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

August 14, 2004

Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call last Wednesday, when we briefly talked about the files that I prepared for your colleague David N. Kelley, U.S. Attorney for the Southern District of New York, and that his Chief of the Criminal Division, Karen Patton Seymour, Esq., forwarded to you. They concern a judicial misconduct and bankruptcy fraud scheme, which has shown further evidence of its existence and depth through an ongoing case in the Bankruptcy Court in your building, namely, David and Mary Ann DeLano, Chapter 13, docket no. 04-20280.

As mentioned, I have prepared a paper in the form of a motion (1-19, infra) that describes the latest developments of a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing involving judicial officers, trustees, and the local parties. The motion demonstrates how these participants have undermined the integrity of the judicial and bankruptcy systems and why this matter deserves that a file be opened and treated with high priority.

The motion's Table of Contents serves as an executive summary. Its first paragraph lets you know of two important hearings in the Court right there where you are:

1. The one next Monday, August 23, at 3:30 p.m., will reconsider Trustee George Reiber's motion to dismiss the case (21, infra) due to the Debtors' unreasonable delay in producing documents as well as my statement in opposition (23, infra), which requests his removal on account of his conflict of interests between his duty to investigate this case and his self-preservation instinct of not uncovering documents that can incriminate him in bankruptcy fraud.
2. The other hearing is set for Wednesday, August 25, at 11:30 a.m. It was noticed by the Debtors' attorney, who seeks to disallow my claim (43, infra) in order to eliminate me from the case, for I am the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud, particularly concealment of assets. I will oppose him and again ask that the Hon. John C. Ninfo, II, issue the proposed order for the Debtors to produce certain documents (34, infra), which the Judge knew I had requested so that he had me fax the order to him only to refuse to issue it by citing the "expressed concerns" of the Debtor's attorney (39, infra), who nevertheless had earlier failed to preserve any objection to the order.

I trust that this overview will enable you to realize the importance of those two hearings for the parties and the future of this case. Hence, I respectfully urge you to attend them or have the attorney reviewing my files do so. Attending those hearings will also give you an opportunity to witness the interaction between the local parties and Judge Ninfo in their courtroom while I am absent appearing by phone from New York City. Therefore, I look forward to hearing from you as soon as you have decided whether to open a file in this matter and to attend the hearings.

Sincerely,

Dr. Richard Cordero

TABLE OF EXHIBITS

1. **Dr. Richard Cordero's motion of August 14, 2004, for docketing and issue, removal, referral, examination, and other relief 1**
    a. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 16
    b. **Proposed order** for docketing and issue, removal, referral, examination, and other relief 17
    c. Dr. Cordero's **telephone bill** showing faxes to Judge Ninfo's fax machine at no. (585)613-4229 on July 20 and 22, 2004..... 19

Background documents

2. Trustee George **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004 21
3. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition 23
    a. Relief: contents of document production order requested to issue 29
4. Dr. **Cordero**'s letter of **July 19**, 2004, faxed **to** Judge **Ninfo** 33
    a. **Proposed order** for production of documents by the DeLanos and their attorney, Christopher Werner, Esq., obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004 34
5. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, **objecting** to Dr. Cordero's **proposed order** because it "extends beyond the direction of the Court" 39
6. Judge **Ninfo**'s order of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" 41
7. Att. **Werner**'s **notice** of hearing and order of **July 19**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it 43

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

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

Madam or Sir,

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

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

TABLE OF CONTENTS

I. AT A HEARING ON JULY 19, 2004, JUDGE NINFO ASKED DR. CORDERO TO FAX TO HIM A PROPOSED ORDER TO SIGN AND MAKE IT EFFECTIVE FOR THE DEBTORS TO PRODUCE DOCUMENTS IMMEDIATELY; DR. CORDERO DID SO, BUT JUDGE NINFO NEITHER SIGNED IT NOR HAD IT DOCKETED, AND DR. CORDERO'S LETTER OF PROTEST OF JULY 21, THOUGH ACKNOWLEDGED BY A CLERK AS RECEIVED AND IN CHAMBERS, WEEKS LATER HAD STILL NOT BEEN DOCKETED, AND WHEN DR. CORDERO PROTESTED, IT WAS CLAIMED NEVER TO HAVE BEEN RECEIVED 2

II. A SERIES OF INEXCUSABLE INSTANCES OF DOCKET MANIPULATION FORM A PATTERN OF NON-COINCIDENTAL, INTENTIONAL, AND COORDINATED WRONGFUL ACTS, WHICH NOW INCLUDE THE NON-DOCKETING AND NON-ISSUE OF LETTERS AND THE PROPOSED ORDER FOR DOCUMENT PRODUCTION BY THE DELANOS THAT JUDGE NINFO REQUESTED DR. CORDERO TO SUBMIT 4

RB:3

III. Judge Ninfo's requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the Delanos that he requested of Dr. Cordero on July 19, 2004 8

IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of attorney for the Delanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the Delanos of financial documents that in all likelihood will reveal bankruptcy fraud 10

V. Since Judge Ninfo has failed to order production by the Delanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud 11

VI. Relief requested 13

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

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

2. At the hearing of Trustee Reiber's motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a

proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.

3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format "page # of 5". I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.

4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER[1] already contained the description of the hearing on July 19, which included the statement in capital letters:

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

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.

6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

07/20/2004	53	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)

When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

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

07/22/2004	51	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)

8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads!

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

This is blatant discriminatory treatment.

9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.

10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.

11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.

12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

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

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.

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

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

from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

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

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

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

of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.

f. Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:

1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY

2) Objection of March 29, 2004, to a Claim of Exemptions

3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

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

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

These entries have many mistakes and reflected poorly on me as a filer…or as an "Interested Party" although I am a creditor listed as such in Schedule F of the DeLanos' petition and in the Court's Register of Creditors. Was somebody in the Court already

prejudging my status after having informally gotten wind of Att. Werner's intention to challenge it in future? I had to write to Clerk of Court Warren on April 13 to point out to him that:

4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:…; otherwise, the title used in 1) above, could be used.

5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.

6) For its part, entry 20 contains jarring mistakes:

   a) it is not "timeless", but rather "timeliness";

   b) it is not "exempltions", but rather "exemptions";

   c) it is not "a written statements", but rather "a written statement".

I wrote to Mr. Warren: "I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed." Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano's petition even cursorily;

8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;

9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;

10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,

11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under "local practice" and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance…*mindboggling statements indeed!*

12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:

a) how "local practice" can invalidate federal law,

b) how a non-local finds out reliably what "local practice" is, and

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

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.

16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

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

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

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

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

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

a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano's attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep you word it all redounded to my detriment.

b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.

c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.

20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court

before you he can rely on federal law and ignore "local practice" (see para. 14.f.11) and 12)) and challenge your rulings on appeal.

21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, "the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004", why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!

22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

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

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.

24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).

25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:

    a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;

    b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;

    c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;

d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and

e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.

26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim…but is there any point in doing so?

27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).

28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake![2]

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

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:

a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.

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

b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.

c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.

d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded $5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases", reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.

e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their' "unreasonable delay" in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.

f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them…yet he has $3,909 *open* cases, according to PACER. Was there never a case in such a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?

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

    1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.

    2) While a bank officer would be expected to carry the bank's credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention 'sticking' their employer with a bankruptcy debt.

3) Mr. DeLano and his working wife declared earnings of $291,470 in only the three years from 2001-2003.

4) Nevertheless, they declared having only $535.50 in cash or in bank accounts…with M&T and in credit, of course;

5) two cars worth together merely $6,500;

6) equity in their house of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;

7) household goods worth only $2,910…that's all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years…unbelievable!

8) Yet, they have accumulated $98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,…

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

30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos' earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.

31. But if Trustee Reiber did review the DeLanos' documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.

32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?

33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:

a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket's electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;

b. issue that order, modified by the remark that insofar compliance therewith is still owing,

the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;

c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;

d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;

e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:

1) Mr. Lawrence A. Friedman, Director

2) Donald F. Walton, Acting General Counsel

3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;

g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:

1) the Debtors under 11 U.S.C. §341; and

2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);

h. enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;

i. allow me to present my arguments by phone at the two upcoming hearings; not cut off the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the next scheduled public event;

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

August 14, 2004

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

eCast Settlement Corporation
agent for Fleet Bank (RI) N.A. and
Associates National Bank
Becket and Lee LLP, Attorneys/Agent
P.O. Box 35480
Newark, NJ 07193-5480

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980

Mr. Erich M. Ramsey
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Finance Department
Account: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011

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 of August 14, 2004, for docketing

July 21, 2004

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

faxed to (585)613-4299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Yesterday I faxed to you the proposed order for document production. It was discussed at the hearing the day before and implements your decision on that occasion. Indeed, after I requested that you grant my request for such order as described in my July 9 Statement Opposing the Motion to Dismiss, you stated that the Court does not prepare orders, but rather issues them on proposal from a party, whereupon I proposed to reformat the text of my requested order into a proposed order. Having already had the opportunity to read that text, you decided that I could do so and gave me your fax number to enable you to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents today.

While neither the order has issued nor my proposal has been docketed, a letter by Att. Werner, delivered via messenger to the Court and protesting the breath of my proposal, has already been docketed. As I indicated in the letter accompanying the proposed order, Att. Werner had ten days since I faxed my Statement to him on July 10 to learn the breath of my requested order, yet he failed to object to your decision that I convert it into a proposed order and fax it to you. If, as he stated on Monday, he has been in this business for 28 years, the must know his obligation to raise timely objections. Now it is too late for him to do so.

Nor can he pretend that your recapitulation of what we had to do constituted the total expression of his and the DeLanos' obligation. Your recapitulation was that I would submit the proposed order, that he and Trustee Reiber would submit the missing pages of the credit reports by today, and that the DeLanos would produce other documents by August 11. Its only reasonable purpose was precisely to act as such: as a summary of your decisions and our obligations. Att. Werner cannot distort your intention by casting out the part concerning the order, whose details he already knew, and retaining the part relating to his obligation expressed in the general terms of a recapitulation. If the latter two parts of the decision stated all that Att. Werner and the DeLanos had to do, I trust that you would not have allowed that I waste my time and effort once more in preparing and submitting a document that you were not going to act upon at all.

Nor can Att. Werner presume that you would content yourself with simply asking him to do what is expected of any lawyer, that is, submit complete documents, and of one acting in good faith, which here meant to comply with the Trustee's April and May requests by submitting all the credit card statements for the last three years, rather than pretend that by submitting a single and incomplete statement between 8 and 11 months old for each card he could truthfully "believe that we have complied in all respects to [sic] the Trustee's requests", as he stated to the Court in his July 13 Statement. The issue of the petition's good faith has been properly raised. Thus the proposed order aims to establish the nature of the expenditures and the whereabouts of the assets through pertinent documents, not just those that suit them. Hence, if the Court wants to be taken seriously by them and to justify my reliance on its word, it should issue the order as proposed.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13
Case no: 04-20280

ORDER
FOR DOCKETING AND ISSUE, REMOVAL, REFERRAL, AND EXAMINATION

Having reviewed the history of the above-captioned case and the papers submitted by the several parties, and in light of the provisions of the United States Code and Rules applicable to it, the Court orders as follows:

a. the proposed order of July 19, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 20, 2004, in entry 53 of docket 04-20280 and uploaded into the docket's electronic version to make it publicly available through it, forthwith by the clerk;

b. said order is incorporated herein and effective immediately; and insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date of this order;

c. the letter of July 21, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 22, 2004, in docket 04-20280 and uploaded into its electronic version to make it publicly available through it, forthwith by the clerk

d. Trustee George Reiber is removed under 11 U.S.C. §324 forthwith from this case; James Weidman, Esq., is to terminate forthwith any and all relation to this case, whether as a professional person employed under §327 or otherwise; and any payment to them or disbursement by them of funds in connection with this case is forthwith prohibited until otherwise ordered by a competent authority;

e. the clerk will forthwith send a copy of both this order and the above-described order of July 19, 2004, with a pertinent report by this Court to follow shortly, to the following officers:

1) for review, investigation, and reconstruction of this case as appropriate, and the subsequent appointment of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the Debtors:

a) Mr. Lawrence A. Friedman, Director

b) Donald F. Walton, Acting General Counsel

c) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

2) under 18 U.S.C. §3057(a) for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.:

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

b) Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

c) Rochester Resident Agent
Federal Bureau of Investigations
300 Federal Building
100 State Street
Rochester NY 14614

f. the following persons are to produce and make themselves available for examination under FRBkrP Rule 2004 by Dr. Richard Cordero, whether as creditor or party in interest, and for the official record, in room _____at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September _____, 2004, and, if necessary for further examination, the following day:

1) the Debtors, Mr. David DeLano and Mrs. Mary Ann DeLano; and

2) Trustee George Reiber and James Weidman, Esq.

SO ORDERED
THIS DAY OF_____ _____
HONORABLE JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

https://www22.verizon.com/foryourhome/mysmarttouch/statementview/GenerateStatement.aspx

Today is Sun, 1 Aug 2004

verizon

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Online Activity Statement for all your SmartTouch℠ calls and purchases

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

Important Numbers

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

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

Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
Ending Balance	**$14.32cr**

Purchases Activity

no.	*date*	*Description*	*amount*
1.	07/19/2004	SmartTouch Purchases	20.00cr
Total Purchase Activity			**$20.00cr**

Direct Dialed Calls

In-State Calls: 718-827-9521

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

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. & MARY ANN DELANO,
Debtor(s)

MOTION TO DISMISS
CHAPTER 13 PETITION

BK NO. 04-20280

George M. Reiber, Trustee, in the above named case, moves this Court as follows:

To dismiss the debtor's petition in the above case pursuant to 11 U.S.C. Section 1307 of the Bankruptcy Code for unreasonable delay which is prejudicial to creditors, or convert to a Chapter 7 proceeding. Debtor has failed to turn over the documents requested by the Trustee in the attached letters. The last confirmation hearing was scheduled on April 26, 2004. Upon information and belief, this petition has not been previously converted to or from another Chapter.

