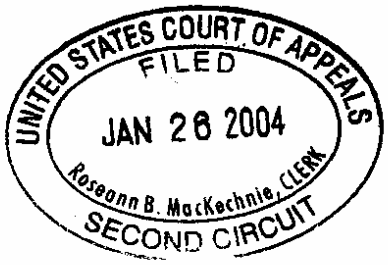
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 26th day of January , two thousand and four.



PRESENT:
Hon. John M. Walker, Jr.,
Chief Judge,
Hon. James L. Oakes,
Hon. Robert A. Katzmann,
Circuit Judges.

----------X

IN RE: PREMIER VAN LINES, INC.,
Debtor.

----------X

RICHARD CORDERO,
Third-Party-Plaintiff-Appellant,

v.

No. 03-5023

KENNETH W. GORDON, ESQ.,
Trustee-Appellee,

DAVID PALMER,
Third-Party-Defendant-Appellee.

----------X

APPEARING FOR APPELLANT: Richard Cordero, Brooklyn, NY

APPEARING FOR APPELLEES: Kenneth W. Gordon, Esq., Gordon & Schaal, LLP, Rochester, New York

Appeal from orders of the United States District Court for the Western District of New York (David G. Larimer, District Judge).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the appeal from orders of the District Court is **DISMISSED.**

Third-party-plaintiff-appellant Richard Cordero appeals from two interlocutory orders issued by the district court. In one of the orders, the district court (1) denied Cordero's motion for default judgment against appellee David Palmer, whom Cordero had joined as a third party in an adversary proceeding within the bankruptcy proceedings commenced by Premier Van Lines, and (2) remanded to the bankruptcy court for further proceedings. In the second order, the district court affirmed the bankruptcy court's dismissal of a cross-claim asserted by Cordero against bankruptcy trustee Kenneth Gordon. The adversary proceedings remain pending before the bankruptcy court at the present time.

Having carefully considered all of Cordero's arguments on appeal, including those raised in the supplemental brief he filed following oral argument, we conclude that we lack jurisdiction to consider the merits of Cordero's claims because the orders he seeks to appeal are non-final and non-appealable.

Pursuant to § 158(d) of the Bankruptcy Act, 28 U.S.C. § 158(d), this court has jurisdiction to review a district court's order in a bankruptcy case only if that order is "final." See In re Prudential Lines, Inc., 59 F.3d 327, 331 (2d Cir. 1995). The first order Cordero seeks to appeal is not final within the meaning of § 158(d) because the district court remanded Cordero's motion for a default judgment to the bankruptcy court for further proceedings. See In re Prudential Lines, 59 F.3d at 331 ("This court has adopted the prevailing view that courts of appeals lack jurisdiction over appeals from orders of district courts remanding for significant further proceedings in bankruptcy courts.") (internal quotation marks omitted). The second order Cordero seeks to appeal is also not final because, in the bankruptcy context, the dismissal of a single cross-claim asserted within a larger adversary proceeding is not a final, appealable order. Id. at 332.

Finally, insofar as Cordero seeks the bankruptcy judge's recusal, to move the proceedings to a different judicial district, or to appeal the bankruptcy court's orders denying Cordero's recusal and removal motions and his belated motion for an extension

of time in which to file a notice of appeal, these claims challenge decisions issued by the bankruptcy court that have not been reviewed by the district court. Pursuant to § 158(d), the jurisdiction of the court of appeals in bankruptcy actions is limited to review of final decisions emanating from the district court. See In re Fugazy Express, Inc., 982 F.2d 769, 774-75 (2d Cir. 1992) (this court lacks jurisdiction over appeals taken from non-final orders originating in the bankruptcy court). Contrary to Cordero's assertions in his supplemental brief, this limitation is unaffected by the provisions of 28 U.S.C. § 455(a). Cf. In re Smith, 317 F.3d 918, 923 (9th Cir. 2002) (reviewing district court's affirmance of bankruptcy judge's denial of motion to recuse). Accordingly, we lack jurisdiction over these claims as well.

For the reasons set forth above, Cordero's appeal is **DISMISSED** for lack of jurisdiction.

FOR THE COURT:
Roseann B. MacKechnie, Clerk

By: Lucille Carr
Lucille Carr, Deputy Clerk

Blank

docket no. 03-5023

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION

In re Premier Van et al.

FOR PANEL REHEARING AND HEARING EN BANC

RICHARD CORDERO,
Cross and Third party plaintiff-Appellant

v.

KENNETH GORDON,
Cross defendant-Appellee,

and no. 03cv6021L, WDNY

DAVID PALMER,
Third party defendant-Appellee
no. 03mbk6001L, WDNY

Dr. Richard Cordero respectfully petitions that this Court's order of January 26, 2004, (Appendix 876=A:876) dismissing his appeal from orders issued by the U.S. Bankruptcy and District Courts for the Western District of NY be reviewed by the panel and in banc on the following factual and legal considerations:

I. Why this Court should hear this petition en banc

1. This petition should be heard an banc because it is the collective responsibility of the members of this Court to safeguard the integrity of judicial process in this

circuit and ensure that justice is not only done, but is also seen to be done. The threshold for their intervention has been met more than enough since there is so much more than "the appearance of impropriet y" *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60, 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988): There is abundant material evidence that judges, administrative personnel, and attorneys in the bankruptcy and district courts in Rochester have disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and the benefit of the local ones in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him (A:674).

2. The resulting abuse and that yet to be heaped on remand on Dr. Cordero, a pro se litigant, can wear him down until he is forced to quit his pursuit of justice (para. 22, infra). The reality that everybody has a breaking point should be factored in by every member of this Court when deciding whether to hear this appeal. It was dismissed on the procedural ground that the appealed orders lack finality. Under these circumstance, the Supreme Court would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all," *Cobbledick v. United St ates,* 60 S.Ct. 540, 540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940). Hence, Dr. Cordero appeals to the commitment to justice and professional responsibility of the Court's members to review this case so that they may relieve him of so much abuse and ensure that he has his day in a

court whose integrity affords him just and fair process.

3. If doing justice to one person were not enough to intervene, then this Court should do so to ensure just and fair process for all similarly situated current and future litigants and to protect the trust of the public at large in the circuit's judicial system that this Court is charged with protecting (A:847§I). Resolving conflicts of law among panels or circuits cannot be a more important ground for a hearing en banc than safeguarding the integrity of the judicial process while aligning itself with Supreme Court pronouncements. Without honest court officers, the judicial process becomes a shell game where the law and its rules are moved around, not by respect for legality and a sense of justice, but rather by deceit, self-gain, and prejudice. To which are you committed?

