 and referring text on page 101), by just reading Premier's business files that had been under the Trustee's control, found at the end of July 2002 other assets of Premier in a warehouse in Avon, NY, belonging to Mr. James Pfuntner (see pages 41 and 42). Dr. Cordero's property was supposed to be there, but Mr. Pfuntner would not release it to him for fear that the Trustee would sue him. Thus, Mr. Pfuntner referred Dr. Cordero to Trustee Gordon. Dr. Cordero tried to contact the Trustee, but the latter would not talk to him to the point that by letter of September 23, 2002, even enjoined him not to contact his office again (see page 29).

Consequently, Dr. Cordero wrote to the Bankruptcy Judge assigned to this case, the Hon. John C. Ninfo, II, and requested a review of the Trustee's performance and fitness to serve as trustee (see pages 46-49). Judge Ninfo referred the complaint to Assistant U.S. Trustee Schmitt. In an effort to dissuade them from launching that review, in a letter of October 1, 2002, the Trustee submitted to them statements that were false and defamatory of Dr. Cordero (see pages 27-28 and their analysis on pages 31-37).

B. The withholding of the transcript of the December 18 hearing

Thereafter Mr. Pfuntner sued, among others, the Trustee and Dr. Cordero in Adversary Proceeding no. 02-2230, with summons issued on October 3, 2002. Dr. Cordero cross-claimed the Trustee for defamation as well as negligent and reckless performance as trustee (see page 71). The Trustee moved to dismiss (see page 89). At the hearing last December 18, Judge Ninfo dismissed Dr. Cordero's cross-claims despite the fact that not even disclosure, let alone discovery, had begun and that other parties in this 10-party case could assert claims and defenses equal or similar to Dr. Cordero's.

Dr. Cordero appealed to the District Court. As part of the record on appeal, he needed the transcript of the hearing. So he contacted the Court Reporter, Ms. Mary Dianetti, at (585)586-6392, and asked her how much it would cost. After reviewing her notes, she called him and let him know that there could be some 27 pages and at $3 each, the transcript could cost some $80. By letter of January 23, with copy to the Bankruptcy Clerk, he agreed to her estimate and requested the transcript (see page 103).

However, weeks went by, but the transcript would not arrive. Dr. Cordero called Ms. Dianetti, but she would neither take nor return his calls despite his leaving voice messages for her inquiring about the transcript. He also called the Bankruptcy Clerk's office, but they said that they could not put him in touch with her because her office was not in that building.

On Monday, March 10, Dr. Cordero called Ms. Dianetti again. Once more he left a voice message explaining that there had been an offer and an acceptance between them for the transcript; that he had left messages for her because neither the transcript had been filed nor he had received a copy; that she had not responded to any of his voice messages; that he found the situation most strange because…she picked up the phone, she had been screening Dr. Cordero's call! She said that she had been sick, that she never got sick but this time she had been sick, and that her typists had not typed the transcript. He reminded her that

back in January she had told him that it would take some 10 days for the transcript to be ready. Again she said that she had been sick (for well over a month but nobody at the Clerk's office knew anything about it?!) Then she added that she would get the transcript out by the end of that week and 'you want it from the moment you came in on the phone.' A chill went down Dr. Cordero's spine, for what a remarkable comment to make!

A hearing begins when both parties can be heard by the judge in open court. Judge Ninfo had allowed Dr. Cordero, who lives in New York City, to attend the hearing in Rochester by phone. Ms. Dianetti was implying that the hearing had begun before Dr. Cordero was brought in. But why would she even assume that he wanted only that part of the transcript in which he had appeared? How could she possibly remember that a hearing that had taken place almost three months earlier had one party attending by phone, a fact never before discussed between them? Why would she care?

Dr. Cordero told her that he wanted everything and asked her whether something had occurred before he had come in on the phone. She replied that nothing had occurred before that moment. So why did she make that comment? (Had she tried to obtain his implicit assent to her sending him only part of the transcript?) Now she began to fumble. She put him on hold twice to consult her notes. She said that at the hearing, after she had called the case, Dr. Cordero had been brought in on the phone. She read passages from 'her notes' (that is, those that she had said her typists had not typed).

Dr. Cordero asked how many pages there would be in the transcript. She said some 15. How come? Dr. Cordero reminded her that she had told him that it would be some 27 pages long and cost some $80. She said that she always estimated more pages and if it came out to fewer, then the client was satisfied. (How many repeat clients does a court reporter have? Does she have competitors to which an appellant could go if dissatisfied with a page estimate? Given her experience, why did she have to overestimate at all, and why from 15 to 27, that is, by 80%? How many more clients does she dissatisfy with similar over-blown estimates? Would her repeat clients be satisfied if they came to realize that her estimates were so unreliable?). Finally, she assured him that he would have a copy of the transcript by the end of the week…but he is still waiting, two weeks later, for 15 pages double spaced?!

It is most unlikely that a court reporter that cared so much about satisfying clients by coming up with transcripts with page counts drastically below her own estimates would care so little about dissatisfying them by not taking their calls, ignoring their recorded messages, and keeping them waiting for well over a month and a half for transcripts without which their appeal records cannot even be filed, let alone their appeals begin. There is hardly any reason why Ms. Dianetti would take it upon herself to prevent an appeal from going forward. Rather, could it be that the whole transcript contained portions before or after Dr. Cordero was allowed to be on the phone and that such portions, constituting in effect ex parte exchanges, were incriminating? Who would benefit from the transcript not being prepared in its entirety and submitted?

C. Other components of the totality of circumstances to be assessed

It is said that a situation should be assessed on the basis of the totality of circumstances. In this case, the withholding of the transcript is only one of many disconcerting events. They are all the more disconcerting because they all happen to have the same effect of not reviewing in court Dr. Cordero's claims. But how likely is it that those events just by coincidence had the same effect? Or is it more likely that it is by concert that they have been aimed to achieve the same objective? To determine whether these questions are the fruit of paranoiac speculation or rather are grounded on a reasonable interpretation of the facts, let's examine some of those events.

1. Failed to review docket that could have led to discovery of Premier assets: The docket of the Premier bankruptcy case (see page 150) reveals that a Jim Pfuntner (entry 17) was involved in the case in

connection with "efforts to collect a debt," and (entry 19) with "James Pfuntner re: motion to turnover property from Jim Pfutner." In December 2001, Trustee Gordon was appointed trustee (entry 63) to find and liquidate Premier's assets. However, it was not until eight months later that a third party, at Dr. Cordero's instigation, examined the Premier business files to which the Trustee had had the key and access and found that more Premier assets were in James Pfuntner's warehouse in Avon, NY. Could Trustee Gordon, by reading the docket and exercising due diligence, have found out the nature of Mr. Pfuntner's involvement in Premier's case and that Mr. Pfuntner was owed rent for storing in his warehouse assets of Premier and property of its clients?

2. Mishandled assets but complained about minimal compensation: Within a month of his appointment as trustee, Trustee Gordon knew on January 26, 2002, that the liquidation of Premier was an asset case (entry 70), meaning that there were assets to warrant and pay for his services (see footnote 1, supra, and accompanying text). However, only on July 23, 2002, is there a statement (entry 94) of:

> "Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentuckey trailer."

For the following day the docket states (entry 95):

> "Letter from trustee stating that this is **now** an **asset case** and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set)" (emphasis added)

It was not until September 26, 2002, (entry 98; see also page 17, heading 19) that the Trustee gave:

> "Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately **$139.00** for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankrupcy estate." (emphasis added; DIP= Debtor in Possession)

However, Trustee Gordon had already abandoned Premier's assets by letter of April 16, 2002, to Mr. Dworkin (see page 56), the owner of that Jefferson Road warehouse. That is the Jefferson-Henrietta warehouse where Premier had its office and kept in storage its clients' property. Thus, among the abandoned assets were office equipment and storage containers as well as income-generating storage contracts, for example, the contract to store Dr. Cordero's property on which the Jefferson Road warehouse billed him $301.60 on March 7, 2002 (see page 79).

Then, in his Memorandum of Law in Opposition to Cordero's Motion to Extend Time for Appeal, dated February 5, 2003, page 5, the Trustee submits to Judge Ninfo the following statement:

> "The underlying Chapter 7 proceeding is a **"no asset" case** in which the estate has no funds to pay creditors and no funds to pay for administrative expenses incurred by the Trustee. **As the Court is aware**, the sum total of compensation to be paid to the Trustee in this case is **$60.00**." (emphasis added)

These passages raise many troubling questions:

a. Was the case an "Asset Case" or was it a "„no asset" case""?

b. Since Trustee Gordon abandoned the assets in the Jefferson Road warehouse and those subsequently found, in spite of his inactivity, in the Pfuntner warehouse at Avon, could the estate have been expected to have funds to pay anything?

c. Why did Trustee Gordon give notice of such abandonment of Premier assets months after he had actually abandoned all the assets and the income-generating storage contracts to one single person? Was that person a creditor for warehousing rent? What happened with all those contracts and their stream of monthly income?

d. When was the Court made "aware" that the sum total of compensation for the Trustee was $60? It certainly was at a time when Dr. Cordero was not within hearing distance.

e. What happened with the assets that the Trustee intended to sell on July 23, 2002? Could and should notice have been given sooner after his appointment as trustee?

f. What happened to the "approximately $139.00" that as of September 26, 2002, the Trustee "plans to abandon" for the Debtor in Possession, Mr. David Palmer, the owner of Premier? Indeed, Mr. Palmer had become unreachable by phone from the end of February 2002, and what is even more telling, his own lawyer, Mr. Stilwell, had occasion to write to Judge Ninfo on December 20, 2002, that Mr. Palmer:

> "has not retained me relative to the suit, or even contacted me in over six months about anything. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them."

g. Did the Trustee perform negligently and recklessly precisely because he knew that he was going to be paid just "$60.00"?

h. Judge Ninfo received Dr. Cordero's letter of September 27, 2002, requesting a review of Trustee Gordon's performance and fitness to serve as trustee (see page 46), and referred it for a "thorough inquiry" to Assistant U.S. Trustee Schmitt. Did she ever ask herself or the Trustee any of these questions when she conducted her 'investigation' by establishing 'contact' -possibly only over the phone- with just the Trustee and one single other person? Did she get any answer? Not open to question is the fact that she did not give even a hint of either such questions, let alone any answers, in her letter of October 22, 2002, to Dr. Cordero with copy to Judge Ninfo and the Trustee (see page 22).