/S/
George M. Reiber
3136 S. Winton Road
Rochester, New York 14623
(585) 427-7225

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before the Honorable John C. Ninfo, II, Bankruptcy Judge, 100 State Street, Rochester, New York, on the 19th day of July, 2004 at 3:30 in the afternoon of that day or as soon thereafter as counsel can be heard.

/S/

Dated: June 15, 2004
Rochester, New York

To: Debtor
Debtor's Attorney
U.S. Trustee

Certificate of Service by Mail of SNT, /S/_____Clerk. Copies of this motion were personally mailed by me on June 15, 2004 to David & Mary Ann Delano, Christopher Werner, Esq., US. Trustee

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Statement in Opposition to Trustee's Motion To Dismiss the DeLano Petition

Dr. Richard Cordero, creditor, states the following under penalty of perjury:

1. Last June 15, Chapter 13 Trustee George Reiber, Esq., moved the court to dismiss the above captioned DeLano bankruptcy petition because of Debtor DeLanos' unreasonable delay in submitting financial documents. Because such delay has been tolerated by the Trustee due to his unwillingness or incapacity to obtain those documents or to know what to do with those received and because there is now evidence that dismissal is contrary to both a trustee's duty to report reasonable suspicion of wrongdoing and the interests of the creditors, Dr. Cordero opposes such dismissal.

Table of Contents

I. Trustee Reiber Has Demonstrated Unwillingness And Incapacity To Obtain Financial Documents From The Delanos 23

II. Trustee Reiber Failed To Detect Even The Blatant Incompleteness Of The Documents That He Received On June 14, 2004 24

III. Trustee Reiber Failed And Refused To Take Appropriate Action Relating To His Request For Documents And His Receipt Of Them 25

IV. If Trustee Reiber Had Analyzed The Petition On Its Own As Well As Against The Documents Received On June 14, He Would Have Realized Its Questionable Good Faith, The Evidence Of Wrongdoing, And The Need To Report It 26

V. The U.S. Trustees And The Court Must Take Notice Of Trustee Reiber's Ineffective And Halfhearted Effort To "Investigate" The Delanos And Replace Him 28

VI. Relief Requested 29

I. Trustee Reiber has demonstrated unwillingness and incapacity to obtain financial documents from the DeLanos

2. Although in his Objection to Confirmation of March 4, 2004, Dr. Cordero requested of Trustee Reiber financial documents supporting the DeLanos' petition of January 26, 2004, Dr. Cordero had to insist with the Trustee and with his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt, for him to do so. Only in his letter of April 20, addressed to the Delano's attorney,

Christopher Werner, Esq., did the Trustee requested documents.

3. Even so his request was insufficient because, among other things:

   a) it covered only three years out of the 15 years that the DeLanos brought into play by claiming in Schedule F that their financial difficulties began with their "1990 and prior credit card purchases";

   b) it concerned only 8 credit cards out of the 18 listed in Schedule F; and

   c) it failed to request credit bureau reports from each of the three major bureaus, whose reports are complementary and must be read together.

4. Despite the insufficiency of Trustee Reiber's request, no documents were produced. Dr. Cordero had to insist again that the Trustee take further action to obtain them. By letter of May 18, the Trustee lamely asked of Att. Werner: "Please advise me as to the progress that you and your clients have made on obtaining the documents which I requested in my prior letter to you dated April 20, 2004".

II. Trustee Reiber failed to detect even the blatant incompleteness of the documents that he received on June 14, 2004

5. On June 14, the DeLanos submitted meager documents through Att. Werner. Even the most cursory peek at them shows their unjustifiable incompleteness:

   a) both Equifax reports are missing numbered pages!,

   b) there is only one single statement for each of the 8 credit cards covered by the request and they are from between July and October *2003!*, and

   c) each of those statements is missing the key section of names of sellers of purchased goods and services, and dates and amounts of purchase.

6. To browse through only 19 pages that you have requested and have been kept waiting to receive for months, would it have taken you more than two to three minutes to realize those defects? Only if your mind went into a spin wondering what conceivable reason could the DeLanos and their attorney have had to submit between 8 and 11 month old credit card statements but not those in between, let alone all the previous ones.

7. A closer check of those documents against the figures in the petition and the court-developed register of claims and creditors matrix points to debt underreporting, account unreporting, and unaccountability of assets in the petition. These grave defects call into question the good faith of the DeLanos' petition. They also support the reasonable inference that the DeLanos have been and are reluctant to submit more documents, let alone the complete set of requested documents, due to their awareness that more documents would only further deny such good faith and warrant an investigation into whether their petition was motivated by a fraudulent intent as part of a bankruptcy fraud scheme.

8. Actually, it was Trustee Reiber's attorney, James Weidman, Esq., the first who ever used the term fraud in connection with the DeLanos' petition. This he did when he repeatedly asked of Dr. Cordero at the meeting of creditors on March 8, 2004, whether he knew that the DeLanos' had committed fraud and, if so, what evidence of their fraud he had. Dr. Cordero specifically

stated that by objecting to the confirmation of the DeLanos' plan of debt repayment he was not accusing them of any fraud, and simply wanted to examine them in the meeting of creditors called precisely to do so. Nevertheless, Att. Weidman reacted in a clearly unlawful and undeniably suspicious way: He put an end to the meeting after Dr. Cordero, the only creditor present, had asked merely two questions!

9. If Att. Weidman was so interested in finding out whether the DeLanos' had committed fraud, why would he not allow Dr. Cordero to ask questions of them? Or was he interested just in finding out how much Dr. Cordero knew? Aside from the fact that it was unlawful for Trustee Reiber not to preside over the meeting of creditors, but given that his attorney was so keen to find out any evidence of fraud in connection with the DeLanos' petition, should Trustee Reiber not have been equally keen? Of course he should have been!

III. Trustee Reiber failed and refused to take appropriate action relating to his request for documents and his receipt of them

10. The Trustee has not been keen enough on the documents submitted to him on June 14, to have looked at them for even two or three minutes. Indeed, in a phone conversation between him and Dr. Cordero on July 6, he as much as admitted to not having as yet reviewed them. Hence, he was not, or pretended not to be, aware of their incompleteness and evidence of wrongdoing.

11. Naturally, if Trustee Reiber were aware of the documents' grave defects, he would be expected to fulfill his obligation to report reasonable suspicion of wrongdoing to law enforcement agencies. Far from it, the Trustee stated that he would not do any such reporting at this time, would maintain his motion to dismiss, and would not subpoena the DeLanos for any documents. What is more, he stated that he does not know whether he has subpoena power and that he has never before used subpoenas!

12. However, Rule 9016 F.R.Bkr.P. makes Rule 45 F.R.Civ.P. applicable in cases under the Code, which provides thus:

> Rule 45 Subpoena
>
> (a)(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as office of the court may also issue and sign a subpoena on behalf of
>
> ...
>
> (B) a court for a district in which a deposition or production is compelled by the subpoena,...

13. Since Trustee Reiber is a party as well as an attorney, and in any event he has Att. Weidman at his side, the Trustee can issue subpoenas to compel the DeLanos to produce the requested documents. In addition, "any party in interest" can invoke Rule 9016 to compel production of documents under Rule 2004(a) and (c).

14. Therefore, what prevents Trustee Reiber from using subpoenas to compel the DeLanos to produce the requested documents? Nothing except a lack of willingness or incapacity to fulfill his obligation under B.C. §704(4) to "investigate the financial affairs of the debtor" and under B.C. §704(4) to "furnish such information concerning the estate and the estate's administration

as is requested by a party in interest".

15. Trustee Reiber's argument that he does not want to use subpoenas because a petition under Chapter 13 is voluntary and the debtor has a right to withdraw his petition at any time is totally without merit: The Trustee himself is the one intent on accomplishing the same result through his motion to dismiss. There would have been no appreciable extra work in issuing by subpoena his request to the DeLanos for documents contained in his letter of April 20. On the contrary, he would have spared himself the need to send his letter of May 18.

16. The fact is that no progress has been made, for even when some documents were submitted to him on June 14, Trustee Reiber was not willing or able to realize the inescapable minimum of missing pages and sections and mind-boggling dates. Therefore, how would he ever know what he still needs to request if he is not aware of what he already received? What would he do with hundreds of pages of documents covering the last three years, let alone the past 15 years, if he does not know what to do with 19 pages? He who cannot do the least cannot do the most.

IV. If Trustee Reiber had analyzed the petition on its own as well as against the documents received on June 14, he would have realized its questionable good faith, the evidence of wrongdoing, and the need to report it

17. Judge for yourself from the following salient figures and circumstances whether Trustee Reiber, just as Att. Weidman, has had reason to suspect the petition's good faith:

    a) Mr. DeLano has been *a bank officer for 15 years!*, or rather more precisely, a **loan** bank officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines.

    b) The DeLanos incurred scores of thousands of dollars in credit card debt;

    c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;

    d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

    e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

    f) owe also a mortgage of $77,084;

    g) have near the end of their work life equity in their house of only $21,415;

    h) declared these earnings in just the last three years:

2001	2002	2003	total
$91,229	91,655	108,586	$291,470

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) their cash in hand or on account declared in their petition was only $535.50;

k) the rest of their tangible personal property is just two cars worth $6,500;

l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

m) make a $10,000 loan to their son and declare it uncollectible;

n) but offer to repay only 22 cents on the dollar without interest for just 3 years;

o) refused for months to submit any credit card statement covering any length of time 'because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies';

p) however, the DeLanos:

(1) must still receive the monthly statement from each of the 18 credit card issuers in Schedule F, given that on April 16, Att. Werner, their lawyer, stated to the court: "Debtors have maintained the minimum payments on those obligations";

(2) must have consulted in January 2004, such statements to provide in Schedule F the numbers of their accounts with those issuers and their addresses; and

(3) must know –Loan Officer DeLano must no doubt be presumed to know- that they have an obligation to keep financial documents for a certain number of years;

q) despite Dr. Cordero's requests for financial documents of March 4 and 30, April 23, and May 23, and the Trustee's of April 20 and May 18, the DeLanos provided only some financial documents on June 14, so late that the Trustee moved on June 15 for dismissal for "unreasonable delay", and what they did provide is incomplete and incriminatory:

(1) only one statement of each of only 8 credit card accounts out of 18 in Schedule F,

(2) those statements are missing the section showing from which seller of goods and services a purchase was made, for what amount and on what date, which is indispensable information to establish the timeline of debt accumulation and its nature;

(3) the statements are not even the latest ones of May and June 2004, but rather are of between July and October 2003! Why would the DeLanos ever do such thing?!;

(4) the credit bureau report submitted for Mr. DeLano and the one for Mrs. DeLano are from only one bureau, namely, Equifax, even though the DeLanos must know that none of the reports of even the other two major bureaus, that is, Trans Union and Experian, is exhaustive by including all accounts or up to date as to each account, but rather the reports of the three bureaus are complementary;

(5) worse yet, the Equifax reports submitted are missing pages, even pages that must contain information on accounts, such as outstanding balance and payment history;

(6) the figures in the three IRS 1040 forms for 2001, 2002, and 2003 do not coincide with the information on earnings in the DeLanos' bankruptcy petition of January 26, 2004.

18. A comparison between those credit card statements, the Equifax reports, the bankruptcy petition, and the court-developed claims register and creditors matrix calls into question the petition's good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.

19. Indeed, in Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let's assume that in 1989 the combined income of him and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what they owned before 1989, let alone their credit card borrowing and two loans totaling $118,000. Where did the money go? Where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement have they been planning for and where?

20. Did Mr. DeLano put his knowledge and experience as a bank loan officer to good use in living it up with his family and closing down all collection activity of 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants' financial documents, have thought that it would be deemed in good faith to submit such objectively incomplete documents? Did he have any reason to expect Trustee Reiber not to analyze them?

21. Have Trustee Reiber and Att. Weidman asked themselves that question? Did they ever scan the figures in the January 26 petition to get a hint on whether they made sense? How did they ascertain the timeline of debt accumulation and its nature when they readied the petition for confirmation by the court on March 8, if they had not yet even requested the documents that eventually were submitted to the Trustee on June 14? Or was it that to ask any questions and request any supporting documents they were simply too busy with their other *3,909 open* cases, according to Pacer, as well as with the rolling in of new ones? Were they also too busy to defend the interests of the creditors left holding bags of worthless IOUs, including federal tax authorities, when they approved the DeLanos' plan to repay them only 22¢ on the dollar?

V. The U.S. Trustees and the court must take notice of Trustee Reiber's ineffective and halfhearted effort to "investigate" the DeLanos and replace him

22. There is now circumstantial and documentary evidence supporting reasonable suspicion of wrongdoing in the DeLano's petition. Is Trustee Reiber's unwillingness and incapacity to perform his role part of the problem?

23. One can only hope that Assistant U.S. Trustee Kathleen Schmitt and U.S. Trustee for Region 2 Deirdre Martini recognize that a trustee intent on properly performing his role as representative of the estate for the benefit of the creditors would use all the means at his disposal, such as subpoenas, so clearly available to him. Similarly, a trustee determined to safeguard the integrity of the bankruptcy system would fulfill his obligation to report reasonable suspicion of wrongdoing, including bankruptcy fraud, to law enforcement agencies. Such trustee would not open the easy way out of dismissal for petitioners who may have refused to comply with a request for documents because of their incriminating content. To do so would send the wrong message to the public, namely, that they can always try to escape their debts by filing totally meritless and even fraudulent petitions because if they are about to be caught, the trustee will let them "off the hook" by applying on their behalf for the dismissal of their cases.

24. Yet, Trustees Schmitt and Martini have allowed Trustee Reiber to hold on to this case despite

Dr. Cordero's reasoned request of March 30 for his replacement. Now, the U.S. Trustees must take notice of the Trustee's ineffective and substandard effort to "investigate" the DeLanos.