II. The appealed order dismissing a cross-claim against Trustee Gordon is not just that of the bankruptcy court, but also the subsequent order of the district court holding that Dr. Cordero's appeal from that dismissal was, although timely mailed, untimely filed, which is a conclusion of law that cannot possibly be affected by any pending proceedings in either court, so that the order is final and appealable

4. Bankruptcy Judge John C. Ninfo, II, dismissed (A:151) the cross-claims against Trustee Kenneth Gordon (A:83) on the latter's Rule 12(b)(6) FRCP motion, while disregarding the genuine issues of material fact that Dr. Cordero had raised (Opening Brief=OpBr:38). This dismissal is final, just as is the dismissal of a complaint unless leave to amend is explicitly granted. *Elfenbein v. Gulf & Western Industries, Inc.,* 90 F.2d 445, 448 n. 1 (2d Cir. 1978).

5. Dr. Cordero appealed to the district court (A:153), but the Trustee moved to dismiss alleging the untimeliness of the filing of the appeal notice, never mind that it was timely mailed. Dr. Cordero moved the district court twice to uphold his appeal (A:158, 205). Twice it dismissed it (A:200, 211). Likewise, twice he appealed to the bankruptcy court to grant his timely mailed motion to extend time to file notice to appeal (A:214, 246). Twice the bankruptcy court denied relief (A:240, 259), alleging that the motion too had been untimely filed, although even Trustee Gordon had admitted that it had been timely *filed* (OpBr:11).
6. Consequently, there is no possibility in law whereby Dr. Cordero could for a fifth time appeal the issue of timelines to either court. Nor is it possible, let alone likely, that either will sua sponte revise their decisions and reverse themselves. As the bankruptcy put it, 'the district court order establishing that Dr. Cordero's appeal was untimely' "is the law of the case" (A:260). Thus, res judicata prevents any such appeal or sua sponte reversal. Similarly, it is not possible for Dr. Cordero, well over a year after the entry in 2002 of the underlying order dismissing his cross-claims, to move the bankruptcy court to review it and reinstate them; nor could that court sua sponte review it and reverse itself.
7. Due to these orders, Trustee Gordon is beyond Dr. Cordero's reach in this case, and since the Trustee settled with the other parties, he is no longer a litigating party. No pending proceedings in the courts below could ever change the legal relation between Dr. Cordero and the Trustee. Each order is final because it "ends

the litigation on the merits and leaves nothing for the court to do but execute the judgment", *Catlin v. United States,* 65 S.Ct. 631, 633, 324 U.S. 229, 233, 89 L.Ed. 911 (1945). Their legal relation can only change if this Court reviews either or both of those orders and determines that they are tainted by bias against Dr. Cordero (OpBr:9, 54); and that they are unlawful because the bankruptcy court disregarded the law applicable to a 12(b)(6) motion (OpBr:10, 38) and to defamation (OpBr:38); and both courts disregarded the Bankruptcy Rules, such as 9006(e) complete-on-mailing and (f) three-additional-days (OpBr:25). What else could possibly be necessary to make an order final and appealable to this Court?

8. This Court can reach the bankruptcy court order (A:151) dismissing the cross-claims because 1) it was included in the notice of appeal to this Court (A:429), and 2) in *In re Bell,* 223 F.3d 203, 209 (2d Cir. 2000) it stated that in an appeal from a district court's review of a bankruptcy court ruling, the Court's review of the bankruptcy court is "independent and plenary ." Thus, through its review of the district court order dismissing the appeal for untimeliness, the Court can reach the underlying bankruptcy court order dismissing the cross-claims.

III. The district court order remanding to the bankruptcy court the application for default judgment is:

1) final because the further proceedings ordered by the district court were in fact ordered by the bankruptcy court on April 23 and undertaken on May 19, 2003, and

2) appealable because such proceedings were ordered in disregard of the express provisions of Rule 55 FRCP and

without any other legal foundation, an issue of law raised on appeal to, and rehearing in, the district court, and reviewable by this Court since the unlawful obligation imposed on Dr. Cordero to participate in the proceedings and the grounds for it cannot possibly be changed by future developments in those courts

9. Dr. Cordero brought third party claims against Mr. David Palmer, the owner of the moving and storage company Premier Van Lines, for having lost his stored property, concealed that fact, and committed insurance fraud (A:78, 87, 88). Although he was already under the bankruptcy court's jurisdiction as an applicant for bankruptcy, Mr. Palmer failed to answer. Dr. Cordero timely applied for default judgment for a sum certain under Rule 55 FRCP. (A:290, 294) Yet, the court belatedly (A:302) recommended to the district court (A:306) that the default judgment application be denied and that Dr. Cordero be required to inspect his property to prove damages, in total disregard of Rule 55 and without citing any legal basis whatsoever for imposing that obligation on him (OpBr:13).

10. Dr. Cordero submitted to the district court a motion presenting factual and legal grounds why it should dismiss the recommendation and enter default judgment (A:314). However, District Judge David Larimer accepted the recommendation without even acknowledging his motion and required that he "still establish his entitlement to damages since the ma tter does not invol ve a sum certai n" (A:339). But it did involve a sum certain! (A:294) By making this gross mistake of fact, the district court undercut its own rationale for requiring that Dr. Cordero

demonstrate his entitlement in "an inquest concerning damages" to be conducted by the bankruptcy court. Moreover, it cited no statutory or regulatory provision or any case law whatsoever as source of its power to impose that obligation on Dr. Cordero in contravention of Rule 55, which it did not even mention (OpBr:13).

11. Dr. Cordero discussed that outcome-determinative mistake of fact and lack of legal grounds in a motion for rehearing (A:342; cf. OpBr:16). In disposing of it, the district court not only failed to mention, let alone correct, its mistake, or to provide any legal grounds, but it also failed to provide any opinion at all, just a lazy and perfunctory "The motion is in all respects denied." (A:350; cf. A:211, 205; Reply Brief=ReBr:19) That is all that was deemed necessary between judges that so blatantly disregard law, rules, and facts (OpBr:9-C; 48-53). They have carved their own judicial fiefdom of Rochester out of the territory of this circuit (A:813§E), where they lord it over attorneys and parties by replacing the laws of Congress with the law of the locals, based on close personal relations and the fear of retaliation against those who challenge their distribution of favorable and unfavorable decisions (A:804§IV).