3. Summary dismissal of same or similar cross-claims as those of other parties: The docket reveals that Trustee Gordon abandoned the assets that Premier had at the time of his appointment and did not find other assets that the docket entries for James Pfuntner could have led him to discover had he exercised some curiosity and due diligence. Yet, the Trustee had the cheek to assert in his letter of October 1, 2002, to Judge Ninfo (see page 27) that:

> "Since conversion of this case to Chapter 7, I have undertaken **significant efforts to identify assets** to be liquidated for the benefit of creditors;" (emphasis added)

However, not only did Judge Ninfo not demand that the Trustee substantiate that assertion, as Dr. Cordero requested (see pages 71 and 31), but also the Judge dismissed, even before disclosure or discovery had started for any of the many litigants, his cross-claim that charged the Trustee with having submitted false statements to the Judge as well as to Assistant Schmitt with the intent of dissuading them from undertaking the review that Dr. Cordero had requested of the Trustee's performance and fitness.

Why would the Judge be indifferent, or even condone, the submission of falsehood by an officer of the court who in addition was a federal appointee?

4. Dismissal of claims even disregarding opposing party's statement against legal interest: On Trustee Gordon's motion, at the hearing on December 18, 2002, Judge Ninfo dismissed Dr. Cordero's cross-claims against the Trustee for defamation and negligent and reckless performance as Premier's trustee. The Judge told Dr. Cordero, who is appearing pro se, that he could appeal if he wanted. Dr. Cordero asked about any appeal forms and instructions and the Judge replied that they would be sent with the order of dismissal. That order was entered on December 30, 2002, and was mailed from Rochester. But when it arrived in New York City, it had no appeal forms or instructions, although in four previous occasions Dr. Cordero had received forms and instructions from the Court. Dr. Cordero had to call the clerk's office and ask for the forms to be mailed.

Time was running short since Dr. Cordero had learned that he had only 10 days to give notice of appeal. So he prepared the forms as soon as he could and mailed them timely on Thursday, January 9, 2003, reasonably relying that the complete-on-mailing rule of Rule 9006(e) and the three additional days to act after papers have been served by mail of Rule 9006(f) F.R.Bankr.P. were applicable. His notice of appeal was filed on Monday, January 13. To his astonishment, Trustee Gordon subsequently filed a motion in the U.S. District Court for the Western District of New York to dismiss the appeal on grounds that it had been filed untimely! After Dr. Cordero received that motion, he scrambled to prepare a motion to extend time to file the notice of appeal under 8002(c)(2) F.R.Bankr.P. Once more he mailed it timely on Monday, January 27, 2003. What is more, Trustee Gordon acknowledged that it had been also filed timely, for on page 2 of his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time for Appeal (see page 143) he wrote that:

> "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal."

The return day for the motion was February 12, 2003. Dr. Cordero attended by phone. This time, to his bafflement, Judge Ninfo ruled that the motion had been filed untimely on January 30 and therefore, he denied it! Dr. Cordero protested and brought to his attention that the Trustee himself had written in his responsive pleading that Dr. Cordero had filed it on January 29. Judge Ninfo disregarded that fact just as he did the squarely on point statement of the Supreme Court In re Pioneer, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993):

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

Judge Ninfo stated that Dr. Cordero did not get to keep talking after he had made a ruling. Dr. Cordero said that he wanted to preserve for the record the objection that page 2 of Trustee Gordon's papers in opposition stated that Dr. Cordero had filed his motion to extend on January 29 so that the…Dr. Cordero's phone connection was cut off abruptly.

5. Default judgment application handled contrary to law and facts: In this effort to consider the totality of circumstances, one should also consider what has happened with Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Premier. The latter never answered the third-party complaint against him (see page 66), nor did he oppose the default application, which Dr. Cordero not only served on his lawyer, Mr. Stilwell, but also on him directly.

Dr. Cordero submitted the default judgment application, as required, to the Bankruptcy Court, which was supposed to make a recommendation on it to the United States District Court, the one that would then make the decision on whether to enter the default judgment. But first, the bankruptcy clerk must act according to the unconditional legal obligation imposed on him by Rule 55 F.R.Civ.P., made applicable by Rule 7055 F.R.Bankr.P.:

> "When a party…has failed to plead or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

Dr. Cordero timely submitted the required Application for Entry of Default on December 26, 2002 (see page 104). That Mr. Palmer had failed to plead or defend was undisputable and undisputed. The application was accompanied by an Affidavit of Amount Due requesting that $24,032.08 be entered against Mr. Palmer (see page 108) as per the relief requested in the summons and complaint served on him. Nevertheless, for weeks nothing happened with the application and Dr. Cordero received no feedback either.

When Dr. Cordero began to inquire into this, he was bandied between the District Court and the Bankruptcy Court. Finally, he found out from a bankruptcy clerk that the application had been transferred to Judge Ninfo, who was holding it until Dr. Cordero's property could be inspected and he could demonstrate what damages he had sustained. But there is absolutely no legal basis under Rule 55 for requiring a plaintiff to have to demonstrate anything when applying for default judgment for a sum certain! In such a case, default judgment is predicated on the defendant's failure to appear and contest the sum certain claimed in the complaint, not on the plaintiff's loss.

Dr. Cordero had to write to Judge Ninfo, which he did by letter of January 30, 2003 (see page 116). The Judge never replied to that letter. Instead, on February 4, the Bankruptcy Clerk Paul Warren entered default, a fact that he had the unconditional legal obligation to enter back in December upon receiving the application. For his part, Judge Ninfo recommended to the District Court that default not be entered. His recommendation shows an astonishingly undisguised lack of impartiality and pre-judgment of the issues (see page 119).

Among other things, Judge Ninfo stated that Dr. Cordero had not demonstrated damages and that upon inspection of his property it would be shown that he had sustained no loss. UN-BE-LIVE-A-BLE! What could possibly give him grounds to make such assertion since no disclosure or discovery has taken place even now when this Adversary Proceeding no. 02-2230 is nearing the end of the six month after it was filed. Not only that, but Dr. Cordero's property has not been actually seen by anybody; the only thing that has been seen is a label bearing his name affixed to a container left behind in Mr. James Pfuntner's warehouse since who knows when. This is so even though Judge Ninfo required last January 10, at the only pre-trial meeting held so far, that this property be made available for inspection. Nevertheless, Mr. Pfuntner, the plaintiff who filed the Adversary Proceeding and sued Dr. Cordero for storage fees, has not yet held that inspection despite the fact that he has every interest in its taking place in order to establish his claim.

To top this off, the Hon. David G. Larimer, United States District Court Judge, who received the recommendation of his next door colleague Judge Ninfo, had a decision entered last March 12 (see page 147). Therein Judge Larimer concurred with the recommendation to "deny entry of default judgment…since the matter does not involve a sum certain." WHAT?! It does! Dr. Cordero's Affidavit of Sum Due clearly stated that the sum certain is $24,032.08. So does paragraph 59 of his Motion to Enter Default Judgment Against David Palmer and Withdraw Proceeding, which he submitted together with a letter addressed to Judge Larimer and dated March 2, 2003 (see pages 122 and 123).

However, Judge Larimer made no reference whatsoever to that motion, or the letter to him for that matter, in his decision entered 10 days later.

D. Conclusion: Is so much contempt for law and facts mere coincidence?

How could it possibly be that so many court officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal? How could this have happened by coincidence rather than by concert? Did everybody just fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? What's for them in this case and how much higher were and are the stakes in those other cases?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of those courts and the justice that its officers are supposed to dispense. So does the question of to what extent the reluctance or refusal of Trustee Program officers all the way to the top to investigate this matter results from a critical or worse problem in the Program's functioning. If trust is not elicited by officers that in their professional designation as trustees carry that notion, in whom can it be placed?

Dr. Cordero very much hopes that trust can be placed in Attorney General Ashcroft, who according to the description in his DoJ webpage is "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." This case cries for justice, particularly since Dr. Cordero's only fault in it has been that of having paid for years on end storage and insurance fees to store his property and then having tried to find it only to be sucked into this maelstrom of Kafkian non-sense and arbitrariness.

E. Action requested

Therefore, Dr. Cordero respectfully requests that Attorney General Ashcroft open a two prong investigation into the totality of circumstance forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Perhaps the Attorney General might wish to start by requesting Director Friedman and General Counsel Guzinski what they have done since receiving over two and a half months ago Dr. Cordero's letter of last January 10 (see page ix). As to the Courts, the Attorney General might wish to begin by requesting the transcript of the hearing of Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims held before Judge Ninfo on December 18, 2002, in Adversarial Proceeding no. 02-2230, which will make it possible to find out what went on between the participants physically present in court before or after Dr. Cordero was brought in on the phone. To that end, a list is submitted with the names, addresses, and phone numbers of all the parties (see page xx).

Dated: March 24, 2002

Dr. Richard Cordero

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Resubmitted on May 1, 2003

April 21, 2003

Mr. Glenn Fine
Inspector General
U.S. Department of Justice
1425 New York Avenue, NW
Washington, DC 20530

faxed to (202)616-9884

Dear Mr. Inspector General,

Last March 24, I sent a documented complaint to Attorney General John Ashcroft, as the supervisory head of the Executive Office for U.S. Trustees, about Director Lawrence Friedman's and General Counsel Joseph Guzinski's unresponsiveness and indifference to the evidence of trustees' misconduct that I had submitted to them. The complaint also concerns the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Since by April 7 I had not received even an acknowledgment of receipt, I called the Justice Department. Because nobody could find my complaint, I faxed a cover letter for you with my March 24 letter to Mr. Ashcroft together with a Statement of Facts and a copy of a letter to Director Friedman. My complaint was referred for investigation to the complained-about entity, that is, the Trustees' Office. Its Deputy Director, Mr. Clifford White, called me on April 9 and we discussed the conduct of the trustees in Rochester, NY, that triggered the complaint as well as the indifference of Director Friedman and General Counsel Guzinski to my letters of January 10, February 20, and March 11, to which they never sent an acknowledgment of receipt either. Mr. White said he would call me the next week, but failed to do so.