25. They must not disregard any longer his obvious conflict of interest between, on the one hand, the fact that he and his attorney approved and readied the DeLanos' petition for confirmation on March 8, 2004, and vouched in open court on that date for its good faith despite never having requested or obtained any supporting financial documents, and on the other hand, the fact that the Trustee is being required to comply with his legal obligation to investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied is in fact as a vehicle of fraud to avoid payment of claims.

26. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney's working methods, good judgment, and motives. That could have devastating consequences. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's myriad other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

27. But more is riding on this. The fact is that an independent investigation that discovered more DeLano-like cases would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from U.S. Trustees Schmitt and Martini. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

28. What were they all thinking!? Whatever it was, from their perspective now their best self-protection is not to set in motion an investigative process that can spin out of control and end up crushing them. However, their failure to treat the DeLano petition as a test case to be investigated openly and independently will further undermine the integrity of the judicial system and the public trust in it. It will also confirm the worst fears about them and would only buy them time to dig themselves further into a hole. The time is now for them to cut their losses.

VI. Relief Requested

29. Therefore, Dr. Cordero respectfully requests that:

30. The motion to dismiss the DeLanos' bankruptcy petition be denied;

31. The DeLanos be ordered to submit to the court the following financial documents:

    a) financial documents relating to transactions with institutions

        (1) types of documents:

            (a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements' parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

            (b) monthly bank statements, with all their parts and without redaction;

(c) credit bureau reports, with all their pages; from Equifax, Trans Union, and Experian;

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(2) period of coverage: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) status of account: whether open or closed;

(4) holder of account or interest: whether in both or either of their names, or entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them;

(5) deadline for submission:

(a) for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

i) 4:30 p.m. on Tuesday, July 20, 2004, which is the day following the return day of the dismissal motion;

(b) for documents **not in their possession**:

i) by 5:00 p.m. on Friday, July 23, 2004, for the DeLanos:

(A) to have issued, through their attorney, subpoenas, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶31.a)(1) above and that could not be produced pursuant to ¶31.a)(5)(a) above, and

(B) to have mailed each with a signature confirmation slip;

ii) by 4:30 p.m. on Monday, July 26, 2004, to have submitted to the court an affidavit attesting to their compliance with the order in ¶31.a)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number, and the postmark.

b) All financial documents relating to the **loan to their son** referred to in Schedule B:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or

cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or the terms of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶31.b)(5)(b)-(h) above;

(7) dateline for submission

(a) 4:30 p.m. on Tuesday, July 20, 2004, for all such documents in the DeLanos' possession;

(b) 4:30 p.m. on Monday, July 26, 2004, for their affidavit; and

(c) as provided for in ¶31.a)(5)(b) above, for documents not in their possession;

32. the court acknowledge and take action with respect to Trustee Reiber as follows:

a) Trustee Reiber's inherent conflict of interest between having vouched for the petition's good faith and having to investigate whether it was submitted with a fraudulent intent;

b) Trustee Reiber's failure up to now, and his inability due to his conflict of interests, to represent the creditors and defend their interests;

c) Trustee Reiber's substandard efforts and inefficiency in requesting and obtaining financial documents from the DeLanos, including his failure to realize the insufficiency of those requested and his reluctance to request them through subpoenas;

d) Trustee Reiber's unwillingness or incapacity to analyze financial documents generally or those of the DeLanos specifically, including his failure to detect the obvious incompleteness and defects of those received on June 14, 2004;and

e) the court, in light of such unwillingness and incapacity,

(1) recommend to the U.S. Trustees that Trustee Reiber be replaced in the DeLano case by an independent trustee, unrelated to Trustee Reiber and the DeLanos, and capable of conducting a competent, objective, and zealous investigation of this case;

(2) require that Trustee Reiber and/or the DeLanos at their expense:

(a) make the documents submitted to the court pursuant to its order also publicly available through Pacer and, if that is not possible,

(b) make a photocopy of those documents and send it to Dr. Cordero;

33. the court make a simultaneous referral of this case to the FBI for a concurrent investigation aimed at determining whether there has been fraud in connection with the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

34. the court allow Dr. Cordero to present his arguments by phone and that the court not cut off the phone connection to him until after the court declares the hearing concluded and that thereafter no other oral communication between the court and a party be allowed on this case until the next scheduled event;

35. the court reply to Dr. Cordero's motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

July 9, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (716)232-5300

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

eCast Settlement Corporation
agent for Fleet Bank (RI) N.A. and
Associates National Bank
Becket and Lee LLP, Attorneys/Agent
P.O. Box 35480
Newark, NJ 07193-5480

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980

Mr. Erich M. Ramsey
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Finance Department
Account: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011

Dr. Richard Cordero

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

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

July 19, 2004

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

faxed to (585)613-3299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Please find herewith a proposal for an order to issue upon your decisions at the hearing today of Trustee George Reiber's motion to dismiss the DeLano case. The order is in substance and even its wording practically the same as the relief that I requested in my statement of July 9 in opposition to the motion, except that in compliance with your decisions, I have:

1. eliminated the requests that Trustee Reiber be replaced and that a concurrent referral be made of this case to the FBI,
2. changed the dates for document production to those that you chose; and
3. taken account of Att. Werner's statement that he has already issued some subpoenas.

The removal from the order of the requests in 1. above, is done to abide by your decision and does not mean that I have renounced to those requests. On the contrary, as I stated at the hearing, Trustee Reiber has an insurmountable conflict of interests, does not and cannot represent the creditors' interests, and has shown to be unwilling and unable to conduct an investigation of the DeLanos, let alone an effective one. If he cannot exercise the minimum degree of proper care and due diligence to make copies of documents without missing pages, how can he be reasonably expected to be able to analyze them internally, much less by comparing them with all other documents available, and detect inconsistencies, draw logical inferences, and reach sound conclusions therefrom? Hence, not to replace him will doom whatever currently passes for his investigation to an exercise in futility. Only an independent party, such as the FBI, can conduct an investigation with a reasonable expectation of getting to the bottom of what is going on in this case and its broader context.

Nor is there any need to wait for the production of the requested documents to find out the whereabouts of the DeLanos' earnings of over $291,000 in the last three years, not to mention in the past 15. Wherever that money went, it did not make it into a disclosure in the petition. The absence of that money there, except for the ridiculous trace of two cars worth $6,500, household goods worth $2,910, and cash in accounts or in hand of $535.50, has given rise to the reasonable suspicion of concealment of assets. Not even the appearance of those earnings by a sleight of hand will dispel the suspicion. It is too late for that: The wrong was committed.

Therefore, I will reiterate those requests at an appropriate procedural event in the future. At present, I respectfully submit that the order should issue as is, for the parties had ten days since I faxed my Statement to them on July 10, to study it there and then to raise any objections at the hearing today to its presentation in the form of an order. Consequently, having had but missed that opportunity to object to it, they must be deemed to have consented to all its terms just as they are deemed to be able to prove their statements in court.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13
Case no: 04-20280

ORDER
FOR PRODUCTION OF DOCUMENTS

Having heard on Monday, July 19, 2004, the motion raised by Chapter 13 Trustee George Reiber on June 15, 2004, to dismiss the above-captioned case, the Court orders the production of documents by the Debtors –the DeLanos–, their Attorney –Christopher Werner, Esq. – and the Trustee, and their submission to the Court, the Trustee, and Creditor Dr. Richard Cordero, by 4:30 p.m. on Wednesday, August 11, 2004, unless otherwise stated hereinafter, as follows:

a) All the pages of the **Equifax' credit reports** of April 26, 2004, for Mr. DeLano and of May 8, 2004, for Ms. DeLano, submitted incomplete on June 14, 2004, by Att. Werner to Trustee Reiber and by the latter to Dr. Cordero;

(1) deadline for submission: by 4:30 p.m. on Wednesday, July 21, 2004.

b) **Financial documents** relating to transactions between the DeLanos and institutions:

(1) **types of documents**:

(a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements' parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

(b) monthly bank statements of all their bank accounts, with all their parts and without redaction;

(c) [see ¶a) above]

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(f) all materials, including the cover letter(s), sent by MBNA together with the two sets that it produced of copies of statements for the last three years of accounts 5329-0315-0992-1928 and 4313-0228-5801-9530, which sets of copies Att. Werner referred to in his letter to Trustee Reiber of July 12, and in paragraph 5 of his Statement to the Court of July 13, 2004, and which materials Dr. Cordero requested at the hearing without objection from Att. Werner;

(2) **period of coverage**: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) **status of account**: whether open or closed;

(4) **holder of account or interest**: whether in both or either of the DeLanos' names, or entities whom they control, such as their children, relatives, friends, tenants, their

attorney or representative, or holders of trusts for them;

(5) **deadline for submission**:

(a) the deadline applies to the documents themselves for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

(b) for documents **not in their possession**:

i) the deadline applies to **copies of**:

(A) subpoenas already issued, as stated by Att. Werner at the hearing, as well as those to be issued, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶b)(1) above and that could not be produced pursuant to ¶b)(5)(a) above, and

(B) each signature confirmation slip[1] affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;

ii) the deadline applies to an affidavit by the DeLanos and Att. Werner attesting to their compliance with the order in ¶b)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued, whether they were mailed or hand delivered; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number; the signature of the recipient, and the postmark.

c) All financial documents relating to the **loan to their son** referred to in Schedule B of the DeLanos' bankruptcy petition of January 26, 2004, including but not limited to:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment to the DeLanos after the entity processed their withdrawal request;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶c)(5)(b)-(h) above;

(7) dateline for submission:

(a) the documents themselves for all such documents in the DeLanos' possession;

(b) the DeLanos' affidavit; and

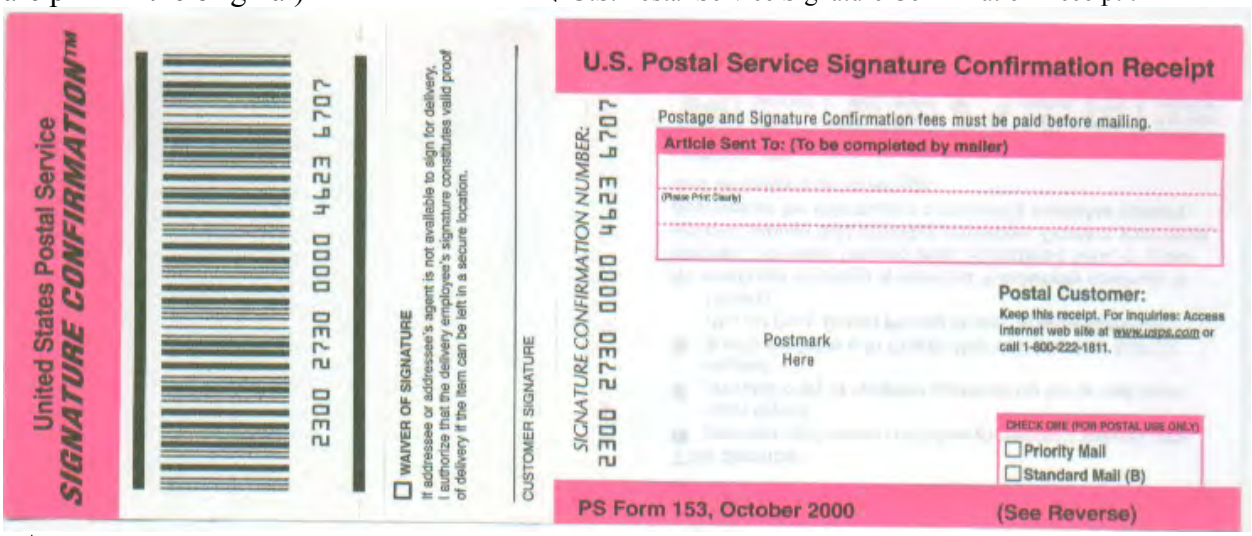
(c) as provided for in ¶b)(5)(b) above, for documents not in their possession;

d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED
THIS DAY OF_____

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

[1] Sample U.S.P.S. signature confirmation slip, with receipt on the right (the dark areas on the fax are pink in the original) ↓ U.S. Postal Service Signature Confirmation Receipt↓



↑ ↑bar code and tracking number↑ ↑PS Form 153, October 2000↑
↑United States Postal Service *Signature Confirmation™*

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

eCast Settlement Corporation
agent for Fleet Bank (RI) N.A. and
Associates National Bank
Becket and Lee LLP, Attorneys/Agent
P.O. Box 35480
Newark, NJ 07193-5480

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980

Mr. Erich M. Ramsey
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Finance Department
Account: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP
ATTORNEYS AT LAW

July 20, 2004

VIA MESSENGER

Hon. John C. Ninfo, II
United States Bankruptcy Court
100 State Street
Rochester, New York 14614

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Judge Ninfo:

We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court. Enclosed please find a copy of the proposed Order with our notations. Based both upon our recollection of your direction in Court and the summary trial, the following is to be performed:

1. By July 21, 2004 close of business, we are to supply copies of all pages of the credit reports in our possession to Mr. Cordero;

2. By August 11, 2004 close of business:

a. Mr. and Mrs. DeLano are to submit copies of any and all account statements and/or records relating to their credit card accounts currently in their possession; and

b. Mr. and Mrs. DeLano are to request credit reports from Equifax, Experion and TransUnion and, upon receipt, provide copies of the complete reports with all cover letters, recitations of federal rights and all other contents supplied to Mr. Cordero and the Trustee.