12. Although the bankruptcy court recommended to the district court that Dr. Cordero's property in storage be inspected to determine damage, it allowed its first order of inspection to be disobeyed with impunity by Plaintiff James Pfuntner and his Attorney David MacKnight to the detriment of Dr. Cordero and without providing him any of his requested compensation or sanctions (OpBr:18).

As a result, the inspection did not take place.

13. Then precisely at the instigation of Mr. Pfuntner and his attorney, it ordered at a hearing on April 23, 2003, that Dr. Cordero travel to Rochester to inspect his property, which Mr. Pfuntner said had been left in his warehouse by his former lessee, Mr. Palmer, the owner of the storage company Premier. Although this inspection was the "inquest" for whose conduct by the bankruptcy court the district court denied Dr. Cordero's application for default judgment against Mr. Palmer and remanded, the bankruptcy court allowed this order to be disobeyed too: None of the necessary preparatory measures were taken (A:365) and neither Mr. Pfuntner, nor his attorney or storage manager even showed up at the inspection. Yet, Dr. Cordero did travel to Rochester and the warehouse on May 19, 2003.

14. At a hearing on May 21 attended by Mr. Pfuntner's attorney, Dr. Cordero reported on the inspection. It had to be concluded that some of his property was damaged and other had been lost (Mandamus Brief:34; Mandamus Appendix= MandA:522-H). Yet, the biased bankruptcy court neither sanctioned the locals that showed but contempt for its orders nor had them compensate Dr. Cordero.

15. It follows that as a matter of fact, the further proceedings for which the case was remanded by the district to the bankruptcy court took place; and as a matter of law, they should never have taken place because requiring them and compelling Dr. Cordero's participation violated Rule 55 FRCP and neither of those courts offered any other legal grounds whatsoever for denying his default judgment

application and imposing such requirements. No number of further pro-ceedings will undo the consequences and cancel the implications of the district and bankruptcy rulings. Both must be considered final and appealable (A:851§II).

16. How could it be said that this Court was dedicated to dispensing justice if it concerns itself with just operating the mechanics of procedure by delivering Dr. Cordero back into the hands of the district and bankruptcy courts for them to injure him with their bias and deprive him of his rights under the law, the sum certain he sued for, and his emotional wellbeing? Meanwhile, those courts have continued protecting Mr. Palmer, another local party, even after he was defaulted by the Clerk of Court (MandA:479). Thus, he has been allowed to stay away from the proceedings despite being under the bankruptcy court's jurisdiction, whereby he shows nothing but contempt for judicial process. With whom do the equities lie? The procedure of final rulings should not be rolled out if it also allows biased courts to crush Dr. Cordero, for it also crushes the sense of equity that must make this Court recoil at the injustice of this situation. Rather than deliver him to them for further abuse, this Court should take jurisdiction of their rulings to establish that they wronged him and prevent them from doing so again by removing the case to a court unrelated to the parties and unfamiliar with the case.

IV. Bankruptcy court orders were appealed for lack of impartiality and disregard for law, rules, and facts to the district court, which was requested to withdraw the case from the bankruptcy court but refused to do so, whereby the district court did

review those orders and the issue of bias so that its order of denial is final and appealable to this Court

17. The legal grounds and factual evidence of partiality and disregard for legality on which the district court was requested (A:342, 314) to withdraw the case from the bankruptcy court were swept away with a mere "denied in all respects" without discussion by a district court's order (A:350), one among those appealed to this Court. Hence, Dr. Cordero went back to the bankruptcy court and invoked those grounds and evidence to request that it disqualify itself under 28 U.S.C. §455(a) (A:674). The bankruptcy court denied the motion too.

18. Consequently, there was no justification either in practice or in logic to resubmit the substance of those grounds and evidence in order to appeal that denial to the district court. How counterintuitive it is to expect that what Dr. Cordero's initial attack on the bankruptcy court could not move the district court to do, the bankruptcy court's own subsequent defense, if appealed to its defending district court, would cause the latter to disqualify the bankruptcy court and remand the case! A reasonable person is expected to use common sense.

19. That reasoning is particularly pertinent because the district court was requested not once, but twice (A:331, 348) to withdraw the case from the bankruptcy court to itself under 28 U.S.C. §157(d) "for caus e shown" . Yet, it did not even acknowledge the request, let alone discuss it in its "denied in all respect" fiat or its earlier perfunctory order predicated on an outcome-determinative mistake of

fact (para. 10, 11, supra). Thus, it would be counterintuitive to expect that if Dr. Cordero appealed to such district court the bankruptcy court's refusal to disqualify itself and remove the case to another district, the district court would roll up its sleeves and write a meaningful opinion to affirm, not to mention reverse, a decision concerning contentions by Dr. Cordero that it has disregarded twice before. And what a waste of judicial resources!, and of Dr. Cordero's time, effort, and money. Does he matter?

20. The counterintuitive nature of this expectation is also supported by practical considerations: The district court showed the same lack of impartiality toward Dr. Cordero and the same disregard for law, rules, and facts that the bankruptcy court had showed so that their conduct formed a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing (OpBr:9, 54; ReBr:19). A reasonable person, upon whose conduct the law is predicated, may rightly assume that if after the bankruptcy court refused to recuse itself and remove, Dr. Cordero had appealed to the district court, the latter could not reasonably have been expected to condemn the bankruptcy court, for in so doing it would have inevitably indicted itself; and what could conceivably be even riskier, it would have betrayed its coordination with the bankruptcy court. For that too, an appeal that endangered those vested interests would have been a wasteful exercise in futility.

21. There is no justification in practice for this Court to require a litigant to engage in such futility and endure the tremendous aggravation concomitant with it. The

unreflective insistence on procedure should not be allowed to defeat substance and establish itself as the sole guiding principle of judicial action, the adverse consequences to those who appeal for justice to the courts notwithstanding. On the contrary, the Supreme Court sets the rationale for pursuing the objective of justice ahead of operating the mechanics of procedure: "There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing"; *Republic Natural Gas Co. v. Oklahoma,* 68 U.S. 972, 976, 334 S.Ct. 62, 68, 92 L.Ed.2d 1212, 1219 (1948). Those words are squarely applicable here.