Today I called him. To my dismay, he does not yet understand what it is that I requested of Mr. Friedman more than three months ago. Blatantly revealing his unwillingness to deal with this complaint with any degree of seriousness is that 12 days after our conversation, he still has not read my complaint! He does not even know what it is that I sent to his office, let alone what I sent to trustees elsewhere. Indeed, I complaint to Mr. Guzinski in my February 20 letter about Mr. Bridenhagen self-demeaning call to ask me what to read of my file, although an 'investigator' unable to decide for himself what to read of a bound file with sequentially numbered pages –a hint: begin with the first pages- can hardly be expected to be able to make evaluative decisions about people's conduct and events. With that precedent, one would imagine that Mr. White would not dare ask me to send him a letter to tell him what it is that I wanted him to do. Against that background, the copy that I am sending you herewith of the letter that Mr. White did ask me to send him will become more meaningful to you.

Mr. White's conduct, just as Mr. Friedman's and Mr. Guzinski's, point out an elementary principle of investigation: An entity cannot investigate itself, and when one attempts to do so, what results is a sham. I trust that you do not want to be part of such an exercise or allow your referral to them to be treated with contemptuous perfunctoriness, which casts doubts on the good-faith intentions and competence of all those involved.

Therefore, I respectfully request that you withdraw my complaint and supporting file to the Attorney General from the hands of Mr. White and his colleagues and launch your own investigation into the conduct of the trustees and judicial officers in question. If you refer the investigation of the judicial officers to the FBI, please let me know the agent's name and phone number. Meanwhile, I look forward to hearing from you, and remain,

sincerely yours,

Dr. Richard Cordero

Dr. Richard Cordero, Esq.

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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59 Crescent Street
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tel. (718) 827-9521; CorderoRic@yahoo.com

COPY

April 21, 2003

Mr. Clifford White
Deputy Director
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

faxed to (202)307-2397

Dear Mr. White,

In our phone conversation today you stated that you are a lawyer and that you needed to know what relief I wanted, but that you were confused by my prolific writing. You requested that I fax to you a letter setting out what I want. What does your failure to find the following material clear enough to understand reveal, which your DoJ superiors referred to you for action and we discussed on April 9?:

1. Next to last sentence of my one-page letter to Attorney General J. Ashcroft of March 24, 2003:
   "Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York."
2. Next to last paragraph of my two-page letter to Director L. Friedman of January 10, 2003:
   "Consequently, I respectfully request that you conduct a „thorough inquiry" into Trustee Gordon"s performance and fitness to serve [file page 17]; Assistant Schmitt"s supervisory failures [file page 3]; and Trustee Schwartz" contemptuous disregard for a complaint about both of them."
3. First sentence of my letter to General Counsel Guzinski of March 11, 2003:
   "I hereby invoke the Freedom of Information Act to request that you send me copies of all documents –…- concerning the matter discussed in the accompanying letters and involving, among others, Trustees Schwartz, Schmitt, and Gordon, and Mr. Bridenhagen."

Your unfamiliarity with these basic letters together with your impatient insistence nevertheless that I "cut to the chase" and your claim that since I know where my property is I can retrieve it and get what I wanted, reveal that you treat my complaint as a nuisance foisted upon you by your superiors so that you are reluctant to waste time reading the complaint. Hence, you take the easy way out of listening to your complained-about colleagues as they claim that my complaint is about trustees not searching for my property, whereby they deflect your attention from my complaint about their performance. As a result, there is no reasonable expectation that you will conduct anything but a pro-forma 'investigation' that cannot possibly be responsive to a complaint whose details you cannot be bothered to learn. It all proves the axiom that a complained-about entity cannot investigate itself with zeal, candor, and objectivity.

While you hammer together some reply, which I will analyze with rigor and professionalism in light of the evidence, the law, and common sense, as I did Trustees Gordon's and Schmitt's, I request that you send me copies of the documents that your Office, as alleged by your colleague Mr. Bridenhagen, has been gathering since shortly after my January 10 letter to Mr. Friedman.

sincerely yours,

Dr. Richard Cordero

cc: Messrs. John Ashcroft, Glenn Fine, Robert McCallun, and Peter Keisler

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COPY

March 24, 2003

Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General,

I hereby submit to you, as the supervisory head of the U.S. Trustee Program, a complaint about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski. I also bring to your attention the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Indeed, last January 10, I submitted to Director Friedman a complaint accompanied by documentary evidence about the false and defamatory statements and the negligent and reckless performance of Trustee Kenneth Gordon, and the pro forma, substandard review of him by Assistant U.S. Trustee Kathleen Dunivin Schmitt, both in the Western District of New York; as well as the unresponsiveness to my complaint about them of U.S. Trustee for Region 2 Carolyn S. Schwartz. Although more than two months have gone by, I have not yet received even a letter of acknowledgment of my complaint, despite my phone calls to Mr. Friedman and Mr. Guzinski, to the latter of whom my complaint was internally transferred, and even though I wrote to him and again to Mr. Friedman on February 20 and March. 11.

The triggering events of misconduct and the substantive issues at stake are set out in detail in my January 10 letter to Director Friedman. To spare you reading them twice, I refer you to the copy on page ix. What you will find in the attached Statement of Subsequent Facts are some events among those that have occurred since in this ever compounding series of disturbing events. It runs for only EIGHT pages, whose reading is facilitated by page references to supporting documents in the Exhibits. After reading them, you may end up asking yourself how could it possibly be that so many officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal. Does this happen by coincidence or by concert? Did everybody fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? Why? What's in it for them?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of the courts and the justice that its officers are supposed to dispense. Likewise, if trust is not elicited by officers that carry that notion in their professional designation, in whom can it be placed? I much hope that trust can be placed in you, who according to the description in your DoJ webpage are "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Meantime, I would be most grateful if you would acknowledge receipt of this complaint and let me know how you have decided to proceed.

Yours sincerely,

Dr. Richard Cordero

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COPY

March 24, 2003

STATEMENT OF SUBSEQUENT FACTS*

in support of an application to

Attorney General John Ashcroft

to Open an Investigation
into certain events and officers at
the United States Trustee Program and
the U.S. Bankruptcy and District Courts for the Western District of NY

submitted by

Dr. Richard Cordero

Kenneth Gordon, Esq., was appointed in December 2001, trustee to liquidate Premier Van Lines, a moving and storage company in Rochester, NY, that had gone bankrupt in March of that year and had become the Debtor in case 01-20692 in the U.S. Bankruptcy Court of the Western District of NY. In January 2002, he determined[1] that Premier was an asset case. Premier was storing under contract the property of many clients, including that of Dr. Richard Cordero.

A. Trustee Gordon's negligent and reckless performance

Neither Premier nor Trustee Gordon gave notice to Dr. Cordero that Premier was in bankruptcy, let alone liquidation. On the contrary, the owner of Premier, Mr. David Palmer, and a principal of the Jefferson-Henrietta warehouse out of which Premier operated, Mr. David Dworkin, intentionally misled Dr. Cordero by telling him for months that his property was safe in that warehouse. However, they would not state so in writing. Finally, Mr. Palmer disappeared and Mr. Dworkin had to admit that Premier was in liquidation and that he was not even sure whether Dr. Cordero's property was in his warehouse.

Eventually, Mr. Dworkin referred Dr. Cordero to the holder of a blanket lien on Premier's assets, namely, Manufacturers & Traders Trust Bank, which in turn referred him to Trustee Gordon to find out

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* These are facts subsequent to those related in the letter of January 10, 2003, to Mr. Lawrence Friedman, Director of the Executive Office of the United States Trustee (see page ix) and the Statement of Facts in Dr. Cordero's Amended Answer with Cross-claims of November 20, 2002 (see page 60).

[1] This determination is the responsibility of the trustee, as provided in §2-2.1. of Chapter 7 Case Administration of the United States Trustee Manual, adopted by the Department of Justice and its United States Trustee Program. It requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**;" (emphasis added).

how to locate and retrieve his property. Dr. Cordero contacted the Trustee to request such information, but the Trustee would not take or return his calls, and after he did, he would not send an agreed upon letter of information. Dr. Cordero had to write to him and then even call him to ask for the letter.

When a letter dated June 10, 2002, arrived (see page 55, and page 12, heading 11 [of the file with exhibits accompanying this Statement]), it was only to "suggest that you retain counsel to investigate what has happened to your property," and to address Dr. Cordero's attention to the attached copy of the Trustee's letter to Mr. Dworkin, dated April 16, 2002 (see page 56), wherein the Trustee informed Mr. Dworkin that he had abandoned Premier's assets in the Jefferson-Henrietta warehouse and "any issues renters may have regarding their storage units should be handled by yourself and M&T Bank.".

As a result of Dr. Cordero's search for his property, a third party (see footnotes 33 and 34 and referring text on page 101), by just reading Premier's business files that had been under the Trustee's control, found at the end of July 2002 other assets of Premier in a warehouse in Avon, NY, belonging to Mr. James Pfuntner (see pages 41 and 42). Dr. Cordero's property was supposed to be there, but Mr. Pfuntner would not release it to him for fear that the Trustee would sue him. Thus, Mr. Pfuntner referred Dr. Cordero to Trustee Gordon. Dr. Cordero tried to contact the Trustee, but the latter would not talk to him to the point that by letter of September 23, 2002, even enjoined him not to contact his office again (see page 29).

Consequently, Dr. Cordero wrote to the Bankruptcy Judge assigned to this case, the Hon. John C. Ninfo, II, and requested a review of the Trustee's performance and fitness to serve as trustee (see pages 46-49). Judge Ninfo referred the complaint to Assistant U.S. Trustee Schmitt. In an effort to dissuade them from launching that review, in a letter of October 1, 2002, the Trustee submitted to them statements that were false and defamatory of Dr. Cordero (see pages 27-28 and their analysis on pages 31-37).