We have already forwarded copies of all of the Equifax report pages in our possession. We have also forwarded copies of the subpoenas we have issued to Bank One (three accounts), Discover, HSBC and Chase, though this was not required by the Court.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
7 South Broadway, Suite 300 • White Plains, New York 10601 • 914-682-4006 • FAX: 914-682-8273
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
http://www.boylanbrown.com

RB:40

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

ORDER

On July 19, 2004 the Court conducted a hearing on the Chapter 13 Trustee's Motion to Dismiss the Debtors' case, as well as on the Statement in Opposition filed by Richard Cordero on July 12, 2004; and

WHEREAS, at the July 19, 2004 hearing, the Court required the Debtors and their attorney, Christopher K. Werner, Esq. ("Attorney Werner"), to do certain things, as more fully set forth in the Case Docket Report highlighted as follows:

> Hearing Continued (RE: related document(s) 42 Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 8/23/2004 at 03:30 PM Rochester Courtroom for 42, The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04. The debtors are to give Mr. Werner any pages of the Equifax report that they have and that he does not have. By the close of business on 7/21/04, Mr. Werner is to send complete copies of the Equifax report to the Trustee and Dr. Cordero. By 8/11/04, the Debtors are to have ordered their credit reports from Equifax, Trans Union and Experian. Within two days of their receipt, copies are to be provided to the Trustee and Dr. Cordero. The Court will adj. Dr. Cordero's request to remove Mr. Reiber as Trustee to 8/23/04. Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee. Appearing in opposition: Christopher Werner, Atty. for Debtors; Dr. Richard Cordero (By phone). (Parkhurst, L.) (Entered: 07/20/2004); and

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

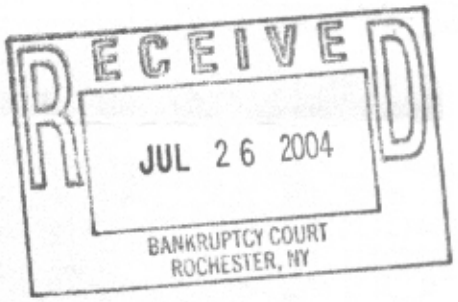
WHEREAS, the Court has reviewed this matter and believes that the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004.

It is therefore, **ORDERED,** that the Debtors and Attorney Werner comply with the highlighted Case Docket Report provisions, and Richard Cordero's request to remove the Chapter 13 Trustee, and other matters in the Chapter 13 case are adjourned to August 23, 2004.

SO ORDERED.

DATED: July 26, 2004

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



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

David G. DeLano
Mary Ann DeLano

Chapter 13
Case No. 04-20280

OBJECTION TO CLAIM
NOTICE OF HEARING AND ORDER

Debtor(s)

NOTICE

NOTICE is hereby given of the objection by Debtors, by their attorney, Christopher K. Werner, Esq.
[Trustee, Debtor or other party]
to your claim in the Western District of New York. A hearing on the objection will be held at the United States Bankruptcy Court,
US Courthouse, 100 State Street, Rochester, NY 14614, _____,
New York, on August 25, 20 04 at 11:30 A.M. only if a written request for a hearing is filed by the claimant as outlined below.

"PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM, YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTOR AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED."

IF YOU OPPOSE THE OBJECTION TO YOUR CLAIM, YOU MAY WANT TO ATTEMPT TO RESOLVE AND SETTLE THE CLAIM OBJECTION PRIOR TO FILING WRITTEN OPPOSITION AND AVOID THE NEED FOR AN ATTORNEY AND/OR A COURT APPEARANCE.

OBJECTION TO CLAIM

The objecting party objects to the following claim in this case:

Claimant's Name: Richard Cordero

Claim #: 19 Amount $ 14,000 + "increments"

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f) Claimant sets forth no legal basis or facts substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liabilty exists as against M & T Bank. No basis for claim against Debtor, Mary Ann Delano, is set forth, whatsoever.

Dated: July 19, 2004

Christopher K. Werner, Esq. Attorney for Debtors
Objecting Party
Address 2400 Chase Square
City/State/Zip Rochester, NY 14604

(PLEASE SEE REVERSE)

This Notice and Objection are being sent to the Debtor, Debtor's Attorney, Chapter 7, 11, 12 or 13 Trustee, United States Trustee, Claimant, Claimant's Attorney (if known) or person designated as Power of Attorney, and any Creditors' Committee or Attorney for the Creditors' Committee.

(SAMPLE ORDER)

CASE NO. 04-20280

There having been no opposition to the herein objection to the claim of Richard Cordero in the amount of $ 14,000 and the Court having considered the objection and determined the sufficiency of the claim, it is hereby

ORDERED the claim is:

XXX DISALLOWED

_____ ALLOWED AS A TIMELY FILED CLAIM IN THE AMOUNT Of $_____

_____ ALLOWED AS A TARDILY FILED CLAIM IN THE AMOUNT OF $_____

_____ OTHER (Complete if applicable)

DATED: _____

_____
John C. Ninfo, II
Chief United States Bankruptcy Judge

(THIS SAMPLE ORDER WAS INTENTIONALLY DRAFTED TO PROVIDE THE MOST BASIC STRUCTURE FOR *ORDERS RESULTING FROM NOTICES OF OBJECTION TO CLAIMS(S). THE COURT RECOGNIZES THAT THERE* WILL BE A BROAD SPECTRUM OF ORDERS ADDRESSING CLAIMS WHICH WILL REFLECT VARYING COMPLEXITY.)

(Rev.01/10/02)

U.S. Department of Justice

United States Attorney
Western District of New York

620 Federal Building
100 State Street
Rochester, New York 14614

(585) 263-6760
FAX(585) 263-6226

August 24, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 12208-1515

Dear Dr. Cordero:

We have reviewed the materials sent to us from the Southern District of New York regarding your allegations of bankruptcy fraud and judicial misconduct. Please be advised that we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so. Accordingly, we are returning your original documents to you with this letter.

Sincerely,

MICHAEL A. BATTLE
United States Attorney

By: RICHARD A. RESNICK
Assistant U.S. Attorney

RAR/kmp
Enclosure

Blank

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

August 31, 2004

Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call today. I appreciate your agreement to examine the documents concerning the above captioned matter that were forwarded to you weeks ago by the Office of Mr. David N. Kelley, U.S. Attorney for the Southern District of New York.

You gave them to your assistant, Richard Resnik, Esq., to review. I called him last Tuesday, August 24. He told me then that he had not taken a look at them and could not do so at that time because he was busy preparing to go to Washington, D.C. the next day; that he would review them upon his return and thereafter we would discuss them on the phone. However, that same day he wrote me a letter dated August 24 where he stated that "we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so". Together with that letter he returned all the files, including the August 14 update that I had sent to you.

It is remarkable how Mr. Resnik made a sudden change of time management to review the 250 pages in the files submitted to you, including more than 30 pages of the bankruptcy petition with 10 schedules and a Statement of Financial Affairs, which upon analysis reveal their declarations and figures to be so incongruous as to render them suspicious; disposed of the matter right away; and even wrote me. I hope that when you examine them, you will allow yourself more time to consider that petition, other Debtors' documents, my analyses of them, and the account of their suspicious handling by bankruptcy and judicial officers that did not want to scrutinize them. Your investment of time in a deliberate examination of these documents is warranted by the stakes, namely, the integrity of the bankruptcy and the judicial systems.

In our conversation today you mentioned that Ms. Kathleen Dunivin Schmitt, the Assistant U.S. Trustee that has her office in your building, did not consider that there were grounds for an investigation of my complaint. I informed her of it since it stems from the DeLano bankruptcy petition, no. 04-20280 WBNY. It is to be hoped that in your conversation with her, an interested party, her views were not deemed deserving of implicit credibility and a substitute for an examination of the evidence, much less the justification for not going where the evidence would lead an objective observer who did not know her. Even if Ms. Schmitt were found not involved in the complained-about bankruptcy fraud scheme, her opinion that there is no need to investigate it or her trustee George Reiber, who has 3,909 *open* cases and failed to vet the DeLanos' petition, or his attorney James Weidman, Esq., who prevented me from examining the DeLanos at the meeting of creditors, might put her at fault. If your personal relation to her and trust in her word render my evidence just "speculations", as you put it, and cause your reluctance to examine it, not to mention investigate her, your objectivity might be compromised. If so, I respectfully request that you recuse yourself and support my referral to the Fraud Section of the U.S. Department of Justice, Criminal Division. I look forward to your statement one way or the other.

Sincerely,

Dr. Richard Cordero

RB:47

Evidentiary Files

containing the bankruptcy petition of January 26, 2004
filed by David and Mary Ann DeLano
in the Bankruptcy Court for the Western District of New York
and other financial documents produced by them
with the analyses of Dr. Richard Cordero
that reveal evidence of a judicial misconduct and bankruptcy fraud scheme

Forwarded to Bradley E. Tyler, Esq.
U.S. Attorney in Charge
of the U.S. Attorney's Office in Rochester
by David N. Kelley,
U.S. Attorney for the Southern District of New York,
returned to Dr. Cordero from the Rochester Office
by Richard Resnik, Esq., on August 24, 2004
and sent back for review by Att. Tyler
on August 31, 2004

1. Copy of letter of May 6, 2004, and file sent to David N. Kelley, U.S. Attorney for the Southern District of New York ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley with letter of same date to his Chief of the Bankruptcy Unit in Civil Matters, David Jones, Esq. ..... 128 pages
3. Letter of August 14, 2004, and file sent to Bradley E. Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester, ... 46 pages
   250 pages
4. Letter of August 31, 2004, in this file sent to U.S. Attorney Tyler with the following updates:
   a) Objection of July 19, 2004, by Christopher Werner, Esq., Attorney for the DeLanos, to Dr. Cordero's Claim, Notice of Hearing and Order 1
   b) Dr. Cordero's reply of August 17, 2004, to Debtors' objection to claim and motion to disallow it 3
   c) Dr. Cordero's application of August 20, 2004, for sanctions on and compensation from Att. Werner and his law firm for violation of FRBkrP Rule 9011(b) 13

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

David G. DeLano
Mary Ann DeLano

Debtor(s)

Chapter 13
Case No. 04-20280

OBJECTION TO CLAIM
NOTICE OF HEARING AND ORDER

NOTICE

NOTICE is hereby given of the objection by Debtors, by their attorney, Christopher K. Werner, Esq.
[Trustee, Debtor or other party]
to your claim in the Western District of New York. A hearing on the objection will be held at the United States Bankruptcy Court,
US Courthouse, 100 State Street, Rochester, NY 14614, ,
New York, on August 25, 20 04 at 11:30 A.M. only if a written request for a hearing is filed by the claimant as outlined below.

"PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM, YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTOR AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED."

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OBJECTION TO CLAIM

The objecting party objects to the following claim in this case:

Claimant's Name: Richard Cordero

Claim #: 19 Amount $ 14,000 + "increments"

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f) Claimant sets forth no legal basis or facts substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liabilty exists as against M & T Bank. No basis for claim against Debtor, Mary Ann Delano, is set forth, whatsoever.

Dated: July 19, 2004

Christopher K. Werner, Esq. Attorney for Debtors
Objecting Party
Address 2400 Chase Square
City/State/Zip Rochester, NY 14604

(PLEASE SEE REVERSE)

RB:49

This Notice and Objection are being sent to the Debtor, Debtor's Attorney, Chapter 7, 11, 12 or 13 Trustee, United States Trustee, Claimant, Claimant's Attorney (if known) or person designated as Power of Attorney, and any Creditors' Committee or Attorney for the Creditors' Committee.

(SAMPLE ORDER)

CASE NO. 04-20280

There having been no opposition to the herein objection to the claim of Richard Cordero in the amount of $ 14,000 and the Court having considered the objection and determined the sufficiency of the claim, it is hereby

ORDERED the claim is:

XXX DISALLOWED

_____ ALLOWED AS A TIMELY FILED CLAIM IN THE AMOUNT Of $_____

_____ ALLOWED AS A TARDILY FILED CLAIM IN THE AMOUNT OF $_____

_____ OTHER (Complete if applicable)

DATED: _____

_____
John C. Ninfo, II
Chief United States Bankruptcy Judge

(THIS SAMPLE ORDER WAS INTENTIONALLY DRAFTED TO PROVIDE THE MOST BASIC STRUCTURE FOR *ORDERS RESULTING FROM NOTICES OF OBJECTION TO CLAIMS(S). THE COURT RECOGNIZES THAT THERE* WILL BE A BROAD SPECTRUM OF ORDERS ADDRESSING CLAIMS WHICH WILL REFLECT VARYING COMPLEXITY.)

(Rev.01/10/02)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Reply in Opposition to Debtors' Objection to Claim and Motion to Disallow it

---

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

TABLE OF CONTENTS

I. The Delanos Were So Aware Of Dr. Cordero's Legal Claim Against Them That They And Their Attorney Themselves Included It In The Original Bankruptcy Petition 4

II. The Debtors Cannot Contest A Bankruptcy Claim On Grounds That They May Not Be Liable In Another Case 5

III. The Debtor's Attorney Cannot Possibly Have A Good Basis Belief In That He Has Standing To Assert That A Third Party, Namely, M&T Bank, In Another Case Is Not Liable To A Creditor In This Case 6

IV. A Creditor May Assert A Claim Against Only One Of Two Debtors Jointly Filing A Bankruptcy Petition 7

V. The Delanos' Objection Is A Desperate Attempt To Remove Belatedly Dr. Cordero, The Only Creditor That Objected To The Confirmation Of Their Chapter 13 Plan And That Is Relentlessly Insisting On Their Production Of Financial Documents That Can Show The Bad Faith Of Their Petition 7

VI. The Delanos Already Objected To Dr. Cordero's Creditor Status And Claim In Their Statement To The Court On April 16, To Which Dr. Cordero Timely Replied On April 25, And The Delanos Did Not Pursue The Issue, Whereby They Are Now Barred By Laches From Raising It Again Two Months Later 9

VII. The Debtors Cannot Overcome The Legal Presumption Of Validity That Rule 3001(F) Attaches To Dr. Cordero's Proof Of Claim By Merely Repeating An Abbreviated Version Of Their April 16 Objection, Which Was Merely An Allegation Devoid Of Any Legal Support 10

VIII. Relief Requested 10

1. By their attorney, Christopher Werner, Esq., the Debtors object as follows to Dr. Cordero's claim:

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

I. The DeLanos were so aware of Dr. Cordero's legal claim against them that they and their attorney themselves included it in the original bankruptcy petition

2. To begin with, it escapes Att. Werner's attention the inconsistency of affirming in the first sentence that Dr. Cordero provides "no legal basis" for "any obligation" of the Debtors to him, only to follow it up in the next sentence with the statement that the basis of the claim is "a pending Adversary Proceeding". That Adversary Proceeding, pending in the U.S. Bankruptcy Court in Rochester, docket no. 02-2230, is a lawsuit with opposing claims at law. Regardless of how those claims will be finally decided, the Adversary Proceeding does provide the legal basis for Dr. Cordero's claim!