22. Dr. Cordero was drawn into this Rochester case as the only non-local defendant. He must prosecute it pro se because a Rochester attorney would hardly risk, for the sake of a one-time non-local client, antagonizing the judges and officers of the fiefdom of Rochester and it would cost him a fortune that he does not have to hire an NYC attorney. So he performs all his painstakingly conscientious legal research and writing at the expense of an enormous amount of time, money, and effort. Under those circumstances, when courts drag this case out, either intentionally to wear him down or unwittingly by subordinating justice to its procedure, they inflict on him irreparable injury. This effect must be taken into account in deciding whether to hear this appeal because determining finality requires a balancing test applied to several considerations, "the most important of

which are the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other", *Dickinson v. Petroleum Conversion Corp.,* 70 S.Ct. 322, 324, 338 U.S. 507, 511, 94 L.Ed. (1950).

23. Preventing anymore irreparable injury to Dr. Cordero and ensuring the integrity of its circuit's judicial system are grounds for the Court to take jurisdiction of this appeal by using the inherent power that emanates from the potent rationale behind its diversity of citizenship jurisdiction: the fear that state courts may be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as detracting from the public's trust in the system of justice. Here that fear has materialized in federal courts that favor the locals at the expense of the sole non-local who dared challenge them.

24. Whether the cause of lack of impartiality is diversity of locality or personal animus and self-gain, it has the same injurious effect on the administration of justice. Section 455(a) combats it by imposing the obligation on a judge to disqualify himself whenever "his impartiality might be reasonably questioned". The Supreme Court has interpreted this language to mean that for disqualification under §455(a) it suffices that there be a situation "creating an appearance of impropriety"; *Liljeberg, 486 U.S. 847, at 859-60,* para. 1, supra.

25. Given the high stakes, to wit, a just and fair process, §455(a) sets a very low threshold for its applicability: not proof, not even evidence, just 'a reasonable question'. Yet, Dr. Cordero has presented a pattern of disregard of laws, rules,

and facts so consistently injurious to him and protective of the local parties as to prove the bias against him of both courts and court officers therein. So why would this Court set the triggering point for its intervention at such high levels as an appeal by Dr. Cordero from the bankruptcy to the district court despite the pro-forma character and futility of that exercise under the circumstances?

26. Intervening only at such injury-causing high level contradicts the principle that the Court recognized in *Ginett v. Computer Task Group, Inc.,* 962 F.2d 1085, 1097 (2d Cir. 1992), of avoidance of the hardship that appellant would sustain if review was delayed. Requiring an intervening appeal to the district court is most unwarranted here because the bankruptcy court, who decided not to disqualify itself as requested by Dr. Cordero, submitted sua sponte its decision to this Court on November 19, 2003, whereby it in practice requested its review by the Court.

27. Instead of reviewing it, the Court dismissed Dr. Cordero's appeal. Thereby it has exposed him to more blatant bias from the bankruptcy court and its partner in coordinated acts of wrongdoing, the district court (ReBr:19). Indeed, it is reasonable to fear that those courts will interpret the Court's turning down the opportunity, offered on that November 19 'platter', to review the decision refusing recusal as its condonation of their conduct. Will this Court leave Dr. Cordero even more vulnerable to more and graver irreparable injury from prejudiced courts that disregard legality while applying the law of the locals?

28. This interpretation is all the more likely because to support its refusal to take

jurisdiction of Dr. Cordero's appeal and its requirement that he first appeal from the bankruptcy to the district court, this Court could find no stronger precedent than a non-binding decision from another circuit, namely, *In re Smith,* 317 F.3d 918, 923 (9th Cir. 2002). Its value is even weaker because Dr. Cordero already submitted to the district court grounds and evidence for disqualifying the bankruptcy court and withdrawing the case, but it disregarded them. Thus, it already had its opportunity to review the matter. Now it is this Court's turn.

V. Relief sought

29. Dr. Cordero respectfully requests that this Court:

a. take jurisdiction of this appeal, vacate the orders tainted by bias or illegality, and "in the interest of justice" remove this case under 28 U.S.C. §1412 to a court that can presumably conduct a just and fair jury trial and is roughly equidistant from all parties, such as the U.S. district court in Albany;

b. launch, with the assistance of the FBI (A:840§C), a full investigation of the lords of the fiefdom of Rochester and their vassals, guided by the principle 'follow the money' of bankruptcy estates and professional persons fees (11 U.S.C. §§326-331), and intended to bring them back into the fold of legality;

c. award Dr. Cordero costs and attorney's fees and all other just compensation.

Respectfully submitted under penalty of perjury,

Dr. Richard Cordero

March 10, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero, Petitioner Pro Se
tel. (718) 827-9521

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(entries from the Appendix sought to be attached as exhibits)

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I served by fax or United States Postal Service on the following parties copies of my petition for panel rehearing and hearing en banc:

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

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: Leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal

Statement of relief sought: That this Court:

1. take jurisdiction of this action under 28 U.S.C. §455, which does not require that the Court have jurisdiction of any appealed order, let alone a final one,
2. take jurisdiction over the appealed orders:
   a) by exercising pendant jurisdiction in connection with the §455 action, and
   b) by applying the collateral order doctrine to those orders

   vacate the orders, and disqualify the judges for bias;
3. take action on equitable grounds and under 28 U.S.C. §1412 in the interest of justice to:
   a) prevent further and irreparable injury to Dr. Cordero, the only non-local and pro se party, through further litigation at the hands of biased court officers;
   b) avoid the waste of judicial resources through more litigation in a court whose judgment is likely to be appealed as procedurally flawed and tainted with biased;
   c) remove the case now, when it has neither started with disclosure nor scheduled discovery, to the U.S. District Court at Albany for a trial by jury;
4. investigate with the FBI the court officers' disregard of legality that has formed a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing; and
5. grant the relief set out in the accompanying brief and any other proper and just relief.