B. The withholding of the transcript of the December 18 hearing

Thereafter Mr. Pfuntner sued, among others, the Trustee and Dr. Cordero in Adversary Proceeding no. 02-2230, with summons issued on October 3, 2002. Dr. Cordero cross-claimed the Trustee for defamation as well as negligent and reckless performance as trustee (see page 71). The Trustee moved to dismiss (see page 89). At the hearing last December 18, Judge Ninfo dismissed Dr. Cordero's cross-claims despite the fact that not even disclosure, let alone discovery, had begun and that other parties in this 10-party case could assert claims and defenses equal or similar to Dr. Cordero's.

Dr. Cordero appealed to the District Court. As part of the record on appeal, he needed the transcript of the hearing. So he contacted the Court Reporter, Ms. Mary Dianetti, at (585)586-6392, and asked her how much it would cost. After reviewing her notes, she called him and let him know that there could be some 27 pages and at $3 each, the transcript could cost some $80. By letter of January 23, with copy to the Bankruptcy Clerk, he agreed to her estimate and requested the transcript (see page 103).

However, weeks went by, but the transcript would not arrive. Dr. Cordero called Ms. Dianetti, but she would neither take nor return his calls despite his leaving voice messages for her inquiring about the transcript. He also called the Bankruptcy Clerk's office, but they said that they could not put him in touch with her because her office was not in that building.

On Monday, March 10, Dr. Cordero called Ms. Dianetti again. Once more he left a voice message explaining that there had been an offer and an acceptance between them for the transcript; that he had left messages for her because neither the transcript had been filed nor he had received a copy; that she had not responded to any of his voice messages; that he found the situation most strange because…she picked up the phone, she had been screening Dr. Cordero's call! She said that she had been sick, that she never got sick but this time she had been sick, and that her typists had not typed the transcript. He reminded her that

back in January she had told him that it would take some 10 days for the transcript to be ready. Again she said that she had been sick (for well over a month but nobody at the Clerk's office knew anything about it?!) Then she added that she would get the transcript out by the end of that week and 'you want it from the moment you came in on the phone.' A chill went down Dr. Cordero's spine, for what a remarkable comment to make!

A hearing begins when both parties can be heard by the judge in open court. Judge Ninfo had allowed Dr. Cordero, who lives in New York City, to attend the hearing in Rochester by phone. Ms. Dianetti was implying that the hearing had begun before Dr. Cordero was brought in. But why would she even assume that he wanted only that part of the transcript in which he had appeared? How could she possibly remember that a hearing that had taken place almost three months earlier had one party attending by phone, a fact never before discussed between them? Why would she care?

Dr. Cordero told her that he wanted everything and asked her whether something had occurred before he had come in on the phone. She replied that nothing had occurred before that moment. So why did she make that comment? (Had she tried to obtain his implicit assent to her sending him only part of the transcript?) Now she began to fumble. She put him on hold twice to consult her notes. She said that at the hearing, after she had called the case, Dr. Cordero had been brought in on the phone. She read passages from 'her notes' (that is, those that she had said her typists had not typed).

Dr. Cordero asked how many pages there would be in the transcript. She said some 15. How come? Dr. Cordero reminded her that she had told him that it would be some 27 pages long and cost some $80. She said that she always estimated more pages and if it came out to fewer, then the client was satisfied. (How many repeat clients does a court reporter have? Does she have competitors to which an appellant could go if dissatisfied with a page estimate? Given her experience, why did she have to overestimate at all, and why from 15 to 27, that is, by 80%? How many more clients does she dissatisfy with similar over-blown estimates? Would her repeat clients be satisfied if they came to realize that her estimates were so unreliable?). Finally, she assured him that he would have a copy of the transcript by the end of the week…but he is still waiting, two weeks later, for 15 pages double spaced?!

It is most unlikely that a court reporter that cared so much about satisfying clients by coming up with transcripts with page counts drastically below her own estimates would care so little about dissatisfying them by not taking their calls, ignoring their recorded messages, and keeping them waiting for well over a month and a half for transcripts without which their appeal records cannot even be filed, let alone their appeals begin. There is hardly any reason why Ms. Dianetti would take it upon herself to prevent an appeal from going forward. Rather, could it be that the whole transcript contained portions before or after Dr. Cordero was allowed to be on the phone and that such portions, constituting in effect ex parte exchanges, were incriminating? Who would benefit from the transcript not being prepared in its entirety and submitted?

C. Other components of the totality of circumstances to be assessed

It is said that a situation should be assessed on the basis of the totality of circumstances. In this case, the withholding of the transcript is only one of many disconcerting events. They are all the more disconcerting because they all happen to have the same effect of not reviewing in court Dr. Cordero's claims. But how likely is it that those events just by coincidence had the same effect? Or is it more likely that it is by concert that they have been aimed to achieve the same objective? To determine whether these questions are the fruit of paranoiac speculation or rather are grounded on a reasonable interpretation of the facts, let's examine some of those events.

1. Failed to review docket that could have led to discovery of Premier assets: The docket of the Premier bankruptcy case (see page 150) reveals that a Jim Pfuntner (entry 17) was involved in the case in

connection with "efforts to collect a debt," and (entry 19) with "James Pfuntner re: motion to turnover property from Jim Pfutner." In December 2001, Trustee Gordon was appointed trustee (entry 63) to find and liquidate Premier's assets. However, it was not until eight months later that a third party, at Dr. Cordero's instigation, examined the Premier business files to which the Trustee had had the key and access and found that more Premier assets were in James Pfuntner's warehouse in Avon, NY. Could Trustee Gordon, by reading the docket and exercising due diligence, have found out the nature of Mr. Pfuntner's involvement in Premier's case and that Mr. Pfuntner was owed rent for storing in his warehouse assets of Premier and property of its clients?

2. Mishandled assets but complained about minimal compensation: Within a month of his appointment as trustee, Trustee Gordon knew on January 26, 2002, that the liquidation of Premier was an asset case (entry 70), meaning that there were assets to warrant and pay for his services (see footnote 1, supra, and accompanying text). However, only on July 23, 2002, is there a statement (entry 94) of:

> "Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentuckey trailer."

For the following day the docket states (entry 95):

> "Letter from trustee stating that this is **now** an **asset case** and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set)" (emphasis added)

It was not until September 26, 2002, (entry 98; see also page 17, heading 19) that the Trustee gave:

> "Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately **$139.00** for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankrupcy estate." (emphasis added; DIP= Debtor in Possession)

However, Trustee Gordon had already abandoned Premier's assets by letter of April 16, 2002, to Mr. Dworkin (see page 56), the owner of that Jefferson Road warehouse. That is the Jefferson-Henrietta warehouse where Premier had its office and kept in storage its clients' property. Thus, among the abandoned assets were office equipment and storage containers as well as income-generating storage contracts, for example, the contract to store Dr. Cordero's property on which the Jefferson Road warehouse billed him $301.60 on March 7, 2002 (see page 79).

Then, in his Memorandum of Law in Opposition to Cordero's Motion to Extend Time for Appeal, dated February 5, 2003, page 5, the Trustee submits to Judge Ninfo the following statement:

> "The underlying Chapter 7 proceeding is a **"no asset" case** in which the estate has no funds to pay creditors and no funds to pay for administrative expenses incurred by the Trustee. **As the Court is aware**, the sum total of compensation to be paid to the Trustee in this case is **$60.00**." (emphasis added)

These passages raise many troubling questions:

a. Was the case an "Asset Case" or was it a "„no asset" case""?

b. Since Trustee Gordon abandoned the assets in the Jefferson Road warehouse and those subsequently found, in spite of his inactivity, in the Pfuntner warehouse at Avon, could the estate have been expected to have funds to pay anything?

c. Why did Trustee Gordon give notice of such abandonment of Premier assets months after he had actually abandoned all the assets and the income-generating storage contracts to one single person? Was that person a creditor for warehousing rent? What happened with all those contracts and their stream of monthly income?

d. When was the Court made "aware" that the sum total of compensation for the Trustee was $60? It certainly was at a time when Dr. Cordero was not within hearing distance.

e. What happened with the assets that the Trustee intended to sell on July 23, 2002? Could and should notice have been given sooner after his appointment as trustee?

f. What happened to the "approximately $139.00" that as of September 26, 2002, the Trustee "plans to abandon" for the Debtor in Possession, Mr. David Palmer, the owner of Premier? Indeed, Mr. Palmer had become unreachable by phone from the end of February 2002, and what is even more telling, his own lawyer, Mr. Stilwell, had occasion to write to Judge Ninfo on December 20, 2002, that Mr. Palmer:

> "has not retained me relative to the suit, or even contacted me in over six months about anything. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them."

g. Did the Trustee perform negligently and recklessly precisely because he knew that he was going to be paid just "$60.00"?

h. Judge Ninfo received Dr. Cordero's letter of September 27, 2002, requesting a review of Trustee Gordon's performance and fitness to serve as trustee (see page 46), and referred it for a "thorough inquiry" to Assistant U.S. Trustee Schmitt. Did she ever ask herself or the Trustee any of these questions when she conducted her 'investigation' by establishing 'contact' -possibly only over the phone- with just the Trustee and one single other person? Did she get any answer? Not open to question is the fact that she did not give even a hint of either such questions, let alone any answers, in her letter of October 22, 2002, to Dr. Cordero with copy to Judge Ninfo and the Trustee (see page 22).

3. Summary dismissal of same or similar cross-claims as those of other parties: The docket reveals that Trustee Gordon abandoned the assets that Premier had at the time of his appointment and did not find other assets that the docket entries for James Pfuntner could have led him to discover had he exercised some curiosity and due diligence. Yet, the Trustee had the cheek to assert in his letter of October 1, 2002, to Judge Ninfo (see page 27) that:

> "Since conversion of this case to Chapter 7, I have undertaken **significant efforts to identify assets** to be liquidated for the benefit of creditors;" (emphasis added)

However, not only did Judge Ninfo not demand that the Trustee substantiate that assertion, as Dr. Cordero requested (see pages 71 and 31), but also the Judge dismissed, even before disclosure or discovery had started for any of the many litigants, his cross-claim that charged the Trustee with having submitted false statements to the Judge as well as to Assistant Schmitt with the intent of dissuading them from undertaking the review that Dr. Cordero had requested of the Trustee's performance and fitness.