3. Likewise, it escapes Att. Werner's recollection that it was he and the Debtors who in the very first document in the instant case, that is, the bankruptcy petition that they signed last January 26, 2004, listed Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". Therefore, it is disingenuous to insinuate that Dr. Cordero only "apparently asserts a claim" given that they were the first to recognize the DeLanos' potential liability to him and were the first to state so in the petition before Dr. Cordero could even suspect, let alone know, that they would file for bankruptcy.

4. In the same vein, it escapes Att. Werner's candor when he states that Dr. Cordero provided "no legal basis" and only "apparently asserts a claim" despite the fact that Dr. Cordero served him with a copy of his proof of claim with an attached copy of his November 21, 2002 pleading in the Adversary Proceeding containing his claim against Mr. DeLano. Consequently, Att. Werner knows full well not only the legal nature of Dr. Cordero's claim against Mr. DeLano, but also its precise substance.

5. Moreover, it escapes Att. Werner's capacity to spot legally significant facts that the Adversary Proceeding is Pfuntner v. Gordon et al, docket no. 02-2230, which is only derivatively related to the case that he cited in his above-quoted Objection, namely, "Premier Van Lines (01-20692)". It is to be hoped that Att. Werner's mistaken reference to only the Premier case is only a reflection on his lack of accuracy when raising an allegation against another party, rather than an intentional effort to mislead the Court and other parties by drawing their attention to a case where Mr. DeLano is not a named party.

6. In addition, it escapes Att. Werner's knowledge of first year law school Torts that a person is not insulated from "individual liability" just because he alleges that he "acted only as

employee" of his employer. Debtor David DeLano is a named third-party defendant in that Adversary Proceeding just as M&T Bank is a named defendant as well as a cross-defendant therein. They can be jointly and severally liable because or in spite of their employer-employee relationship.

II. The Debtors cannot contest a bankruptcy claim on grounds that they may not be liable in another case

7. As a matter of law and common sense, Mr. DeLano's liability in another pending case, that is, the Adversary Proceeding Pfuntner v. Gordon et al., is not a matter that can be denied in this case as the basis to object to a creditor's claim against them. This is all the more so given that in his responsive pleading to Dr. Cordero's third-party claim against him in that other case Mr. DeLano did not even deny his liability in that case on the grounds now asserted for the first time in this case that "David DeLano acted only as employee and has no individual liability". It is not in the instant case where Att. Werner can announce the defense theory of Mr. DeLano's to claims in another case. What kind of lawyering is this on the part of Att. Werner, who is not even Mr. DeLano's attorney of record in the other case?!

8. Moreover, the Court in this case has no jurisdiction to decide the legal question whether Mr. DeLano is liable in another case. Not only has the trial in that other case not begun, but also no motion in that case has been raised, let alone heard, contesting Mr. DeLano's liability, whether on the ground now asserted here or on any other ground. That other case is so much in its 'infancy' that discovery has not even started! But even if a motion had been raised, the issue whether Mr. DeLano is liable as an employee or in his personal capacity is one of fact that cannot be decided on the pleadings on the mere assertion that Mr. DeLano was M&T Bank's employee at the time. Consequently, even if the Court in the instant case were to arrogate to itself power to pick out an issue of fact from another case and decide it in isolation, it has absolutely nothing to go by except a specific, 31-page complaint with exhibits and a general 2-page denial in that other case.

9. Mr. DeLano's liability in another case is a matter to be decided by the court in that case through litigation in the context of all the parties, issues, and facts of the other case. As long as a decision in that case has not been reached and it has become final after exhaustion of all avenues of appeal, the claim against Mr. DeLano in that other case is viable. Hence, the claim in the other case provides a legally valid basis for a claim in the instant case.

10. Indeed, a claim can be asserted by a creditor regardless of whether it is reduced to judgment, whether the claim is liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. United States v. Connery, 867 F.2d 929, 934 (reh'g denied)(6th Cir. 1989), appeal after remand 911 F.2d 734 (1990).

11. Hence, the Debtors' objection to Dr. Cordero's claim because they dispute his claim in another case falls due to its own lack of legal basis and the court's lack of jurisdiction.

III. The Debtor's attorney cannot possibly have a good basis belief in that he has standing to assert that a third party, namely, M&T Bank, in another case is not liable to a creditor in this case

12. Att. Werner claimed at the hearing on July 19, 2004, that 'he has been in this business for 28 years', presumably meaning that he has been practicing law for that length of time. If so, he should know better than to pretend that the legally ridiculous allegation that "Further, no liability exists as against M&T Bank", a third-party in another case that has neither a claim nor standing in this case, provides grounds for the Debtors' objection to the claim of a creditor, Dr. Cordero, in the instant case.

13. Nor does Att. Werner have any standing to make such an allegation, for he is not M&T Bank's attorney in that other case. Therefore, he has no standing to represent M&T's legal position in that case, let alone in this case.

14. It should be noted that it is bad lawyering for Att. Werner to assert on behalf of the Debtors that M&T is not liable at all to Dr. Cordero in the other case, that is, the Adversary Proceeding Pfuntner v. Gordon et al, docket no. 02-2230. That only means that Mr. DeLano does not hold M&T liable for his acts as its employee. By contrast, Mr. DeLano's denial of liability to Dr. Cordero carries no wait until finally established in the Adversary Proceeding. What an unintended 'unthought of' consequence if M&T Bank were to argue successfully that Mr. DeLano is estopped from arguing respondeat superior in that Proceeding as a way to shift liability from him to his employer. Would Att. Werner be liable to Mr. DeLano for malpractice for hanging him up out there to bear alone the liability that he may be found to have to Dr. Cordero by a court with jurisdiction?

15. But even if Att. Werner were the attorney for M&T Bank, his biased opinion on his client's lack of liability is absolutely irrelevant to the issue whether Dr. Cordero has a valid claim against a different client of Att. Werner in different case. Att. Werner's opinion on any party or issue whatsoever is not evidence of anything. Since the facts in the other case have not even been the subject of discovery yet, let alone found by a court with jurisdiction, much less been given anything even remotely sounding like collateral estoppel effect, not to mention anything about res judicata for issues, Att. Werner cannot rely on any facts in that case to argue anything in this case. He is left with nothing but that: an opinion, his biased opinion expressed at the wrong time in the wrong context for the wrong purpose.

16. Indeed, Att. Werner's purpose of defending the DeLanos by disallowing Dr. Cordero's claim in this case is not advanced a bit by his allegation that "Further, no liability exists as against M&T Bank". Even if M&T were found not to be liable to Dr. Cordero in the other case, such finding would not preclude the finding that Debtor David DeLano was personally liable to Dr. Cordero. This is so because in law the fact that an employer is not vicariously liable to a third party by application of the doctrine of respondeat superior, is not incompatible with the fact that his employee may be personally liable by application, among others, of the doctrine of ultra vires due to the employee having acted on a folly of his own outside the scope of his employment. The only thing accomplished by that ridiculous allegation is the undermining of Att. Werner's credibility as a lawyer, for he failed to do his legal research homework before coming to court to advocate his client's interests.

IV. A creditor may assert a claim against only one of two debtors jointly filing a bankruptcy petition

17. Att. Werner also alleges in his objection to Dr. Cordero's claim that "No basis for claim against Debtor Mary Ann DeLano, is set forth, whatsoever". What an absolutely meaningless allegation! Who ever said that creditors lose their claims against a debtor if the latter and his spouse file a joint petition for bankruptcy? Whose head ever conceived of the idea that a bankruptcy system, let alone a national economy, could be predicated on the principle that debtors can escape their financial responsibility to those holding claims against them by the simple subterfuge of filing for bankruptcy jointly with their spouses?

18. Assuming that Att. Werner understands the concept of consistency, would he dare argue in court that Mr. DeLano is not liable to either AT&T Universal, Bank of America, Bank One, or Capital One, etc., because these creditors, whom the Debtors listed in Schedule F of their petition, hold claims against Mr. DeLano alone, but not against Mrs. DeLano?

19. Look! There, in the petition! It instructs the debtors to:

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

20. The DeLanos and Att. Werner even marked their claims with either H, W, or J. As revealed by their own acts, they knew that the fact that a creditor holds a claim against one but not the other of the debtors was of absolutely no consequence. Yet, they went ahead and asserted the bogus objection to Dr. Cordero's claim by stating that he has "no basis for claim against Debtor Mary Ann DeLano". They knowingly raised a spurious objection. They acted in bad faith!

21. Att. Werner has cited not a single case or Bankruptcy Code section or Rule to object to Dr. Cordero's claim. He does not have even a legally cogent argument, only his opinion, one so perfunctorily cobbled together that it would have shocked his professors of Torts and Civil Procedure in his first year of law school to the point of denying him a passing grade. Thus, what could possibly have possessed Att. Werner to think that those utterly untenable allegations would pass muster with the chief judge of a federal bankruptcy court? Desperation.

V. The DeLanos' objection is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 plan and that is relentlessly insisting on their production of financial documents that can show the bad faith of their petition

22. For well over a year before filing their petition on January 26, the DeLanos have known the exact nature of Dr. Cordero's claim against Mr. DeLano, contained in his complaint of November 21, 2002, in another case. So much so that they and Att. Werner took the initiative to include it in their petition opening this case. They even marked it as unliquidated and disputed. From that moment on they could have filed an objection to that claim because they already knew all the factual and legal elements supporting their dispute. Since then those

elements have neither been strengthened nor added to. So what has changed? Only their level of desperation.

23. Their first manifestation of desperation took place at the meeting of creditors on March 8. As Mr. DeLano, a bank loan officer for 15 years must have expected, none of the 18 credit card issuers that they listed in Schedule F showed up. Far from taking advantage of consolidating and refinancing his and his wife's debt with a loan at a lower rate secured by property, Mr. DeLano took care to split their debt among so many unsecured nonpriority creditors so as not to give any of them a stake high enough to make it cost-effective to pursue their claims in bankruptcy court.

24. But something happened that was most unnerving: Dr. Cordero showed up in person, having traveled all the way from New York City to Rochester, and not only did he hand out written objections to confirmation, but also wanted to examine the DeLanos under oath! Swift to realize the danger was the Trustee's attorney, James Weidman, Esq., who was unlawfully presiding over the meeting, which the Trustee had the duty to conduct himself as provided under C.F.R. §58.6(a)(10). Att. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud; rather, he was interested in establishing the good faith of the bankruptcy petition, an issue that is properly raised as to any petition. (cf. 11 U.S.C. §1325(a)(3))

25. The exchange alerted Att. Werner to danger. He contested on that very occasion that Dr. Cordero had a claim against the DeLanos and thus, his status as creditor. Dr. Cordero stated grounds supporting such status. Att. Werner relented. Dr. Cordero went ahead to ask questions of the DeLanos. However, in rapid succession, Att. Weidman asked Dr. Cordero more times to state his evidence of fraud. Dr. Cordero had even to insist that Mr. Weidman take notice that he was not alleging fraud. With that answer, Dr. Cordero failed to reveal how much he had already found out about the DeLanos, their petition, and their financial affairs. Att. Weidman panicked and put an end to the meeting after Dr. Cordero had asked only two questions of the DeLanos!

26. Later on in the courtroom before the Hon. John C. Ninfo, II, Trustee Reiber and Att. Weidman stated that the DeLanos' petition had been filed in good faith. Thus, Dr. Cordero impugned their capacity to conduct an impartial investigation of the DeLanos without any bias toward finding of good faith filing, the only one that can exonerate them of any charge of having approved, whether negligently or knowingly, a meritless petition filed in bad faith. Consequently, Dr. Cordero called for the replacement of the Trustee and the exclusion from the case of Att. Weidman.

27. All this gave notice to the DeLanos and Att. Werner that Dr. Cordero was serious about asserting his creditor status and claim. By then they had all the elements of law and fact concerning not only his claim, but also his determination to pursue it. If they had entertained a good faith belief that Dr. Cordero had no legal basis for asserting a claim against the DeLanos, they had to raise that objection timely on grounds of judicial economy and fairness. Nor did they do so after Dr. Cordero served Att. Werner with different papers in the course of the following months. Therefore, by their failure to raise that objection in a timely fashion, they created for Dr. Cordero a reliance interest in the reasonable assumption that they had given up any such objection and had accepted the legal validity of his claim. In reliance thereon, Dr. Cordero has invested his time, effort, and money pursuing his claim.

28. Therefore, more than four months later and only after Dr. Cordero's relentless request for

financial documents threatens to prove that their petition was filed in bad faith, it is untimely for Att. Werner and the DeLanos to raise their objections to his claim…for the third time.

VI. The DeLanos already objected to Dr. Cordero's creditor status and claim in their Statement to the court on April 16, to which Dr. Cordero timely replied on April 25, and the DeLanos did not pursue the issue, whereby they are now barred by laches from raising it again two months later

29. On April 16, the DeLanos raised the already untimely objection that Dr. Cordero "is not a proper creditor in this matter". To this Dr. Cordero timely replied less than 10 days later thus:

    a) This is what the Bankruptcy Code has to say as to who is a proper "creditor":

    B.C. §101. Definitions
    (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…

    [(15) "entity" includes person…]

    In turn, it defines "claim" thus:

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

    b) The Code's definition of who is a creditor is more than broad enough to include Dr. Cordero and his pre-petition claim against Mr. DeLano.

30. Not only did Att. Werner fail to provide any legal argument for their April 16 contention that Dr. Cordero was not a proper creditor, but they did not even counter with an objection, let alone a legal argument, to Dr. Cordero's legal basis for asserting his creditor status, not within the following 10 days, not within the next 30 days, not in the next two months. Far from it, to their repetition of their objection devoid of any legal argument they add an abundance of legally ridiculous, spurious, and thoughtless allegations. Hence, now they are barred from raising the objection not only by untimeliness and laches, but also by bad faith.