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

OPPOSSING PARTY: See caption on first page of brief

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo II, and District Judge David Larimer

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: December 28, 2003

ORDER

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

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

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. case no. 03-5023

MOTION FOR LEAVE
TO BRIEF THE ISSUE OF JURISDICTION
RAISED AT ORAL ARGUMENT BY THE COURT

In re PREMIER VAN LINES, INC., Chapter 7 bankruptcy
Debtor case no. 01-20692, Ninfo, WBNY

JAMES PFUNTNER, Adversary proceeding
Plaintiff no. 02-2230, Ninfo, WBNY
v.
KENNETH W. GORDON, as Trustee in Bankruptcy for Premier Van Lines, Inc., RICHARD CORDERO, ROCHESTER AMERICANS HOCKEY CLUB, INC., and M&T BANK,
Defendants

RICHARD CORDERO
Third party plaintiff
v.
DAVID PALMER, DAVID DWORKIN, DAVID DELANO, JEFFERSON HENRIETTA ASSOCIATES,
Third party defendants

RICHARD CORDERO Appeal
Cross-plaintiff no. 03cv6021, Larimer, WDNY
v.
KENNETH W. GORDON, Trustee
Cross-defendant

RICHARD CORDERO Appeal
Third-party-plaintiff no. 03mbk6001, Larimer, WDNY
v.
DAVID PALMER
Third-party defendant

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

1. At oral argument last December 11, the Court asked about its jurisdiction to entertain this appeal. For lack of time then, now this brief sets forth considerations that militate in favor of the Court exercising jurisdiction over this appeal.

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I. The Court can take jurisdiction of a complaint about a judge's partiality under 28 U.S.C. §455(a) and decide his disqualification even in the absence of any order issued by the judge, let alone a final one

2. This Court is the steward of the integrity of the judicial system in this circuit, as follows from 28 U.S.C. §351. As such, it has the statutory power and duty to ensure that judges and other court officers maintain "good behavior" and that their conduct is not "prejudicial to the effective and expeditious administration of the business of the courts". Where it has claims of judicial misconduct, it must investigate to establish the facts and act, if need be, to restore respect for legality and the commitment to high ethical standards of those who have been charged with dispensing justice.

3. Substantiated claims are before it (Opening Brief (OpBr):9, 54; Reply Brief (RepBr):19; Writ of Mandamus Brief (MandBr):4; Motion Updating Evidence of Bias:3) that judges and other court officers have so repeatedly disregarded law, rules, and facts, and so consistently to the detriment of one litigant -non-local and pro se to boot- and to the benefit of local attorneys and their clients, as to give rise

to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. On those claims and the evidence in the record, their "impartiality **might** reasonably be questioned" (emphasis added) under 28 U.S.C. §455(a) (Special Appendix in OpBr (SPA):86), a provision that does not require this Court to be seized of any order, let alone a final one, to disqualify such judges to the end of ensuring the integrity of judicial process for the claimant in particular and the public in general.

4. Indeed, the Court can disqualify judges for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60 (1988) . So it is even more strongly justified in undertaking a disqualification where upon review of the evidence it determines that the judges have not only repeatedly shown partiality, but have also engaged in other misconduct "prejudicial to the…business of the courts".

A. In determining whether disqualification is warranted, the Court should review all evidence available for bias and prejudice, including orders of the judge, over which it should take appellate jurisdiction, particularly where it has been formally seized of the orders by even the judge himself

5. However, where the judges whose impartiality is questioned have in the course of their misconduct or wrongdoing issued orders, there arises the reasonable inference that those orders may be tainted by bias and prejudice. As part of its plenary review of the claims of bias and wrongdoing, the Court should take jurisdiction of the orders in the process of deciding whether disqualification is warranted.

6. In the instant case, the Court has before it the

> Order and Decision of October 16, 2003, Denying Recusal and Removal Motions and Obj ection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003

of WDNY Bankruptcy Judge John C. Ninfo, II. It is final and properly before this Court because Judge Ninfo himself submitted it to the Court by his letter of November 19, 2003. The order is his response to Dr. Cordero's motion of August 8, for his recusal for bias and prejudice and removal of the case to the U.S. District Court for the Northern District of New York in Albany (MandBr:38).

7. Likewise, Judge Ninfo submitted to the Court his:

> a) Order of October 16, 2003, Disposing of Causes of Action;
>
> b) Scheduling Order of October 23, 2003, in Connecti on with the Remaining Claims of the Plaintiff, James Pfuntner, and the Cross-Claims, Counter-claims and Third-Party Clai ms of the Third-Party Plaintiff, Richard Cordero; and
>
> c) Decision and Order of October 23, 2003, Finding a Waiver of a Trial by Jury.

8. Hence, these orders are before the Court officially, by submission of the issuing judge himself as his response to Dr. Cordero's motion of November 3, for leave to file updating supplement of evidence of bias, which the Court granted on November 13. Therefore, the Court is seized of this controversy between a litigant and a judge, the former charging the latter with partiality and requesting by motion that he disqualify himself, and the latter denying both the charge and the motion.

9. Over this controversy the Court can exercise jurisdiction to determine it pursuant to §455(a), made applicable to a bankruptcy judge by FRBkrP Rule 5004(a) so

that "if appropriate, [the judge] shall be disqualified from presiding over the case". As a court under Article III of the Constitution, the Court has the inherent judicial power to ensure that the judge in controversy is still among those who "shall hold their Offices during good Behaviour", and to determine, by reviewing all the evidence, whether it is appropriate that the judge "be disqualified".

10. It follows that if the Court can disqualify judges for their bias and prejudice in their conduct or orders, then it can also vacate or otherwise modify the orders, for it would be a contradiction in fact and contrary to the effective administration of justice to exercise judicial power to remove judges motivated by partiality but to leave in force the product of their bias or even wrongdoing.

11. By the same token, the review of a judge under §455(a) must include all orders in the case since all belong to the type of vehicle through which a judge's bias would naturally and most damagingly find expression. This holds true for the orders that Judge Ninfo himself submitted to this Court as well as the others that he has taken in this case or caused to be taken based thereon. Their inclusion is all the more justified because Judge Ninfo himself makes reference to other orders taken by him or by the district court upon their appeal to it by Dr. Cordero, namely:

    a) 1. Judge Ninfo's order dismissing Dr. Cordero's **cross-claims against Trustee** Kenneth Gordon (Appendix (A):151);

       2. Judge Ninfo's order denying Dr. Cordero's motion to extend time to file notice of appeal (A:240);

       3. Judge Ninfo's order denying Dr. Cordero's motion for relief from order denying his motion to extend time to file notice of appeal (A:259);

4. District Judge David Larimer's order granting Trustee Gordon's motion to dismiss of Dr. Cordero's notice of appeal (A:200);

5. Judge Larimer's order denying Dr. Cordero's motion for rehearing of the grant of Trustee Gordon's motion to dismiss the appeal (A:211);

b) 1. Judge Ninfo's recommendation to the District Court that Dr. Cordero's **application for default judgment against** Mr. David **Palmer** not be entered (A:306);

2. Judge Larimer's order denying entry of default judgment against Mr. Palmer (A:339); and

3. Judge Larimer's order denying Dr. Cordero's motion for rehearing of the order denying entry of default judgment against Mr. Palmer (A:350).