Why would the Judge be indifferent, or even condone, the submission of falsehood by an officer of the court who in addition was a federal appointee?

4. Dismissal of claims even disregarding opposing party's statement against legal interest: On Trustee Gordon's motion, at the hearing on December 18, 2002, Judge Ninfo dismissed Dr. Cordero's cross-claims against the Trustee for defamation and negligent and reckless performance as Premier's trustee. The Judge told Dr. Cordero, who is appearing pro se, that he could appeal if he wanted. Dr. Cordero asked about any appeal forms and instructions and the Judge replied that they would be sent with the order of dismissal. That order was entered on December 30, 2002, and was mailed from Rochester. But when it arrived in New York City, it had no appeal forms or instructions, although in four previous occasions Dr. Cordero had received forms and instructions from the Court. Dr. Cordero had to call the clerk's office and ask for the forms to be mailed.

Time was running short since Dr. Cordero had learned that he had only 10 days to give notice of appeal. So he prepared the forms as soon as he could and mailed them timely on Thursday, January 9, 2003, reasonably relying that the complete-on-mailing rule of Rule 9006(e) and the three additional days to act after papers have been served by mail of Rule 9006(f) F.R.Bankr.P. were applicable. His notice of appeal was filed on Monday, January 13. To his astonishment, Trustee Gordon subsequently filed a motion in the U.S. District Court for the Western District of New York to dismiss the appeal on grounds that it had been filed untimely! After Dr. Cordero received that motion, he scrambled to prepare a motion to extend time to file the notice of appeal under 8002(c)(2) F.R.Bankr.P. Once more he mailed it timely on Monday, January 27, 2003. What is more, Trustee Gordon acknowledged that it had been also filed timely, for on page 2 of his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time for Appeal (see page 143) he wrote that:

> "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal."

The return day for the motion was February 12, 2003. Dr. Cordero attended by phone. This time, to his bafflement, Judge Ninfo ruled that the motion had been filed untimely on January 30 and therefore, he denied it! Dr. Cordero protested and brought to his attention that the Trustee himself had written in his responsive pleading that Dr. Cordero had filed it on January 29. Judge Ninfo disregarded that fact just as he did the squarely on point statement of the Supreme Court In re Pioneer, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993):

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

Judge Ninfo stated that Dr. Cordero did not get to keep talking after he had made a ruling. Dr. Cordero said that he wanted to preserve for the record the objection that page 2 of Trustee Gordon's papers in opposition stated that Dr. Cordero had filed his motion to extend on January 29 so that the…Dr. Cordero's phone connection was cut off abruptly.

5. Default judgment application handled contrary to law and facts: In this effort to consider the totality of circumstances, one should also consider what has happened with Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Premier. The latter never answered the third-party complaint against him (see page 66), nor did he oppose the default application, which Dr. Cordero not only served on his lawyer, Mr. Stilwell, but also on him directly.

Dr. Cordero submitted the default judgment application, as required, to the Bankruptcy Court, which was supposed to make a recommendation on it to the United States District Court, the one that would then make the decision on whether to enter the default judgment. But first, the bankruptcy clerk must act according to the unconditional legal obligation imposed on him by Rule 55 F.R.Civ.P., made applicable by Rule 7055 F.R.Bankr.P.:

> "When a party…has failed to plead or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

Dr. Cordero timely submitted the required Application for Entry of Default on December 26, 2002 (see page 104). That Mr. Palmer had failed to plead or defend was undisputable and undisputed. The application was accompanied by an Affidavit of Amount Due requesting that $24,032.08 be entered against Mr. Palmer (see page 108) as per the relief requested in the summons and complaint served on him. Nevertheless, for weeks nothing happened with the application and Dr. Cordero received no feedback either.

When Dr. Cordero began to inquire into this, he was bandied between the District Court and the Bankruptcy Court. Finally, he found out from a bankruptcy clerk that the application had been transferred to Judge Ninfo, who was holding it until Dr. Cordero's property could be inspected and he could demonstrate what damages he had sustained. But there is absolutely no legal basis under Rule 55 for requiring a plaintiff to have to demonstrate anything when applying for default judgment for a sum certain! In such a case, default judgment is predicated on the defendant's failure to appear and contest the sum certain claimed in the complaint, not on the plaintiff's loss.

Dr. Cordero had to write to Judge Ninfo, which he did by letter of January 30, 2003 (see page 116). The Judge never replied to that letter. Instead, on February 4, the Bankruptcy Clerk Paul Warren entered default, a fact that he had the unconditional legal obligation to enter back in December upon receiving the application. For his part, Judge Ninfo recommended to the District Court that default not be entered. His recommendation shows an astonishingly undisguised lack of impartiality and pre-judgment of the issues (see page 119).

Among other things, Judge Ninfo stated that Dr. Cordero had not demonstrated damages and that upon inspection of his property it would be shown that he had sustained no loss. UN-BE-LIVE-A-BLE! What could possibly give him grounds to make such assertion since no disclosure or discovery has taken place even now when this Adversary Proceeding no. 02-2230 is nearing the end of the six month after it was filed. Not only that, but Dr. Cordero's property has not been actually seen by anybody; the only thing that has been seen is a label bearing his name affixed to a container left behind in Mr. James Pfuntner's warehouse since who knows when. This is so even though Judge Ninfo required last January 10, at the only pre-trial meeting held so far, that this property be made available for inspection. Nevertheless, Mr. Pfuntner, the plaintiff who filed the Adversary Proceeding and sued Dr. Cordero for storage fees, has not yet held that inspection despite the fact that he has every interest in its taking place in order to establish his claim.

To top this off, the Hon. David G. Larimer, United States District Court Judge, who received the recommendation of his next door colleague Judge Ninfo, had a decision entered last March 12 (see page 147). Therein Judge Larimer concurred with the recommendation to "deny entry of default judgment…since the matter does not involve a sum certain." WHAT?! It does! Dr. Cordero's Affidavit of Sum Due clearly stated that the sum certain is $24,032.08. So does paragraph 59 of his Motion to Enter Default Judgment Against David Palmer and Withdraw Proceeding, which he submitted together with a letter addressed to Judge Larimer and dated March 2, 2003 (see pages 122 and 123).

However, Judge Larimer made no reference whatsoever to that motion, or the letter to him for that matter, in his decision entered 10 days later.

D. Conclusion: Is so much contempt for law and facts mere coincidence?

How could it possibly be that so many court officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal? How could this have happened by coincidence rather than by concert? Did everybody just fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? What's for them in this case and how much higher were and are the stakes in those other cases?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of those courts and the justice that its officers are supposed to dispense. So does the question of to what extent the reluctance or refusal of Trustee Program officers all the way to the top to investigate this matter results from a critical or worse problem in the Program's functioning. If trust is not elicited by officers that in their professional designation as trustees carry that notion, in whom can it be placed?

Dr. Cordero very much hopes that trust can be placed in Attorney General Ashcroft, who according to the description in his DoJ webpage is "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." This case cries for justice, particularly since Dr. Cordero's only fault in it has been that of having paid for years on end storage and insurance fees to store his property and then having tried to find it only to be sucked into this maelstrom of Kafkian non-sense and arbitrariness.

E. Action requested

Therefore, Dr. Cordero respectfully requests that Attorney General Ashcroft open a two prong investigation into the totality of circumstance forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Perhaps the Attorney General might wish to start by requesting Director Friedman and General Counsel Guzinski what they have done since receiving over two and a half months ago Dr. Cordero's letter of last January 10 (see page ix). As to the Courts, the Attorney General might wish to begin by requesting the transcript of the hearing of Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims held before Judge Ninfo on December 18, 2002, in Adversarial Proceeding no. 02-2230, which will make it possible to find out what went on between the participants physically present in court before or after Dr. Cordero was brought in on the phone. To that end, a list is submitted with the names, addresses, and phone numbers of all the parties (see page xx).

Dated: March 24, 2002

Dr. Richard Cordero

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

Dr. Richard Cordero

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Resubmitted on May 1, 2003

April 21, 2003

Mr. Peter Keisler
Principal Deputy to the Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

faxed to 202-514-0238; tel. 202-514-9500

Dear Mr. Keisler,

Last March 24, I sent a documented complaint to Attorney General John Ashcroft, as the supervisory head of the Executive Office for U.S. Trustees, about Director Lawrence Friedman's and General Counsel Joseph Guzinski's unresponsiveness and indifference to the evidence of trustees' misconduct that I had submitted to them. The complaint also concerns the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Since by April 7 I had not received even an acknowledgment of receipt, I called the Justice Department. Because nobody could find my complaint, I faxed a cover letter for you with my March 24 letter to Mr. Ashcroft together with a Statement of Facts and a copy of a letter to Director Friedman. My complaint was referred for investigation to the complained-about entity, that is, the Trustees' Office. Its Deputy Director, Mr. Clifford White, called me on April 9 and we discussed the conduct of the trustees in Rochester, NY, that triggered the complaint as well as the indifference of Director Friedman and General Counsel Guzinski to my letters of January 10, February 20, and March 11, to which they never sent an acknowledgment of receipt either. Mr. White said he would call me the next week, but failed to do so.

Today I called him. To my dismay, he does not yet understand what it is that I requested of Mr. Friedman more than three months ago. Blatantly revealing his unwillingness to deal with this complaint with any degree of seriousness is that 12 days after our conversation, he still has not read my complaint! He does not even know what it is that I sent to his office, let alone what I sent to trustees elsewhere. Indeed, I complaint to Mr. Guzinski in my February 20 letter about Mr. Bridenhagen self-demeaning call to ask me what to read of my file, although an 'investigator' unable to decide for himself what to read of a bound file with sequentially numbered pages –a hint: begin with the first pages- can hardly be expected to be able to make evaluative decisions about people's conduct and events. With that precedent, one would imagine that Mr. White would not dare ask me to send him a letter to tell him what it is that I wanted him to do. Against that background, the copy that I am sending you herewith of the letter that Mr. White did ask me to send him will become more meaningful to you.