31. Furthermore, at the hearing on July 19, 2004, Att. Werner brought up the subject of raising a motion to challenge Dr. Cordero's status as a creditor of the DeLanos. Judge Ninfo himself pointed out to Att. Werner that Mr. DeLano's liability in the Adversary Proceeding could not be decided in this case. Dr. Cordero too mentioned many of the issues discussed here. Yet, Att. Werner went ahead an raised the motion without taking into account any of those issues and without presenting any legal argument that one would expect of a lawyer, particularly one 'in this business for 28 years'. He could not have reasonably have thought that he was acting responsibly when he disregarded the legal difficulties of his position pointed out by the court itself as well as by the opposing party for the record at a hearing.

32. Does Att. Werner expect the court and Dr. Cordero to rehash the same issues at the August 25

hearing of his motion? By his conduct, he shows that he wants simply to have another go at it while sparing himself the effort, time, and money required to do legal research, think through the legal issues, and write down an argument worthy of a lawyer. But in the process, he has irresponsibly caused Dr. Cordero, who holds himself to the standards of a professional, to invest a lot of effort, time, and money to research and write this response. Att. Werner will also cause the court to revisit the same issue, compounded by the ridiculous and spurious statements that Att. Werner has added in his motion. For such irresponsible conduct and the waste that he has already caused and will still cause shortly, Att. Werner will be asked to compensate Dr. Cordero and to bear sanctions imposed by the court.

VII. The Debtors cannot overcome the legal presumption of validity that Rule 3001(f) attaches to Dr. Cordero's proof of claim by merely repeating an abbreviated version of their April 16 objection, which was merely an allegation devoid of any legal support

33. Rule 3001(a) provides thus:

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

34. Dr. Cordero's proof of claim of May 15 not only conforms substantially to the appropriate form, but it was also contained in the official one provided to him with the notice of the meeting of creditors. Moreover, it was so formally correct, that it was filed by the clerk of court and entered in the register of claims.

35. FRBkrP Rule 3001(f) provides as follows:

> (f) Evidentiary effect
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

36. Dr. Cordero's claim is now legally entitled to the presumption of validity. As a result, it is legally stronger than when the DeLanos and Att. Werner took the initiative to include it in the January 26 petition. It follows that by summarizing their April 16 objection, as to which they made no effort to support with law or precedent, and weakening it with the addition of legally ridiculous and spurious allegations made in bad faith, they cannot possibly overcome a claim now strengthened with prima facie evidence of validity as a result of the filing of Dr. Cordero's proof of claim.

VIII. Relief Requested

37. Therefore, Dr. Cordero respectfully request that the Court:

a) hold a hearing on the motion;

b) reject the motion to disallow his claim against the DeLanos;

c) award Dr. Cordero costs and any other proper and just relief.

August 17, 2004

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP, Attorneys/Agent
for eCast Settlement & Asso. National. Bank
P.O. Box 35480
Newark, NJ 07193-5480
tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin. Dept. acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Notice of Motion for Sanctions and compensation for violation of FRBkrP Rule 9011(b)

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, intends to seek under FRBkrP Rule 9011(c)(1)(A) and (2) sanctions to be imposed on, and compensation to be obtained from, Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, and his law firm of Boylan, Brown, Code, Vigdor & Wilson, LLP. for violation of subsection (b) thereof, as evidenced in the grounds adduced by Att. Werner in his motion of July 19, 2004, to object to Dr. Cordero's claim in this case and have it disallowed.

If as provided under 9011(c)(1)(A), Att. Werner does not timely withdraw or correct his motion to disallow Dr. Cordero's claim after service of the instant motion, Dr. Cordero will move this Court at the United States Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on October 6, 2004, or as soon thereafter as he can be heard, for such sanctions and compensation. If the motion to disallow is withdrawn before its hearing next August 25 is held, Dr. Cordero asks that Att. Werner and his law firm jointly and severally compensate him in the nominal amount of $2,500, for some of the expenses and attorneys' fees incurred in conducting legal research and writing to oppose Att. Werner's motion; otherwise, Dr. Cordero will move on October 6, for any reasonable addition compensation.

Dated: August 20, 2004

Dr. Richard Cordero

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Brief in Support of the Motion for Sanctions and compensation for violation of FRBkrP Rule 9011(b)

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

1. On July 19, Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, filed a motion to object to Dr. Cordero's claim in the Debtors' case and disallow it. He limited himself in his motion to stating the following grounds, which he did not support with any citation to law, rule, or case:

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

TABLE OF CONTENTS

I. Att. Werner has rendered himself liable to sanctions and for compensation by presenting in order to disallow Dr. Cordero's claim frivolous arguments incapable of being supported by evidence in this case 15

II. Although Att. Werner knew even before signing and filing the DeLanos' petition what the nature of Dr. Cordero's claim was, he treated for months Dr. Cordero as a creditor, thereby creating in him a reliance interest in that Att. Werner deemed the claim valid so that defeating that interest now by having the claim declared invalid renders Att. Werner liable to Dr. Cordero for compensation 16

A. If Att. Werner believed in good faith that he had valid legal grounds to disallow Dr. Cordero's claim, he had to submit them to the Court and Dr. Cordero as soon as possible for the sake of judicial economy and out of fairness to Dr. Cordero, but he failed to do so 16

B. By Att. Werner not moving to disallow and just making in passing frivolous statements about Dr. Cordero's status as creditor while dealing with other matters, he revealed that he did not believe that he had a legally cognizable objection to the validity of Dr. Cordero's claim 17

C. Att. Werner deemed Dr. Cordero a creditor with the right to examined the DeLanos and provided Trustee Reiber with dates for such examination 18

D. Att. Werner also considered Dr. Cordero a creditor entitled to disclosure of financial documents of the DeLanos and thus, produced documents to him 19

E. If Att. Werner is to be assessed by the standard of a reasonable man, his conduct created in Dr. Cordero a reliance interest and his defeat of it gives rise to a right to compensation in Dr. Cordero 20

III. Att. Werner's motion to disallow Dr. Cordero's claim is motivated, not by a nonfrivolous argument, but rather by self-interest in casting from the case Dr. Cordero, the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud in the DeLanos' petition 21

IV. Request for relief 24

I. Att. Werner has rendered himself liable to sanctions and for compensation by presenting in order to disallow Dr. Cordero's claim frivolous arguments incapable of being supported by evidence in this case

2. At a hearing on July 19, 2004, which was noticed for a different matter, Att. Werner brought up the issue of objecting to Dr. Cordero's status as creditor to disallow his claim. He alleged that neither Mr. DeLano nor his employer, M&T Bank, are liable in another case to Dr. Cordero so that the latter's claim in this case based on liability to him in that other case is not valid. The Court pointed out, as did subsequently Dr Cordero, that Mr. DeLano's liability to Dr. Cordero in another case cannot be determined in this case.

3. As shown in the quote in ¶1 above, Att. Werner included the same allegations in his motion to disallow Dr. Cordero's claim. Such allegations concerning Mr. DeLano's liability to Dr. Cordero in another case –whose correct name is not the one given by Att. Werner, but rather Adversary Proceeding Pfuntner v. Gordon et al, docket no. 02-2230– which is even at its pre-discovery stage as far as M&T and Mr. DeLano goes, and involves a third party, the Bank, that is not even a party to this case, cannot possibly be supported by any evidence in this case.

4. Consequently, by presenting such allegations in his motion to disallow, Att. Werner violated FRBkrP Rule 9011(b)(3), which provides thus:

> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;

5. Att. Werner had a duty to review his position because an attorney operates under a "continuous obligation to make inquiries", so that an attorney that advocates a position that has become untenable is sanctionable; Battles v. City of Ft. Myers, 127 F.3d 1298, 1300 (11th Cir., 1997).

6. By failing to ameliorate, whether before or after filing, the weaknesses inherent in his position,

Att. Werner violated FRBkrP Rule 9011(b)(2); cf. Sprewell v. Golden State Warriors, 231 F.3d 520, 530 (9th Cir., 2000). That rule provides as follows:

> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

7. Far from correcting or supporting such untenable allegations, Att. Werner further undermined his position by adding other legally ridiculous and spurious allegations, discussed by Dr. Cordero in his Reply of August 17 in opposition to Debtors' Objection to Claim and Motion to Disallow it, which is incorporated herein by reference,

8. Att. Werner's violation of Rule 9011 is all the more obvious because it is measured against a burden of proof that is heavier than the one that he had to bear when he signed and filed the Delanos' petition back in January. Indeed, once Dr. Cordero executed his proof of claim last May 15 in substantial accordance with the Official Form, as required under FRBkrP Rule 3001(a) and filed it, his claim constitutes prima facie evidence of validity under subsection (f). As a result, the form for objecting to a claim sets out in capital letters that the objecting party must provide:

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

9. Att. Werner's opinion as to who is liable in another case that is still at a pre-discovery stage is legally incapable of overcoming that presumption. Nor did Att. Werner make any attempt to argue why Dr. Cordero or his claim falls outside the scope of the applicable definitions of "creditor", "entity", and "claim" contained in 11 U.S.C. §101. His assertion in blatant disregard of existing law violates Rule 9011(b)(2).

10. By presenting his motion, Att. Werner certified that his arguments in it are either justified by existing law or are nonfrivolous arguments for modification of existing law. Nevertheless, the grounds adduced by Att. Werner 'have absolutely no chance of success under the existing precedent'. Hence, his motion to disallow based on such frivolous arguments violates Rule 9011; cf. In re Sargent, 136 F.3d 349, 352 (4th Cir, 1998), cert. denied, 525 U.S. 854, 119 S.Ct. 133, 142 L.Ed.2d 108 (1998).

II. Although Att. Werner knew even before signing and filing the DeLanos' petition what the nature of Dr. Cordero's claim was, he treated for months Dr. Cordero as a creditor, thereby creating in him a reliance interest in that Att. Werner deemed the claim valid so that defeating that interest now by having the claim declared invalid renders Att. Werner liable to Dr. Cordero for compensation

A. If Att. Werner believed in good faith that he had valid legal grounds to disallow Dr. Cordero's claim, he had to submit them to the Court and Dr. Cordero as soon as possible for the sake of judicial economy and out of fairness to Dr. Cordero, but he failed to do so

11. Att. Werner was so aware of the grounds for disputing Dr. Cordero's claim, that he qualified his claim as "disputed" when he listed it in Schedule F of the DeLanos' Chapter 13 bankruptcy petition of January 26, 2004. However, that qualification does not give notice that the claim is invalid given that the Bankruptcy Code at 11 U.S.C. §101(5)(A) expressly includes a disputed claim among valid claims for bankruptcy purposes.

12. Convinced of the validity of his claim, Dr. Cordero engaged in legal research and writing to compose his written objections to the DeLanos' plan of debt repayment. Then he traveled from New York City to Rochester to attend the meeting of creditors held on March 8, 2004.

13. At that meeting, when Dr. Cordero tried to exercise his right to examine the DeLanos under oath, Att. Werner objected alleging that Dr. Cordero was not even a creditor. However, he did not state any legal basis in support of his allegation, just as he would fail to do later on in his motion to disallow. Dr. Cordero stated the legal basis for his claim, Att. Werner relented, and Dr. Cordero asked his first question of the DeLanos.

14. On that occasion, Dr. Cordero handed out his written objections to the DeLanos' plan. Therein he requested that Trustee George Reiber investigate their financial affairs, obtain therefor certain financial documents from them, and inform him of the result of the investigation.

15. By producing such objections and undertaking that trip, Dr. Cordero gave Att. Werner clear evidence that he believed that he had a valid claim and was making a considerable investment of effort, time, and money to pursuit it. By not moving to disallow the claim, Att. Werner gave rise to the reasonable assumption that he had dropped his pro-forma objection to Dr. Cordero's claim, and thereby implicitly encouraged Dr. Cordero to continue making such investment.

B. By Att. Werner not moving to disallow and just making in passing frivolous statements about Dr. Cordero's status as creditor while dealing with other matters, he revealed that he did not believe that he had a legally cognizable objection to the validity of Dr. Cordero's claim

16. On March 29, Dr. Cordero filed with the court his Objection to a claim of exemption. Att. Werner did not counter with a motion to disallow, but rather with his "DEBTORS' STATEMENT IN OPPOSITION TO CORDERO [SIC] OBJECTION TO CLAIM OF EXEMPTIONS" of April 16. Therein he stated that Dr. Cordero "is not a proper creditor in this matter". However, he failed to provide a single legal reference or argument of what a "creditor" is, or a "proper" as opposed to an 'improper creditor' is or how this "matter" made a difference in the properness of a creditor.

17. More than a month after Dr. Cordero had stated at the March 8 meeting the legal basis for his claim, and months after first learning from the DeLanos the nature of Dr. Cordero's claim, Att. Werner could still not come up with a single legal argument or citation to law, rule, or case supporting his objection to that claim. On the contrary, in that April 16 statement Att. Werner showed how devoid of legal support his objection was and how his failure to think through even basic legal notions revealed that his objection was merely pro-forma. He wrote thus:

> 12. Should Cordero wish to obtain such records, he is free to Subpoena them from the Bank should a proper proceeding be pending against the Debtors, after it is established that he is someone of proper standing with some substantial basis for process against the Debtors –none of which criteria are satisfied by Cordero.

18. To begin with, whatever "proper" means in Att. Werner's particular notion of "proper proceeding", the fact remains that a case *is* pending against Mr. DeLano: It is Adversary Proceeding Pfuntner v. Gordon et al., which has not been finally decided so that it is still open. Moreover, Mr. DeLano by his attorneys in that proceeding never disputed the legal sufficiency of Dr. Cordero' claim against him and M&T Bank contained in his complaint of November 21, 2002. They never moved to dismiss on the pleadings, for example, on a motion based by reference on FRCivP Rule 12(b)(6). In addition, the fact that a defendant contests liability –as all do, otherwise there would be no controversy before the court– does not mean that the proceeding is 'improper'.