II. Pendant jurisdiction in connection with the §455 claims allows the Court to review all orders, just as the collateral order doctrine can be applied to the orders disposing of Dr. Cordero's claims against Trustee Kenneth Gordon and Mr. David Palmer

12. Upon taking jurisdiction of Dr. Cordero's claims of bias under §455, the Court can also exercise pendant jurisdiction over all these orders. This is warranted because those submitted by Judge Ninfo in November are inextricably intertwined with the issue of judicial bias. So are those in para. 11 above, which Dr. Cordero included in his notice of appeal (A:429) since they constituted part of the set of circumstances that prompted this appeal and configure its merits. The Court should review and vacate all of them to prevent that they become the vehicle through which the bias invidiously driving the judges reaches its injurious objectives.

13. The Court can also apply the collateral order doctrine to relax the constraints of appellate jurisdiction under 28 U.S.C. §1291, which requires that the order be final

in that it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233, 89 L. Ed. 911, 65 S. Ct. 631 (1945).

14. However, as this Court has recently reiterated in *Rohman v. New York City Transit Authority (NYCTA)*, 215 F.3d 208 at 214 (2d Cir. 2000):

> under the collateral order doctrine, interlocutory appeals may be taken from determinations of "claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949).

15. It further stated in *U.S. v. Graham*, 257 F.3d 143 at 147 (2d Cir. 2001) that:

> To fit within the collateral order exception, the interlocutory order must: "[i] conclusively determine the disputed question, [ii] resolve an important issue completely separate from the merits of the action, and [iii] be effectively unreviewable on appeal from a final judgment." (quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468, 57 L. Ed. 2d 351, 98 S. Ct. 2454 (1978) (internal quotation marks omitted)

A. The four orders dismissing the notice of appeal and denying the motion to extend time to file it turned on the legal issue of computation of time under the Bankruptcy Rules, the determination of which is not susceptible to change by future litigation

16. These dismissal orders were predicated solely on determinations of issues of law, which this Court is as capable as, if not more than, the lower courts to determine de novo on appeal, *Salve Regina College v. Russell* , 111 S.Ct. 1217, 1225, 499 U.S. 225, 238, 113 L.Ed.2d 190 (1991); *McHugh v. Rubin* , Docket No. 99-6274

(2d Cir. July 11, 2000), namely:

a) Whether the district court (A:200, 211) correctly dismissed Dr. Cordero's notice of appeal as untimely because filed after the 10 day period following the entry of the bankruptcy court's order dismissing his cross-claims against Trustee Gordon or whether it erred therein because 1) the notice was mailed within that period, 2) so it should be considered filed upon being mailed under Rule 9006(e), and 3) the period was extended by three additional days under Rule 9006(f) and to the next business day under Rule 9006(a).

b) Whether by applying these same considerations as "the law of the case" (A:260) the bankruptcy court (A:240, 259) erred in dismissing as untimely filed Dr. Cordero's timely mailed motion under Rule 8002(c)(2) to extend time to file notice of appeal.

17. Future litigation cannot change the mailing or filing dates of the notice of appeal or the motion to extend time. Hence, the dismissal orders are separate therefrom and conclusive. Likewise, postponing appellate review until final judgment would so impair further litigation, causing such hardship on Dr. Cordero, a pro se, non-local litigant, as to deprive him of an effective right of review (para. 37 below).

1. The underlying order dismissing as a matter of law the cross-claims against Trustee Gordon is also immune to further litigation

18. Underlying the dismissal orders were Dr. Cordero's cross-claims against Trustee Gordon for negligent and reckless liquidation of Debtor Premier Van Lines, and

false and defamatory statements about Dr. Cordero. The bankruptcy court granted the Trustee's motion to dismiss before there had been any disclosure –except by Dr. Cordero- or any pre-trial conference or discovery whatsoever. It treated the motion as one under Rule 12(b)(6) and granted it by finding that as a matter of law the cross-claims failed to provide a basis for further prosecution. As a result, the dismissal orders conclusively keep those claims' out of future litigation, which cannot affect the orders given the legal grounds on which they are predicated.

19. Legal too are the grounds –aside from bias motivation- that Dr. Cordero has invoked to appeal from the dismissal (OpBr:38; RepBr:25): among others, that Judge Ninfo disregarded the standards for disposing of a 12(b)(6) motion, failing not only to afford extra leeway to the pleadings of a pro se litigant, but even to consider his factual allegations in the light most favorable to him as plaintiff, conducting instead, as the transcript shows (A:262), a summary trial where the Judge passed judgment on the sufficiency of the evidence as a trier of fact would do.

20. Thus, from a legal as well as a practical point of view, the dismissal orders have sounded the death knell for Dr. Cordero's cross-claims, as would have it, mutatis mutando, the alternative, non-exclusive doctrine under which this Court can also take jurisdiction of an interlocutory order that makes further prosecution of a case –here distinctly separate aspects of it- impossible.

21. Such death knell has become only louder since Plaintiff James Pfunter either settled or dropped his claims against the Trustee, as Judge Ninfo's order of Octo-

ber 16, 2003, disposing of causes of action –among those that he submitted to this Court- has made so clearly audible. That order has trumpeted Trustee Gordon's exit, at least formally, from the scene and underscores in practical terms the finality of the earlier order: With the Trustee out for the remainder of the case, Dr. Cordero's dismissed cross-claims against him are conclusively kept separate from future litigation unless this Court revives them by vacating the dismissal orders.

B. The district court's orders denying Dr. Cordero's application for default judgment against Mr. Palmer and the bankruptcy court's treatment of the application turned on the legal issues of entitlement to judgment under FRCivP Rule 55 and of service, conclusively separating it from further litigation, at the end of which review would be ineffective

22. Dr. Cordero's third-party complaint against Mr. Palmer was predicated on the latter's fraudulent, negligent, and reckless storage of Dr. Cordero's property and handling of his storage and insurance fees, not on the possibility that he might default by disregarding his duty to answer the complaint. Thus, by definition Dr. Cordero's application for judgment by default due to Mr. Palmer's failure to appear and defend constitutes a separate claim from those in the case.