Mr. White's conduct, just as Mr. Friedman's and Mr. Guzinski's, point out an elementary principle of investigation: An entity cannot investigate itself, and when one attempts to do so, what results is a sham. I trust that you do not want to be part of such an exercise or allow your referral to them to be treated with contemptuous perfunctoriness, which casts doubts on the good-faith intentions and competence of all those involved.

Therefore, I respectfully request that you withdraw my complaint and supporting file to the Attorney General from the hands of Mr. White and his colleagues and launch your own investigation into the conduct of the trustees and judicial officers in question. If you refer the investigation of the judicial officers to the FBI, please let me know the agent's name and phone number. Meanwhile, I look forward to hearing from you, and remain,

sincerely yours,

Dr. Richard Cordero

JA:230

Dr. Richard Cordero, Esq.

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COPY

April 21, 2003

Mr. Clifford White
Deputy Director
Executive Office for United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

faxed to (202)307-2397

Dear Mr. White,

In our phone conversation today you stated that you are a lawyer and that you needed to know what relief I wanted, but that you were confused by my prolific writing. You requested that I fax to you a letter setting out what I want. What does your failure to find the following material clear enough to understand reveal, which your DoJ superiors referred to you for action and we discussed on April 9?:

1. Next to last sentence of my one-page letter to Attorney General J. Ashcroft of March 24, 2003:
   "Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York."
2. Next to last paragraph of my two-page letter to Director L. Friedman of January 10, 2003:
   "Consequently, I respectfully request that you conduct a „thorough inquiry" into Trustee Gordon"s performance and fitness to serve [file page 17]; Assistant Schmitt"s supervisory failures [file page 3]; and Trustee Schwartz" contemptuous disregard for a complaint about both of them."
3. First sentence of my letter to General Counsel Guzinski of March 11, 2003:
   "I hereby invoke the Freedom of Information Act to request that you send me copies of all documents –…- concerning the matter discussed in the accompanying letters and involving, among others, Trustees Schwartz, Schmitt, and Gordon, and Mr. Bridenhagen."

Your unfamiliarity with these basic letters together with your impatient insistence nevertheless that I "cut to the chase" and your claim that since I know where my property is I can retrieve it and get what I wanted, reveal that you treat my complaint as a nuisance foisted upon you by your superiors so that you are reluctant to waste time reading the complaint. Hence, you take the easy way out of listening to your complained-about colleagues as they claim that my complaint is about trustees not searching for my property, whereby they deflect your attention from my complaint about their performance. As a result, there is no reasonable expectation that you will conduct anything but a pro-forma 'investigation' that cannot possibly be responsive to a complaint whose details you cannot be bothered to learn. It all proves the axiom that a complained-about entity cannot investigate itself with zeal, candor, and objectivity.

While you hammer together some reply, which I will analyze with rigor and professionalism in light of the evidence, the law, and common sense, as I did Trustees Gordon's and Schmitt's, I request that you send me copies of the documents that your Office, as alleged by your colleague Mr. Bridenhagen, has been gathering since shortly after my January 10 letter to Mr. Friedman.

sincerely yours,

Dr. Richard Cordero

cc: Messrs. John Ashcroft, Glenn Fine, Robert McCallun, and Peter Keisler

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COPY

March 24, 2003

Mr. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General,

I hereby submit to you, as the supervisory head of the U.S. Trustee Program, a complaint about the unresponsiveness and indifference to official misconduct of Director Lawrence Friedman and General Counsel Joseph Guzinski. I also bring to your attention the questionable conduct of court officers at the United States Bankruptcy and District Courts for the Western District of New York.

Indeed, last January 10, I submitted to Director Friedman a complaint accompanied by documentary evidence about the false and defamatory statements and the negligent and reckless performance of Trustee Kenneth Gordon, and the pro forma, substandard review of him by Assistant U.S. Trustee Kathleen Dunivin Schmitt, both in the Western District of New York; as well as the unresponsiveness to my complaint about them of U.S. Trustee for Region 2 Carolyn S. Schwartz. Although more than two months have gone by, I have not yet received even a letter of acknowledgment of my complaint, despite my phone calls to Mr. Friedman and Mr. Guzinski, to the latter of whom my complaint was internally transferred, and even though I wrote to him and again to Mr. Friedman on February 20 and March. 11.

The triggering events of misconduct and the substantive issues at stake are set out in detail in my January 10 letter to Director Friedman. To spare you reading them twice, I refer you to the copy on page ix. What you will find in the attached Statement of Subsequent Facts are some events among those that have occurred since in this ever compounding series of disturbing events. It runs for only EIGHT pages, whose reading is facilitated by page references to supporting documents in the Exhibits. After reading them, you may end up asking yourself how could it possibly be that so many officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal. Does this happen by coincidence or by concert? Did everybody fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? Why? What's in it for them?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of the courts and the justice that its officers are supposed to dispense. Likewise, if trust is not elicited by officers that carry that notion in their professional designation, in whom can it be placed? I much hope that trust can be placed in you, who according to the description in your DoJ webpage are "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." Therefore, I respectfully request that you open a two prong investigation into the totality of circumstances forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Meantime, I would be most grateful if you would acknowledge receipt of this complaint and let me know how you have decided to proceed.

Yours sincerely,

Dr. Richard Cordero

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COPY

March 24, 2003

STATEMENT OF SUBSEQUENT FACTS*

in support of an application to

Attorney General John Ashcroft

to Open an Investigation
into certain events and officers at
the United States Trustee Program and
the U.S. Bankruptcy and District Courts for the Western District of NY

submitted by

Dr. Richard Cordero

Kenneth Gordon, Esq., was appointed in December 2001, trustee to liquidate Premier Van Lines, a moving and storage company in Rochester, NY, that had gone bankrupt in March of that year and had become the Debtor in case 01-20692 in the U.S. Bankruptcy Court of the Western District of NY. In January 2002, he determined[1] that Premier was an asset case. Premier was storing under contract the property of many clients, including that of Dr. Richard Cordero.

A. Trustee Gordon's negligent and reckless performance

Neither Premier nor Trustee Gordon gave notice to Dr. Cordero that Premier was in bankruptcy, let alone liquidation. On the contrary, the owner of Premier, Mr. David Palmer, and a principal of the Jefferson-Henrietta warehouse out of which Premier operated, Mr. David Dworkin, intentionally misled Dr. Cordero by telling him for months that his property was safe in that warehouse. However, they would not state so in writing. Finally, Mr. Palmer disappeared and Mr. Dworkin had to admit that Premier was in liquidation and that he was not even sure whether Dr. Cordero's property was in his warehouse.

Eventually, Mr. Dworkin referred Dr. Cordero to the holder of a blanket lien on Premier's assets, namely, Manufacturers & Traders Trust Bank, which in turn referred him to Trustee Gordon to find out

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* These are facts subsequent to those related in the letter of January 10, 2003, to Mr. Lawrence Friedman, Director of the Executive Office of the United States Trustee (see page ix) and the Statement of Facts in Dr. Cordero's Amended Answer with Cross-claims of November 20, 2002 (see page 60).

[1] This determination is the responsibility of the trustee, as provided in §2-2.1. of Chapter 7 Case Administration of the United States Trustee Manual, adopted by the Department of Justice and its United States Trustee Program. It requires that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case**;" (emphasis added).

how to locate and retrieve his property. Dr. Cordero contacted the Trustee to request such information, but the Trustee would not take or return his calls, and after he did, he would not send an agreed upon letter of information. Dr. Cordero had to write to him and then even call him to ask for the letter.

When a letter dated June 10, 2002, arrived (see page 55, and page 12, heading 11 [of the file with exhibits accompanying this Statement]), it was only to "suggest that you retain counsel to investigate what has happened to your property," and to address Dr. Cordero's attention to the attached copy of the Trustee's letter to Mr. Dworkin, dated April 16, 2002 (see page 56), wherein the Trustee informed Mr. Dworkin that he had abandoned Premier's assets in the Jefferson-Henrietta warehouse and "any issues renters may have regarding their storage units should be handled by yourself and M&T Bank.".

As a result of Dr. Cordero's search for his property, a third party (see footnotes 33 and 34 and referring text on page 101), by just reading Premier's business files that had been under the Trustee's control, found at the end of July 2002 other assets of Premier in a warehouse in Avon, NY, belonging to Mr. James Pfuntner (see pages 41 and 42). Dr. Cordero's property was supposed to be there, but Mr. Pfuntner would not release it to him for fear that the Trustee would sue him. Thus, Mr. Pfuntner referred Dr. Cordero to Trustee Gordon. Dr. Cordero tried to contact the Trustee, but the latter would not talk to him to the point that by letter of September 23, 2002, even enjoined him not to contact his office again (see page 29).

Consequently, Dr. Cordero wrote to the Bankruptcy Judge assigned to this case, the Hon. John C. Ninfo, II, and requested a review of the Trustee's performance and fitness to serve as trustee (see pages 46-49). Judge Ninfo referred the complaint to Assistant U.S. Trustee Schmitt. In an effort to dissuade them from launching that review, in a letter of October 1, 2002, the Trustee submitted to them statements that were false and defamatory of Dr. Cordero (see pages 27-28 and their analysis on pages 31-37).

B. The withholding of the transcript of the December 18 hearing

Thereafter Mr. Pfuntner sued, among others, the Trustee and Dr. Cordero in Adversary Proceeding no. 02-2230, with summons issued on October 3, 2002. Dr. Cordero cross-claimed the Trustee for defamation as well as negligent and reckless performance as trustee (see page 71). The Trustee moved to dismiss (see page 89). At the hearing last December 18, Judge Ninfo dismissed Dr. Cordero's cross-claims despite the fact that not even disclosure, let alone discovery, had begun and that other parties in this 10-party case could assert claims and defenses equal or similar to Dr. Cordero's.