19. Att. Werner also shows ignorance of the difference between having standing to sue an entity in a case, and prevailing on the merits. Successfully contesting liability is not what determines whether a person can be sued as a defendant in a cause of action cognizable at law.

20. And what about establishing that a person "is someone of proper standing with some substantial basis for process against the Debtors"?, which upon translation most likely means whether a person has standing to bring a cause of action against the debtor? Where is that supposed to be established? Can Att. Werner be trying to say the nonsense that Dr. Cordero's standing to sue Mr. DeLano in another case be established in this case? Or is he saying that before he can maintain his claim against Debtor DeLano in this case, he must first establish his standing to sue Mr. DeLano in the other case? Who ever said that!? Where did Att. Werner get these things?, for he certainly did not cite any law, rule, or case. These points are so frivolous that by raising them Mr. Werner undermines his credibility as a lawyer and renders himself liable under Rule 9011 to sanctions and for compensation.

21. Indeed, Dr. Cordero had to invest further effort, time, and money to preserve his objection to Att. Werner's statements about his creditor status. In his reply of April 25, Dr. Cordero quoted and argued the definition under 11 U.S.C. §101 of what a creditor for purposes of the Bankruptcy Code is. After that 10 days went by, 30 days went by, months went by without Att. Werner presenting any legal support for his position or moving to disallow Dr. Cordero's claim. His conduct gave rise to the reasonable assumption that he had dropped his pro-forma objection to Dr. Cordero's claim. Dr. Cordero continued his efforts to have the DeLanos investigated.

22. Att. Werner did not even object when Dr. Cordero filed his proof of claim on May 15 and the clerk of court filed it on May 19. By failing to do so, the reasonable assumption that he had dropped his objection to Dr. Cordero's claim became a reasonable conclusion because the filing of the claim entitled it to a legal presumption of validity that increased the burden of proof that Att. Werner had to bear to prove its invalidity. Yet, Att. Werner had been unable for months to bear the lesser, pre-filing burden of proof. He who cannot do the lesser cannot do the most.

C. Att. Werner deemed Dr. Cordero a creditor with the right to examined the DeLanos and provided Trustee Reiber with dates for such examination

23. Nor did Att. Werner object to Trustee Reiber's holding Dr. Cordero up as a creditor with the right to demand an investigation of the DeLanos' financial affairs. In a letter of March 12, 2004, Trustee Reiber wrote to Att. Werner thus:

> I have reviewed [Dr. Cordero's] written objections which were filed with the Court on or about March 8, 2004. I believe there are

> some points within those objections which it is proper for him to question the debtors about.

24. Att. Werner confirmed his acknowledgment that Dr. Cordero was a "proper creditor" by writing in his letter of June 14 to Trustee Reiber:

> We plan to appear for the scheduled June 21, 2004 §341 Meeting and Confirmation unless we are advised otherwise by your office.

25. Not only did Att. Werner fail to object to Dr. Cordero's right to ask questions of the DeLanos, but he even proposed dates when he would produce the DeLanos for such questioning! Such conduct is inconsistent with that of a competent lawyer who in good faith believes that a person is not a "proper creditor" with a valid claim against the lawyer's client, the debtor.

26. In this context, it is "proper" to notice that:

a) the only creditor that showed up at the March 8 meeting of creditors was Dr. Cordero;

b) the only creditor who objected to the confirmation of the DeLanos' repayment plan was Dr. Cordero;

c) the only creditor who has ever expressed an interest in examining the DeLanos under oath is Dr. Cordero;

d) the only creditor who caused Trustee Reiber to assert for the record in open court on March 8 that he deemed the DeLanos' petition to have been filed in good faith but that nevertheless he could not ask the court to confirm the plan because the filing of objections to it was Dr. Cordero;

e) therefore, the only creditor that Att. Werner could reasonably expect to show up at that "scheduled June 21, 2004 §341 Meeting" and examine the DeLanos was Dr. Cordero, a creditor, as attested to by Att. Werner's own conduct.

D. Att. Werner also considered Dr. Cordero a creditor entitled to disclosure of financial documents of the DeLanos and thus, produced documents to him

27. Moreover, Trustee Reiber considered that Dr. Cordero's standing as creditor was "proper" enough not only to ask questions of the DeLanos, but also to ask for documents of Att. Werner himself. In that same letter of March 12 sent to Mr. Werner, the Trustee wrote:

> It would also be helpful if Mr. Cordero could transmit to Mr. Werner a list of any documents which he may desire prior to the [adjourned §341] hearing.

28. As soon as Dr. Cordero received a copy of that letter, which the Trustee had failed to send to him and in which he entitled Dr. Cordero as a "proper creditor" to communicate directly with Att. Werner to ask for documents, Dr. Cordero wrote to Att. Werner on May 23, 2004, thus:

> I ask that you let me know whether you object to providing the Trustee or me any documents or, if only some, which. Please note that the DeLanos have a duty under B.C. §521(3) and (4) to cooperate with the trustee and provide him with information. If they refuse to provide any financial documents, then pursuant to B.C. §§1307(c) they risk a request of a party in interest or the U.S. trustee for conversion of their

case to a case under Chapter 7.

29. Far from objecting to Dr. Cordero's claim and the right deriving therefrom to request documents, Att. Werner provided some of the requested documents to Trustee Reiber on June 14. Then he provided some more documents directly to Dr. Cordero on July 13, 20, and 28, and August 5 and 13. However this trickling production of documents is late, incomplete, and falls utterly short of what Dr. Cordero requested and even the Court ordered, it is nevertheless a fact that Att. Werner provided them to Dr. Cordero, thereby treating him as a "proper creditor" entitled to know the financial affairs of Att. Werner's clients, the DeLanos.

E. If Att. Werner is to be assessed by the standard of a reasonable man, his conduct created in Dr. Cordero a reliance interest and his defeat of it gives rise to a right to compensation in Dr. Cordero

30. If Att. Werner holds himself out as a reasonable person, then his conduct must be assessed by the standard of a reasonable person. He cannot conduct himself in a way that leads to a reasonable conclusion, while concealing all along that there was no reason for him to conduct himself in that way and that whenever it suited him, he would change course 180 degrees to conduct himself in the diametrically opposite direction…and that therefrom would flow no adverse consequences for him at all, but rather that the adverse consequences would be borne by the people that he led to such reasonable conclusion, such as Dr. Cordero. Such conduct is deceitful, unreasonable, and willfully irresponsible.

31. Therefore, applying the standard of a reasonable man to Att. Werner's conduct of treating Dr. Cordero as a creditor leads to the reasonable conclusion that Att. Werner created in Dr. Cordero a reliance interest, namely, that Att. Werner had dropped his threshold objection to Dr. Cordero's claim and that Dr. Cordero could proceed to invest the enormous amount of effort, time, and money that he, and that Att. Werner had reason to know that Dr. Cordero, has invested in opposing the confirmation of the DeLanos' plan of repayment and investigating whether their petition was filed in good faith.

32. If it were to be held that Dr. Cordero is not a "proper creditor", then it would follow that Att. Werner engaged in conduct that was deceitful, unreasonable, and irresponsible and that misled Dr. Cordero into further investing his effort, time, and money in uselessly and wastefully pursuing an invalid claim. Thereby Att. Werner rendered himself liable to Dr. Cordero.

33. If, on the other hand, it were to be held that Dr. Cordero is indeed a "proper creditor", then in moving now on frivolous grounds to have Dr. Cordero's claim disallowed Att. Werner has engaged in legally unjustifiable conduct motivated by bad faith that renders him liable to sanctions by the court and for compensation to Dr. Cordero.

III. Att. Werner's motion to disallow Dr. Cordero's claim is motivated, not by a nonfrivolous argument, but rather by self-interest in casting from the case Dr. Cordero, the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud in the DeLanos' petition

34. Since the complaint of November 21, 2002, that gave Mr. DeLano notice of Dr. Cordero's claim against him, Mr. DeLano has known the nature of such claim. That knowledge is imputed to Att. Werner because under FRBkrP Rule 9011(b) he had the obligation to conduct:

> …an inquiry reasonable under the circumstances [before] presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper…

35. Att. Werner signed and filed the DeLanos' petition of January 26, 2004. By that time and at the initiative of the DeLanos' and with his approval, he had already listed in Schedule F Dr. Cordero's claim and marked it as "disputed". At that very point in time, he had all the elements of information that he needed to raise a motion to disallow the claim…except the one that would provide him the motive to do so.

36. By taking the initiative to list Dr. Cordero's claim and giving him notice of the DeLanos' bankruptcy, Att. Werner provided for the inclusion of that claim among the dischargeable debts if discharge was granted. By contrast, if he had not included Dr. Cordero's claim, then despite any discharge, Dr. Cordero could still have been entitled to pursue his claim against the DeLanos.

37. As he stated at the July 19 hearing, Att. Werner 'has been in this business for 28 years', and Mr. DeLano is an insider of the lending industry who has been a bank *loan* officer for 15 years. Hence, they both knew from experience that in all likelihood no creditor would show up at the meeting of creditors. And that is exactly what happened: out of 21 creditors, 20 did not show up. Yet, these are institutional creditors with the resources to pay for a representative to travel to the meeting. What is more, not even those institutional creditors that did not have to incur any appreciable travel expense because they are located right there in Rochester or Buffalo showed up! All the more likely then that a non-institutional, unsecured, non-priority creditor that lived hundreds of miles away in New York City, such as Dr. Cordero, would not travel either all the way to Rochester to attend the meeting.

38. Moreover, what would Dr. Cordero do if he attended the meeting? The petition was submitted to Trustee Reiber, who according to PACER has 3,909 open cases, and thus, hardly the time or the incentive to examine any petition carefully. In fact, Trustee Reiber had readied it for submission to the court for it to approve its plan of repayment. Given that none of the creditors had filed an objection to the plan, not even Dr. Cordero, there was every reason for Experienced Insiders Werner and DeLano to assume that the meeting of creditors would be nothing but a pre-confirmation chat between friendly people. So Att. Werner had no incentive to file a motion to disallow Dr. Cordero's claim and thereby alert him more than the indispensable minimum to the petition and the DeLano's financial affairs.

39. But the unimaginable happened: Dr. Cordero showed up and filed and objection! However, the imaginable came to the rescue: Trustee Reiber, willing to violate his duty to preside personally

over the meeting of creditors, had assigned his attorney, James Weidman, Esq., to preside over it. For his part, Att. Weidman was willing to violate the law by preventing Dr. Cordero from examining the DeLanos, thereby frustrating the only purpose under the law for holding that meeting! Then Trustee Reiber and Att. Weidman vouched in open court for the good faith of the DeLanos' petition. With such advocates for his position, Att. Werner did not have to have a worry in the world.

40. The subsequent events comforted Att. Werner in that assurance, for despite complaining to the Court in his April 16 letter about the so many "pages of single-space text" that Dr. Cordero wrote asking Trustee Reiber to investigate the DeLanos or to be removed,

    a) Trustee Reiber had not intention to investigate the DeLanos;

    b) had asked not for a single document from them;

    c) when he did ask for documents, his request was just another pro-forma exercise in its scope and nature since he asked for:

        1) just eight out of 18 credit cards listed in Schedule F,

        2) for only 3 years out of 15 put in play by the DeLanos, and

        3) did not include any bank account statements or titles of interest in property;

    d) when the Trustee received some documents from Att. Werner on June 14, he did not even notice that they:

        1) were incomplete due to missing pages;

        2) did not consist of the statements of accounts covering from the present to three years back, instead there was inexplicably only one single statement between eight and 11 months old for each of only eight credit cards; and

        3) they were not examined at all so that the 232 times that, according to even incomplete Equifax credit reports, the DeLanos had been late in paying their credit cards belied Att. Werner's key statement in his April 16 letter on behalf of the DeLanos' good faith that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years".

41. Best of all, such a trustee that would not notice the obvious, let alone investigate the suspicious, would remain in his position given that both Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre A. Martini had rejected Dr. Cordero's request that he be replaced.

42. Att. Werner did not have a worry in the world…until Dr. Cordero pointed out to the Court in his Statement of July 9 that:

> 7. A closer check of those documents against the figures in the petition and the court-developed register of claims and creditors matrix points to debt underreporting, account unreporting, and unaccountability of assets in the petition. These grave defects call into question the good faith of the DeLanos' petition. They also support the reasonable inference that the DeLanos have been and are reluctant to submit more documents, let alone the complete set of requested documents, due to their awareness that more documents would only further deny such

> good faith and warrant an investigation into whether their petition was motivated by a fraudulent intent as part of a bankruptcy fraud scheme.

43. *The horror of it!* Dr. Cordero, who at the March 8 meeting had emphatically stated that he was not raising any charge that the DeLanos had committed fraud, was now pointing to evidence of a bankruptcy fraud scheme! Worse still, he requested the Court a detailed order directing the DeLanos to submit bank as well as debit account statements, titles to interest in specific types of property, and documents evidencing the money transfer and use concerning the loan to the son. Much worse still, he asked the Court to remove his advocate Trustee Reiber and

> 33. the court make a simultaneous referral of this case to the FBI for a concurrent investigation aimed at determining whether there has been fraud in connection with the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

44. And at the July 19 hearing the Court did not flatly reject that request, but rather adjourned it to another hearing on August 23…and for Att. Werner it was *PANIC TIME BIG TIME!*

45. That very same day Att. Werner moved the Court to disallow the claim of such threatening a creditor as Dr. Cordero and thereby remove him from the case. He did it by cobbling together the legally untenable, ridiculous, and spurious grounds quoted in ¶1 above and discussed in Dr. Cordero's Reply of August 17 to his motion to disallow, which Reply is already incorporated herein by reference.

46. In such unseemly irresponsible haste did Att. Werner scribble his perfunctory objection that in his one single little rushed paragraph he challenged Dr. Cordero's claim by denying the liability of his client Mr. DeLano and his non-client M&T Bank to Dr. Cordero in "Premier Van Lines (01-20692)", a voluntary Chapter 11 bankruptcy petition in which neither of the three is a named party and liability among them is not an issue at all. Att. Werner got the Adversary Proceeding wrong!, which means that he did not check it with sufficient due diligence to know what he was talking about.