1. The order's of Judge Ninfo and Judge Larimer denying the default judgment application do not cite any rule or law and contain outcome-determinative mistakes of fact so that this Court should hold them null and void as their flawed personal opinions with no legal power to deprive a litigant of rights or property

23. After Dr. Cordero applied for default judgment (A:290-295), Judge Ninfo belatedly (A:302) made his recommendation to the district court, stating in his

Conclusions that, "The Plaintiff is not entitled under applicable law to entry of judgment by default" (A:305). However, in his "attached reasons" (A:306-307) he did not invoke, let alone discuss as judges do, any rule or law whatsoever for his denial. Worse still, he imposed on Dr. Cordero the obligation to demonstrate damages without citing any authority therefor.

24. His colleague on the floor above in the same federal building, Judge Larimer, accepted his recommendation and added: "Even if the adverse party failed to appear or answer, third-party pl aintiff must still establish his entitlement to damages since the matter does not involve a sum certai n" (A:339). Thereby he showed that he had intentionally disregarded or inexcusably failed to read the statements by Judge Ninfo himself as well as Dr. Cordero indicating that the matter did involve a sum certain, to wit $24,032.08 (A:305, 294, 327, 344, 348).

25. Nor did Judge Larimer cite, let alone analyze, any rule or law setting out the conditions for such "entitlement" or for obtaining judgment for defendant's failure to appear as opposed to compensation for damages. Dr. Cordero moved the district court to reject the recommendation and the obligation to demonstrate damages as he, for a change, analyzed Rule 55 (A:314), which provides that plaintiff is entitled to default judgment where 1) the clerk of court has entered defendant's default due to its failure to appear, and 2) plaintiff has applied for a sum certain

26. Without even acknowledging that motion, Judge Larimer required that Dr. Cordero prove damages through an "inquest" conducted by the bankruptcy court,

for which he similarly failed to cite any rules governing it. (A:340) Dr. Cordero moved the district court to correct its outcome-determinative mistake about the sum certain and reverse his unsupported call for an inquest. (A:342; OpBr:50.2, 53.4) Once more Judge Larimer lazily spared himself any legal analysis by ordering merely that "The motion is in all respects denied" (A:350).

27. That "inquest" was Judge Larimer's way to allow Judge Ninfo to implement the requirement that he had stated in the Attachment to the recommendation that Dr. Cordero demonstrate damages, if any, through an inspection at Plaintiff Pfuntner's warehouse, where some storage containers were thought (A:364) to hold property of Dr. Cordero, after which the application would be decided (A:306). That inspection took place on May 19, 2003, for which Dr. Cordero, the only non-local party, had to travel from New York City to Rochester and to Avon.

28. At a hearing on May 21 before Judge Ninfo, Dr. Cordero reported thereon, including the fact that Mr. Pfuntner, his attorney, David MacKnight, Esq., and his warehouse manager failed not only to attend, but also to take any of the necessary measures for the inspection, which Dr. Cordero had identified as early as January 10, put in writing (A:365, 368), and Att. MacKnight had agreed to at the April 23 hearing when he moved for a second discovery order for that inspection after he and Mr. Pfuntner had disobeyed the first one with impunity (A:374, 378). After Dr. Cordero concluded his report, Judge Ninfo of his own initiative asked him to resubmit his application for judgment by default against Mr. Palmer. Dr. Cordero

did so. (MandBr Appendix or Appendix Supplement (MandA/ASup):472, 479:84) Astonishingly, at the June 25 hearing Judge Ninfo refused to grant the application by this time raising doubts that service on Mr. Palmer had been proper! (cf. Recusal Decision:5.I, Recusal Order:4)

29. However, not only did Dr. Cordero serve the complaint and the default application on Mr. Palmer's attorney of record, Raymond Stilwell, Esq., (A:18, 70; MandA/ASup:99) but also served Mr. Palmer with the application (A:296). It should be noted that Att. Stilwell was at the time representing Mr. Palmer in the voluntary bankruptcy petition (MandA/ASup:431) of which this adversary proceeding is a derivative action. Acknowledging Mr. Stilwell's status as Mr. Palmer's attorney, the bankruptcy court summoned him to attend the pre-trial conference held on January 10, 2003 (A:362). Moreover, the court has confirmed this status by serving Mr. Stilwell with the court's orders of October 16 (MandA/ASup:552, entry 25; below 25, entry between 138 and 140).

30. What is more, Judge Ninfo had certified in his recommendation Findings that:

> This Court now finds that the Third-party Complaint was filed by the Plaintiff [Dr. Cordero] 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 [Palmer] 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 2/4/03. (A:305)

31. How could Judge Ninfo contradict himself so blatantly without even showing some awareness, let alone explaining away, his previous Findings? Because there is no system to his bias so that he will state anything and its opposite so long as it works against Dr. Cordero. Otherwise, his contradictions reveal disqualifying incompetence to keep track and do legal analysis. Anyway one thing is clear: Judicial decisions that can deprive a person of his property and rights must not be used to write a comedy of errors. When out of bias they are used to intentionally cause a litigant so much waste of time, effort, and money and inflict such tremendous emotional distress as in this case, they become a farce for mocking the law.

32. What kind of judges are these who contradict their own statements, disregard or ignore the law, and are unwilling or unable to perform legal research and writing, but have no qualms about lording it over a litigant's rights and property? They are the Justices of the Peace of the Fiefdom of Rochester, which they have carved out of the judicial system founded on the Constitution and delimitated by Congressional enactments. Therein they no longer pay allegiance to the rule of law, but rather rule by the whims of their personal opinions…or no opinion at all: "The motion is in all respects denied"! (A:211, 350)

33. This Court should take jurisdiction of their orders since they conclusively disposed of alleged legal issues concerning the "applicable law" of "entitlement" to damages; their "inquest" to demonstrate such damages took place; and the denial of the resubmitted application relied on the pretense of legal defects in service.

Then the Court should hold them null and void as a matter of the law that they disregard and as the expression of court officers who have chosen to ignore the requirements of their office and their solemn responsibility to avoid giving even the appearance of bias and wrongdoing to those that appeal to them for justice.

C. The orders of Judge Larimer show that he disregarded his statutory duty to review de novo matters objected to by Dr. Cordero, and based his orders on ex parte 'hearings' of the opposite parties, whereby those orders are so procedurally defective and tainted with partiality as to require this Court to review and rescind them

34. Dr. Cordero brought to Judge Larimer's attention his objections to Judge Ninfo's recommendation (A:328, 343). Judge Larimer had a legal obligation under 28 U.S.C. §157(c)(1) to 'review "de novo those matters to which any party has timely and specifically objected".