Dr. Cordero appealed to the District Court. As part of the record on appeal, he needed the transcript of the hearing. So he contacted the Court Reporter, Ms. Mary Dianetti, at (585)586-6392, and asked her how much it would cost. After reviewing her notes, she called him and let him know that there could be some 27 pages and at $3 each, the transcript could cost some $80. By letter of January 23, with copy to the Bankruptcy Clerk, he agreed to her estimate and requested the transcript (see page 103).

However, weeks went by, but the transcript would not arrive. Dr. Cordero called Ms. Dianetti, but she would neither take nor return his calls despite his leaving voice messages for her inquiring about the transcript. He also called the Bankruptcy Clerk's office, but they said that they could not put him in touch with her because her office was not in that building.

On Monday, March 10, Dr. Cordero called Ms. Dianetti again. Once more he left a voice message explaining that there had been an offer and an acceptance between them for the transcript; that he had left messages for her because neither the transcript had been filed nor he had received a copy; that she had not responded to any of his voice messages; that he found the situation most strange because…she picked up the phone, she had been screening Dr. Cordero's call! She said that she had been sick, that she never got sick but this time she had been sick, and that her typists had not typed the transcript. He reminded her that

back in January she had told him that it would take some 10 days for the transcript to be ready. Again she said that she had been sick (for well over a month but nobody at the Clerk's office knew anything about it?!) Then she added that she would get the transcript out by the end of that week and 'you want it from the moment you came in on the phone.' A chill went down Dr. Cordero's spine, for what a remarkable comment to make!

A hearing begins when both parties can be heard by the judge in open court. Judge Ninfo had allowed Dr. Cordero, who lives in New York City, to attend the hearing in Rochester by phone. Ms. Dianetti was implying that the hearing had begun before Dr. Cordero was brought in. But why would she even assume that he wanted only that part of the transcript in which he had appeared? How could she possibly remember that a hearing that had taken place almost three months earlier had one party attending by phone, a fact never before discussed between them? Why would she care?

Dr. Cordero told her that he wanted everything and asked her whether something had occurred before he had come in on the phone. She replied that nothing had occurred before that moment. So why did she make that comment? (Had she tried to obtain his implicit assent to her sending him only part of the transcript?) Now she began to fumble. She put him on hold twice to consult her notes. She said that at the hearing, after she had called the case, Dr. Cordero had been brought in on the phone. She read passages from 'her notes' (that is, those that she had said her typists had not typed).

Dr. Cordero asked how many pages there would be in the transcript. She said some 15. How come? Dr. Cordero reminded her that she had told him that it would be some 27 pages long and cost some $80. She said that she always estimated more pages and if it came out to fewer, then the client was satisfied. (How many repeat clients does a court reporter have? Does she have competitors to which an appellant could go if dissatisfied with a page estimate? Given her experience, why did she have to overestimate at all, and why from 15 to 27, that is, by 80%? How many more clients does she dissatisfy with similar over-blown estimates? Would her repeat clients be satisfied if they came to realize that her estimates were so unreliable?). Finally, she assured him that he would have a copy of the transcript by the end of the week…but he is still waiting, two weeks later, for 15 pages double spaced?!

It is most unlikely that a court reporter that cared so much about satisfying clients by coming up with transcripts with page counts drastically below her own estimates would care so little about dissatisfying them by not taking their calls, ignoring their recorded messages, and keeping them waiting for well over a month and a half for transcripts without which their appeal records cannot even be filed, let alone their appeals begin. There is hardly any reason why Ms. Dianetti would take it upon herself to prevent an appeal from going forward. Rather, could it be that the whole transcript contained portions before or after Dr. Cordero was allowed to be on the phone and that such portions, constituting in effect ex parte exchanges, were incriminating? Who would benefit from the transcript not being prepared in its entirety and submitted?

C. Other components of the totality of circumstances to be assessed

It is said that a situation should be assessed on the basis of the totality of circumstances. In this case, the withholding of the transcript is only one of many disconcerting events. They are all the more disconcerting because they all happen to have the same effect of not reviewing in court Dr. Cordero's claims. But how likely is it that those events just by coincidence had the same effect? Or is it more likely that it is by concert that they have been aimed to achieve the same objective? To determine whether these questions are the fruit of paranoiac speculation or rather are grounded on a reasonable interpretation of the facts, let's examine some of those events.

1. Failed to review docket that could have led to discovery of Premier assets: The docket of the Premier bankruptcy case (see page 150) reveals that a Jim Pfuntner (entry 17) was involved in the case in

connection with "efforts to collect a debt," and (entry 19) with "James Pfuntner re: motion to turnover property from Jim Pfutner." In December 2001, Trustee Gordon was appointed trustee (entry 63) to find and liquidate Premier's assets. However, it was not until eight months later that a third party, at Dr. Cordero's instigation, examined the Premier business files to which the Trustee had had the key and access and found that more Premier assets were in James Pfuntner's warehouse in Avon, NY. Could Trustee Gordon, by reading the docket and exercising due diligence, have found out the nature of Mr. Pfuntner's involvement in Premier's case and that Mr. Pfuntner was owed rent for storing in his warehouse assets of Premier and property of its clients?

2. Mishandled assets but complained about minimal compensation: Within a month of his appointment as trustee, Trustee Gordon knew on January 26, 2002, that the liquidation of Premier was an asset case (entry 70), meaning that there were assets to warrant and pay for his services (see footnote 1, supra, and accompanying text). However, only on July 23, 2002, is there a statement (entry 94) of:

> "Trustees Intent to Sell "Public Sale" 1984 Kentucky Trailer, 1983 Kentucky Trailer, 1979 Kentucky trailer, 1985 Freightliner truck tractor, 1985 International tractor, 1983 Ford Van truck and 1980 Kentuckey trailer."

For the following day the docket states (entry 95):

> "Letter from trustee stating that this is **now** an **asset case** and notice should be sent to all creditors. [95-1] (Clerk's note: did not issue asset notice since asset was determined when the 341 notice was sent out and claims bar date already set)" (emphasis added)

It was not until September 26, 2002, (entry 98; see also page 17, heading 19) that the Trustee gave:

> "Notice to creditors [98-1] re:Trustee's Intent to Abandon Property; Assets at Jefferson Road location; Assets in Avon location; Accounts receivable are also liened by M & T Bank ; Trustee plans to abandon the previously turned over balance of approximately **$139.00** for the DIP acct. The balance of the goods in storage belong to customers of debtor and are not property of the bankrupcy estate." (emphasis added; DIP= Debtor in Possession)

However, Trustee Gordon had already abandoned Premier's assets by letter of April 16, 2002, to Mr. Dworkin (see page 56), the owner of that Jefferson Road warehouse. That is the Jefferson-Henrietta warehouse where Premier had its office and kept in storage its clients' property. Thus, among the abandoned assets were office equipment and storage containers as well as income-generating storage contracts, for example, the contract to store Dr. Cordero's property on which the Jefferson Road warehouse billed him $301.60 on March 7, 2002 (see page 79).

Then, in his Memorandum of Law in Opposition to Cordero's Motion to Extend Time for Appeal, dated February 5, 2003, page 5, the Trustee submits to Judge Ninfo the following statement:

> "The underlying Chapter 7 proceeding is a **"no asset" case** in which the estate has no funds to pay creditors and no funds to pay for administrative expenses incurred by the Trustee. **As the Court is aware**, the sum total of compensation to be paid to the Trustee in this case is **$60.00**." (emphasis added)

These passages raise many troubling questions:

a. Was the case an "Asset Case" or was it a "„no asset" case""?

b. Since Trustee Gordon abandoned the assets in the Jefferson Road warehouse and those subsequently found, in spite of his inactivity, in the Pfuntner warehouse at Avon, could the estate have been expected to have funds to pay anything?

c. Why did Trustee Gordon give notice of such abandonment of Premier assets months after he had actually abandoned all the assets and the income-generating storage contracts to one single person? Was that person a creditor for warehousing rent? What happened with all those contracts and their stream of monthly income?

d. When was the Court made "aware" that the sum total of compensation for the Trustee was $60? It certainly was at a time when Dr. Cordero was not within hearing distance.

e. What happened with the assets that the Trustee intended to sell on July 23, 2002? Could and should notice have been given sooner after his appointment as trustee?

f. What happened to the "approximately $139.00" that as of September 26, 2002, the Trustee "plans to abandon" for the Debtor in Possession, Mr. David Palmer, the owner of Premier? Indeed, Mr. Palmer had become unreachable by phone from the end of February 2002, and what is even more telling, his own lawyer, Mr. Stilwell, had occasion to write to Judge Ninfo on December 20, 2002, that Mr. Palmer:

> "has not retained me relative to the suit, or even contacted me in over six months about anything. I did try several times to make informal contact with him concerning the subject matter of this lawsuit, but received no responses from Mr. Palmer to them."

g. Did the Trustee perform negligently and recklessly precisely because he knew that he was going to be paid just "$60.00"?

h. Judge Ninfo received Dr. Cordero's letter of September 27, 2002, requesting a review of Trustee Gordon's performance and fitness to serve as trustee (see page 46), and referred it for a "thorough inquiry" to Assistant U.S. Trustee Schmitt. Did she ever ask herself or the Trustee any of these questions when she conducted her 'investigation' by establishing 'contact' -possibly only over the phone- with just the Trustee and one single other person? Did she get any answer? Not open to question is the fact that she did not give even a hint of either such questions, let alone any answers, in her letter of October 22, 2002, to Dr. Cordero with copy to Judge Ninfo and the Trustee (see page 22).

3. Summary dismissal of same or similar cross-claims as those of other parties: The docket reveals that Trustee Gordon abandoned the assets that Premier had at the time of his appointment and did not find other assets that the docket entries for James Pfuntner could have led him to discover had he exercised some curiosity and due diligence. Yet, the Trustee had the cheek to assert in his letter of October 1, 2002, to Judge Ninfo (see page 27) that:

> "Since conversion of this case to Chapter 7, I have undertaken **significant efforts to identify assets** to be liquidated for the benefit of creditors;" (emphasis added)

However, not only did Judge Ninfo not demand that the Trustee substantiate that assertion, as Dr. Cordero requested (see pages 71 and 31), but also the Judge dismissed, even before disclosure or discovery had started for any of the many litigants, his cross-claim that charged the Trustee with having submitted false statements to the Judge as well as to Assistant Schmitt with the intent of dissuading them from undertaking the review that Dr. Cordero had requested of the Trustee's performance and fitness.