35. Yet, Judge Larimer did not so much as notice Dr. Cordero's textual analysis of statutory provisions or even Supreme Court cases squarely on point, such as *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership* , 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993). In his reluctance or incapacity to provide any legal foundation for his statements, let alone discuss any rule or law, he failed to make even a passing reference to them or to any Supreme Court case or any case of this circuit at all! He even got outcome-determinative facts wrong (para. 26 above; OpBr:16; RepBr:19). Hence, it can reasonably be inferred from his incompetent (A:200, 339) and lazy (A:211, 350) orders that Judge Larimer did

not even read Dr. Cordero's motions (A158, 205, 314, 342), and issued them upon considering only either Trustee Gordon's or Judge Ninfo's submissions.

36. Hence, those orders are fundamentally defective as a matter of law because Judge Larimer proceeded on an ex parte basis, denying Dr. Cordero a constitutional procedural right to be heard and a statutory procedural right to a de novo review. Hence, this Court should exercise appellate jurisdiction to review and vacate them.

III. Postponing review of the appealed orders until final judgment would in practical terms cause the loss of an effective right of review, which satisfies the unreviewability requirement of the collateral order doctrine and justifies immediate review

37. The Supreme Court has stated that it would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all." *Cobbledick v. United States,* 60 S.Ct. 540-540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940). In harmony therewith, this Court stated in *Locurto v. Safir*, 264 F.3d 154, at 162 (2d Cir. 2001), that an erroneous denial of a right, such as that of qualified immunity, which forces a litigant to carry the burdens of discovery and trial otherwise avoidable, renders the order "effectively unreviewable if appeal is delayed until after a final judgment has been entered", so that if the denial turns on a question of law, the order "is immediately appealable". The Locurto Court added that,

> Such a denial also satisfies the requirement of finality, since the district court's legal determination is conclusive with respect to the [litigant]'s entitlement to avoid the burdens of discovery and trial. id.

38. If appellate review were postponed until a final judgment were entered by the same lower courts, Dr. Cordero would be sent back to suffer more of the same disregard of law, rules, and facts at the hands of court officers emboldened in their bias by coming out of the appeal unscathed. How inequitable!

39. If the orders were left in force, but for the reasons set forth before (OpBr:48) Dr. Cordero is already entitled to default judgment as a matter of law under Rule 55, then all future litigation that he would be required to shoulder, with all its extra burden of time, effort, and money expense, felt only more crushing because of his already exhausted pro se, non-local condition, would work irreparable hardship on him economically and emotionally. Not only in moral terms 'justice delayed is justice denied', but also in practical terms: At the end of a future appeal that were successful, there would likely be nobody liable to compensate him for such unjustified toil. Actually, every day that goes by without his having a default judgment to enforce reduces his already slim chances of finding and collecting anything from Mr. Palmer, that irresponsible person who, disregarding his duty to answer process, just disappeared with impunity from Judge Ninfo's court, where he had filed a voluntary bankruptcy petition and from where he received the benefit on October 24, 2003, of having the case of his failed company closed.

40. Similarly, the orders dismissing the notice of appeal, the motion to extend time to file it, and the underlying cross-claims, allegedly turned on the legal issues of their untimeliness and lack of a cause of action upon which relief can be granted. If

these determinations are erroneous, Dr. Cordero has a right now to press his claims against Trustee Gordon. But if they are maintained conclusive on future litigation until final judgment, Dr. Cordero will have to prosecute his claims solely against the remaining parties. Given the obvious key role of the Trustee in the liquidation of the storage company, those parties –warehouse owners, managers, or lenders- will likely do what they have repeatedly done so far: deflect any blame toward the Trustee just as they referred Dr. Cordero to him for information about his property and permission even to inspect it, let alone release it (A:14, 17, 18, 22, 40, 52, 131, OpBr:43). As a result, no matter who wins the final judgment, it will almost certainly be appealed because a key player, liable for compensation or contribution, was 'indiscreetly disjoined' from the case by the courts.

41. What a waste of judicial resources! Similarly, if on appeal it were determined that Judges Ninfo and Larimer erroneously dismissed the Trustee as a cross-claimed party, not to mention if either or both did so out of bias or other wrongdoing, who will compensate pro se, non-local Dr. Cordero? Who will bear his economic and emotional cost of relitigation? A Pyrrhic hollow appellate review is justice denied.

42. In stewarding the integrity of the judicial process, the Court can also take jurisdiction of these orders to determine whether the bias found, its appearance, or other considerations warrant that "in the interest of justi ce" it should under 28 U.S.C. §1412 instruct the lower court to transfer this case to a court in another district.

IV. Relief sought

43. Therefore, Dr. Cordero respectfully requests that the Court:

a) take jurisdiction and vacate 1) the orders on appeal, listed in para. 11 above, and Judge Ninfo's 2) Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceeding with any Hearings and a Trial on October 16, 2003, and 3) Order Finding a Waiver of a Trial by Jury;

b) disqualify Judge Ninfo and remove this case to the U.S. District Court for the Northern District of New York at Albany for a trial by jury;

c) hold that Judge Larimer violated Dr. Cordero's constitutional and statutory rights to due process;

d) investigate with the assistance of the FBI whether judges and other court officers at the WDNY bankruptcy and district courts partcipated in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

e) order that Dr. Cordero be compensated for the violation of his rights and award him attorney's fees; and

f) award him any other relief that the Court may deem just and proper.

Respectfully submitted on

December 28, 2003

Dr. Richard Cordero

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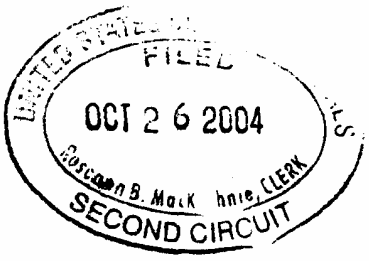
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 26th day of October two thousand four.

IN RE: PREMIER VAN LINES, INC. 03-5023



A petition for a panel rehearing and a petition for rehearing en banc having been filed herein by the cross and third party appellant Richard Cordero.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,
Roseann B. MacKechnie, Clerk
By: _____
Motion Staff Attorney

OCT 26 2004

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