Why would the Judge be indifferent, or even condone, the submission of falsehood by an officer of the court who in addition was a federal appointee?

4. Dismissal of claims even disregarding opposing party's statement against legal interest: On Trustee Gordon's motion, at the hearing on December 18, 2002, Judge Ninfo dismissed Dr. Cordero's cross-claims against the Trustee for defamation and negligent and reckless performance as Premier's trustee. The Judge told Dr. Cordero, who is appearing pro se, that he could appeal if he wanted. Dr. Cordero asked about any appeal forms and instructions and the Judge replied that they would be sent with the order of dismissal. That order was entered on December 30, 2002, and was mailed from Rochester. But when it arrived in New York City, it had no appeal forms or instructions, although in four previous occasions Dr. Cordero had received forms and instructions from the Court. Dr. Cordero had to call the clerk's office and ask for the forms to be mailed.

Time was running short since Dr. Cordero had learned that he had only 10 days to give notice of appeal. So he prepared the forms as soon as he could and mailed them timely on Thursday, January 9, 2003, reasonably relying that the complete-on-mailing rule of Rule 9006(e) and the three additional days to act after papers have been served by mail of Rule 9006(f) F.R.Bankr.P. were applicable. His notice of appeal was filed on Monday, January 13. To his astonishment, Trustee Gordon subsequently filed a motion in the U.S. District Court for the Western District of New York to dismiss the appeal on grounds that it had been filed untimely! After Dr. Cordero received that motion, he scrambled to prepare a motion to extend time to file the notice of appeal under 8002(c)(2) F.R.Bankr.P. Once more he mailed it timely on Monday, January 27, 2003. What is more, Trustee Gordon acknowledged that it had been also filed timely, for on page 2 of his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time for Appeal (see page 143) he wrote that:

> "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal."

The return day for the motion was February 12, 2003. Dr. Cordero attended by phone. This time, to his bafflement, Judge Ninfo ruled that the motion had been filed untimely on January 30 and therefore, he denied it! Dr. Cordero protested and brought to his attention that the Trustee himself had written in his responsive pleading that Dr. Cordero had filed it on January 29. Judge Ninfo disregarded that fact just as he did the squarely on point statement of the Supreme Court In re Pioneer, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993):

> "The time-computation and time-extension provisions of Rule 9006, like those of Federal Rule of Civil Procedure 6, are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted."

Judge Ninfo stated that Dr. Cordero did not get to keep talking after he had made a ruling. Dr. Cordero said that he wanted to preserve for the record the objection that page 2 of Trustee Gordon's papers in opposition stated that Dr. Cordero had filed his motion to extend on January 29 so that the…Dr. Cordero's phone connection was cut off abruptly.

5. Default judgment application handled contrary to law and facts: In this effort to consider the totality of circumstances, one should also consider what has happened with Dr. Cordero's application for default judgment against Mr. David Palmer, the owner of Premier. The latter never answered the third-party complaint against him (see page 66), nor did he oppose the default application, which Dr. Cordero not only served on his lawyer, Mr. Stilwell, but also on him directly.

Dr. Cordero submitted the default judgment application, as required, to the Bankruptcy Court, which was supposed to make a recommendation on it to the United States District Court, the one that would then make the decision on whether to enter the default judgment. But first, the bankruptcy clerk must act according to the unconditional legal obligation imposed on him by Rule 55 F.R.Civ.P., made applicable by Rule 7055 F.R.Bankr.P.:

> "When a party…has failed to plead or defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk **shall** enter the party's default." (emphasis added)

Dr. Cordero timely submitted the required Application for Entry of Default on December 26, 2002 (see page 104). That Mr. Palmer had failed to plead or defend was undisputable and undisputed. The application was accompanied by an Affidavit of Amount Due requesting that $24,032.08 be entered against Mr. Palmer (see page 108) as per the relief requested in the summons and complaint served on him. Nevertheless, for weeks nothing happened with the application and Dr. Cordero received no feedback either.

When Dr. Cordero began to inquire into this, he was bandied between the District Court and the Bankruptcy Court. Finally, he found out from a bankruptcy clerk that the application had been transferred to Judge Ninfo, who was holding it until Dr. Cordero's property could be inspected and he could demonstrate what damages he had sustained. But there is absolutely no legal basis under Rule 55 for requiring a plaintiff to have to demonstrate anything when applying for default judgment for a sum certain! In such a case, default judgment is predicated on the defendant's failure to appear and contest the sum certain claimed in the complaint, not on the plaintiff's loss.

Dr. Cordero had to write to Judge Ninfo, which he did by letter of January 30, 2003 (see page 116). The Judge never replied to that letter. Instead, on February 4, the Bankruptcy Clerk Paul Warren entered default, a fact that he had the unconditional legal obligation to enter back in December upon receiving the application. For his part, Judge Ninfo recommended to the District Court that default not be entered. His recommendation shows an astonishingly undisguised lack of impartiality and pre-judgment of the issues (see page 119).

Among other things, Judge Ninfo stated that Dr. Cordero had not demonstrated damages and that upon inspection of his property it would be shown that he had sustained no loss. UN-BE-LIVE-A-BLE! What could possibly give him grounds to make such assertion since no disclosure or discovery has taken place even now when this Adversary Proceeding no. 02-2230 is nearing the end of the six month after it was filed. Not only that, but Dr. Cordero's property has not been actually seen by anybody; the only thing that has been seen is a label bearing his name affixed to a container left behind in Mr. James Pfuntner's warehouse since who knows when. This is so even though Judge Ninfo required last January 10, at the only pre-trial meeting held so far, that this property be made available for inspection. Nevertheless, Mr. Pfuntner, the plaintiff who filed the Adversary Proceeding and sued Dr. Cordero for storage fees, has not yet held that inspection despite the fact that he has every interest in its taking place in order to establish his claim.

To top this off, the Hon. David G. Larimer, United States District Court Judge, who received the recommendation of his next door colleague Judge Ninfo, had a decision entered last March 12 (see page 147). Therein Judge Larimer concurred with the recommendation to "deny entry of default judgment…since the matter does not involve a sum certain." WHAT?! It does! Dr. Cordero's Affidavit of Sum Due clearly stated that the sum certain is $24,032.08. So does paragraph 59 of his Motion to Enter Default Judgment Against David Palmer and Withdraw Proceeding, which he submitted together with a letter addressed to Judge Larimer and dated March 2, 2003 (see pages 122 and 123).

However, Judge Larimer made no reference whatsoever to that motion, or the letter to him for that matter, in his decision entered 10 days later.

D. Conclusion: Is so much contempt for law and facts mere coincidence?

How could it possibly be that so many court officers ignore the facts, disregard the law and their obligations under it, impose requirements with no legal foundation at all, and avoid or prevent the submission of a transcript for appeal? How could this have happened by coincidence rather than by concert? Did everybody just fall all of a sudden into place to play their part in this particular case or have they been engaging in this type of conduct for a long while in many other cases? What's for them in this case and how much higher were and are the stakes in those other cases?

These are questions fraught with the most serious of consequences, for they go to the essence of the integrity of those courts and the justice that its officers are supposed to dispense. So does the question of to what extent the reluctance or refusal of Trustee Program officers all the way to the top to investigate this matter results from a critical or worse problem in the Program's functioning. If trust is not elicited by officers that in their professional designation as trustees carry that notion, in whom can it be placed?

Dr. Cordero very much hopes that trust can be placed in Attorney General Ashcroft, who according to the description in his DoJ webpage is "committed to confronting injustice by leading a professional Justice Department free from politics, defined by integrity and dedicated to upholding the rule of law." This case cries for justice, particularly since Dr. Cordero's only fault in it has been that of having paid for years on end storage and insurance fees to store his property and then having tried to find it only to be sucked into this maelstrom of Kafkian non-sense and arbitrariness.

E. Action requested

Therefore, Dr. Cordero respectfully requests that Attorney General Ashcroft open a two prong investigation into the totality of circumstance forming and surrounding this case at both the U.S. Trustee Program and the U.S. Bankruptcy and District Courts for the Western District of New York. Perhaps the Attorney General might wish to start by requesting Director Friedman and General Counsel Guzinski what they have done since receiving over two and a half months ago Dr. Cordero's letter of last January 10 (see page ix). As to the Courts, the Attorney General might wish to begin by requesting the transcript of the hearing of Trustee Gordon's motion to dismiss Dr. Cordero's cross-claims held before Judge Ninfo on December 18, 2002, in Adversarial Proceeding no. 02-2230, which will make it possible to find out what went on between the participants physically present in court before or after Dr. Cordero was brought in on the phone. To that end, a list is submitted with the names, addresses, and phone numbers of all the parties (see page xx).

Dated: March 24, 2002

Dr. Richard Cordero

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Office of Information and Privacy

Telephone: (202) 514-3642

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JUL 31 2003

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

Re: Appeal No. 03-1887
EOUST No. 2003-2036
RLH:BVE:ERW

Dear Dr. Cordero:

You appealed from the action of the Executive Office for United States Trustees (EOUST) on your request, made pursuant to the Freedom of Information Act, for access to Department of Justice records.

After carefully considering your appeal, and as a result of discussions between the EOUST and a member of my staff, I have decided to remand your request to the EOUST for processing. The EOUST will search for records concerning the complaint you submitted to Mr. Lawrence Friedman about "the unresponsiveness and failures in performance" of a United States Trustee for Region 2 and her subordinate. Because these records are likely to be filed under your name or personal identifier -- since you submitted the complaint -- before the EOUST can process your request, you must complete the enclosed certificate of identity. See 28 C.F.R. § 16.41(d) (2002). After the EOUST has completed its work on your request, if you remain dissatisfied, you may submit another appeal to this Office.

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

Richard L. Huff
Co-Director

Enclosure

Blank

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