47. Why on earth Att. Werner, who 'has been in this business for 28 years', thought for a nanosecond that the 'grounds' that he so perfunctorily threw together in his motion could conceivably persuade the Court to disallow Dr. Cordero's claim is baffling, unless the explanation is only this: sheer Desperation!

48. After having for months treated Dr. Cordero as a "proper creditor", Att. Werner needed to have him declared 'improper' and cast out before Dr. Cordero could force the production of incriminating documents. Evidence of this is that Att. Werner and the DeLanos have disobeyed the Court's order of July 26 which required that:

> The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04.

49. As of the close of business on August 20, 2004, no such documents had been produced. The debtors prefer to violate a Court order rather than to produce documents that could incriminate them in bankruptcy fraud, particularly through concealment of assets. So much for their pretense that it is Dr. Cordero's claim that is 'improper': It is their petition!

50. Att. Werner's untimely motion, already barred by laches, had nothing to do with bona fide legal considerations, and everything to do with Att. Werner's protection of his clients and his own

professional survival. The motion is a thinly veiled subterfuge to eliminate the one creditor that by now they know will keep pushing for production of documents that they must keep undisclosed. Att. Werner raised that motion in bad faith! In so doing, he violated FRBkrP Rule 9011(b)(1), which provides thus:

> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

51. Consequently, Att. Werner's conduct warrants that this Court impose on him, jointly and severally with his law firm, sanctions as well as the obligation to compensate Dr. Cordero for the detriment that Att. Werner has caused him through such conduct.

IV. Request for relief

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

a) Take judicial notice that Rule 9011 can be invoked by a pro se litigant just as sanctions can be invoked against him; cf. Moore v. Time, Inc., 180 F.3d 463, 463 (2d Cir.), cert. denied, 528 U.S. 932, 120 S.Ct. 331, 145 L.Ed.2d 258 (1999) ; and Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir., 1994).

b) Order that Att. Werner and Boylan, Brown, Code, Vigdor & Wilson, LLP. jointly and severally compensate Dr. Cordero based on the hourly rate of $250, which under the lodestar method to calculate attorney's fees is applicable in the Rochester market;

c) Take judicial notice of the reasonableness of such fee given that the Court routinely awards fees to professional persons, including attorneys, under 11 U.S.C. §330, and given the "level and skill reasonably required to prepare the application", as provided under subsection (a)(6) thereof;

d) Arrive at the compensation for work and expenses, including attorney's fees, as follows:

	Description of Work Done	# of pages @ 2hrs/pg and $250/pg	# of hours at $250/hr	Amount
1.	(a) legal research and writing involved in preparing the following documents			
2.	Dr. Cordero's reply of August 17, 2004, to Att. Werner's motion of July 19, 2004	9 pages		$4,500
3.	Dr. Cordero's application for sanctions and compensation of August 20, 2004	13		6,250
4.	(b) Dr. Cordero's preparation for and defense at the following hearings at the rate of $250 per hour:			0
5.	hearing on August 25, 2004, to argue Att. Werner's motion to dismiss Dr. Cordero's claim		3	750
6.	hearing on October 6, 2004, to argue this motion			

	for sanctions and compensation		3	750
7.	**TOTAL**			$$12,250

e) allow Dr. Cordero to present his arguments by phone at the upcoming hearing and not cut off the phone connection to him until after the Court has declared the hearing concluded; and not allow thereafter any other oral communication between any of the parties to this case and the Court until the next scheduled public event;

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, state under penalty of perjury, that I served the following above motion on the following parties:

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP
Agents for eCast Settlement & Associates National. Bank
P.O. Box 35480
Newark, NJ 07193-5480
tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin. Dept.
acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

August 20, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

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

September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler's decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and he motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

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

September 18, 2004

Appeal

to Michael Battle, Esq., U.S. Attorney for WDNY from the decision taken by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made

submitted by Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.

2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero's "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.

3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero's complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt's opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter's cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:

5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos' earnings before 2001.

6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is accommodating or has a workload of 3,909**[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor's debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee's interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos'…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler's eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero's "allegations" without being able to state concretely what it is that he supposedly 'alleged'. That inability stems from his failure to review the files, as shown by these facts:

    a) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;

    b) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero's call and he could not have reviewed their

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justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and

c) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.

9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?

10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made

> your decision and that he would remain, that it was up to me to consult a lawyer and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra)). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, although such examination is the Meeting's sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.

12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini's strong determination to close this matter and of her shooting down Trustee Schmitt's agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss' decision and refer the matter to the FBI anyway. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins'.)

13. In this vein, **if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt's reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon**. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt Dr. Cordero's complaint about Trustee Gordon's reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in Pfuntner v. Gordon, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler's suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.

15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

is predicated on the debtor's inability to pay his debts because his assets are not enough to meet his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earnings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.

16. Moreover, if Att. Tyler had reviewed Dr. Cordero's Objections, contained in the June 29 file, page 59, to the DeLanos' Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?

17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files** before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero's files and instead rely only on Trustee Schmitt's assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero's complaint.

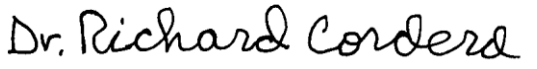
19. Therefore, Dr. Cordero respectfully requests that:

    a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;

    b) the investigation be conducted by officers who belong to neither the U.S. Attorney's nor the FBI's Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and

    c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on



September 18, 2004

59 Crescent Street
Brooklyn, NY 11208

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

TABLE OF CONTENTS AND EXHIBITS

for the Appeal of September 18, 2004,
to U.S. Attorney Michael Battle, Esq., U.S. Attorney for WDNY

by Dr. Richard Cordero

I. THE APPEAL

1. Dr. Richard **Cordero**'s appeal of **September 18**, 2004, **to** Michael **Battle**, Esq., U.S. Attorney for WDNY, **from** the **decision** taken by Bradley **Tyler**, Esq., U.S. Attorney in Charge of the Rochester Office, **not to open** an **investigation into** the complaint about a judicial misconduct and bankruptcy fraud **scheme** and **statement** of the **questionable circumstances** under which that **decision** was **made** 1

II. DOCUMENTS SUPPORTING THE APPEAL

2. Dr. **Cordero**'s letter of **May 6**, 2004, to David N. **Kelley**, U.S. Attorney for the **Southern District** of NY, to submit evidence of bankruptcy fraud and judicial misconduct and request and investigation and a meeting 6

3. Dr. **Cordero**'s updating letter of **June 29**, 2004, to U.S. Attorney **Kelley** containing, among others, Dr. Cordero's Analysis of June 26, 2004, A **Trustee With *Thousands*** of Open **Cases** and **One Case** that **Opens** a **Window into** the Operation of the Bankruptcy Fee **Scheme**, and his Annotated **Table** of June 26, 2004, **Comparing** Claims on the Bankruptcy **Petition** of David and Mary Ann DeLano **and other Documents** Produced by them or Created by the Bankruptcy Court 7

    a) Dr. **Cordero**'s letter of **June 29**, 2004 **to** David **Jones**, Esq., Chief of the Bankruptcy Unit in Civil Matters at the U.S. Attorney's Office in New York 8

4. Dr. **Cordero**'s letter of **August 14**, 2004, **to** U.S. Attorney in Charge Bradley E. **Tyler**, Esq., to inform him of the hearings on August 23 and 25, 2004, and request his attendance 9

5. Letter of Richard **Resnik**, Esq., Assistant U.S. Attorney, in the U.S. Attorney's Office in Rochester, of **August 24**, 2004, **returning to** Dr. **Cordero** the **files** on the judicial misconduct and bankruptcy fraud scheme 11

6. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler to send back** to him the **files** that were returned to Dr. Cordero by Att. Resnik 12

III. DOCUMENTS UPDATING THE COMPLAINT

7. Interlocutory **Order** of WBNY Bankruptcy Judge John C. **Ninfo**, II of **August 30**, 2004, requiring Dr. Cordero to take **discovery** of his claim

against Debtor **DeLano** arising from the Pfuntner v. Gordon et al. **case on appeal** in the Court of Appeals for the Second Circuit to try it in the DeLano case, docket no. 04-20280 14

8. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** the **order** of Bankruptcy Judge Ninfo of August 30, 2004, to **sever** a **claim from** the case on appeal **Pfuntner** v. Gordon et al. in the Court of Appeals for the purpose of **try**ing **it in** the **DeLano** case 22

IV. FILES SUBMITTED BY DR. CORDERO AND TO BE FORWARDED BY ATT. TYLER TO U.S. ATTORNEY BATTLE

1. Copy of letter of May 6, 2004, and file sent to U.S. Attorney Kelley ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley ..... 128 pages
3. Letter of August 14, 2004, and file sent to Att. Tyler ..... +46 pages

   Subtotal 250
4. Letter of August 31, 2004, and file sent to Att. Tyler ..... 25 pages

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

May 6, 2004

Mr. David N. Kelley
U.S. Attorney for the Southern District of NY
One St. Andrews Plaza
New York, NY 10007

Dear Mr. Kelley,

I hereby submit to your U.S. Attorney's Office evidence of bankruptcy fraud and judicial misconduct. Evidence of the latter initially involved the Chief Judge of the Bankruptcy Court for the Western District of New York, the Hon. John C. Ninfo, II, and then implicated the Chief Judge of the District Court for that District, the Hon. David G. Larimer. I filed a complaint about them (page 1, infra) only to be shocked by evidence of misconduct on the part of the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., (10 and 15), against whom I also lodged a complaint, which, like the initial one, has not been investigated. The gravamen of the complaints is that these judges together with administrative officers have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing.

Now evidence has emerged of circumstances that not only point to the underlying forces that may be driving such wrongdoing, but that also indicate the presence of the most powerful driver of government corruption: a lot of money! This is the result of the concentration of *thousands* of bankruptcy cases on each of a handful of appointed private trustees (21.B & 23.C). They have every financial interest in rubberstamping as many bankruptcy petitions as possible, not only regardless of their merits for relief under the Bankruptcy Code, but also especially those with the least merits. From each petition approved by the court, the trustees are paid a legal fee as a percentage of the debtors' payments to the creditors. Whom and what else is being paid?

There is money to spread, for this is a self-reinforcing scheme: The more people learn that bankruptcy petitions can be rubberstamped (38), the more they have every incentive to binge on their credit, for they know that there is no repayment day, just a bankruptcy petition waiting to be filed with one or more fees (20.A). As the scheme develops, it also claims more victims: the creditors, whose interests are ignored by their representatives, the trustees. The latter are not being investigated by the U.S. trustees or the Rochester courts despite the evidence of a lot amiss (11-12; 27.D), just as Chief Judge Walker has taken no action on the complaint about Judge Ninfo in *nine* months! (7-9) [but see 33-37] How did he become a member of the panel hearing my appeal (03-5023)?, which, by contrast, was dismissed. How big is this scheme?!

I respectfully ask that you **do not** refer this matter to your Buffalo office, let alone that in Rochester, located in the same federal building where the judges and U.S. trustee sit. This is to avoid the same reaction as that of the FBI agent who refused to investigate it out of fear for his career, just as the Clerk of Court and the Circuit Executive, who work in the same building as Chief Judge Walker, will not even answer my letters (30-32, infra). If you too won't do anything about his matter, which is taking a tremendous toll on me, I will bring it to the media. Thus, I request a meeting with you.

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

June 29, 2004

Mr. David N. Kelley
U.S. Attorney for the Southern District of NY
One St. Andrews Plaza
New York, NY 10007

Dear Mr. Kelley,

On May 6, I mailed you a letter with supporting documents in which I laid out evidence of judicial misconduct and bankruptcy fraud involving judges and other officers in the U.S. courts in Rochester and the Court of Appeals for the Second Circuit. They have disregarded the law, rules, and facts so repeatedly and consistently as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. I pointed out how the concentration of *thousands* of open cases in the hands of a single trustee can generate the money that incites to wrongdoing through the acceptance for a fee of meritless bankruptcy petitions. One such petition, dated January 26, 2004, was filed by David and Mary Ann DeLano in Rochester, dkt. no. 04-20280 WBNY. It deserves your attention because it is so meritless (page 8, para. 23, infra) for bankruptcy relief –Mr. DeLano is and has been a *loan* bank officer for 15 years- that its investigation as a test case (4.C) can yield insight into the bankruptcy scheme (1.A). To that end and since my submission cannot be found (but see iv), I am sending you a copy and this update.

The DeLanos' petition (92-127) was approved by Trustee George Reiber for confirmation on March 8 by the court. Although it names me as a creditor and I traveled from NYC to Rochester to attend the meeting of creditors on that date, James Weidman, the Trustee's attorney –it was unlawful for him to conduct the meeting-, repeatedly asked *me* how much I knew about the DeLanos having committed fraud. When I revealed nothing, he prevented me from examining them; the Trustee ratified his action as did Judge J. Ninfo. I requested his supervisors, Assistant U.S Trustee Kathleen Schmitt and U.S. Trustee for Region 2 Deirdre Martini, to replace Trustee Reiber with an independent trustee to investigate how such a questionable petition was approved and why I was not allowed to examine the Debtors. They have refused and he has not investigated anything. Instead, Trustee Martini has engaged in deception (77-84) to avoid sending me information that could allow me to investigate this case further.

Due to my insistence, Trustee Reiber obtained some documents from the debtors (28-58). Because they are late, he has moved for dismissal, which would also protect him from my investigation. Indeed, my analysis of those documents (16-27a) reveals their incompleteness as well as debt underreporting, account unreporting, and concealment of assets. Why did Trustee Martini keep him on the case without investigating how many of his *3,909 open cases* (2.B) he approved without regard for their merits (8.D)? Yet, this is not the only trustee with such practices (4.C).

The misconduct of CA2 judges (85-89) and the Region 2 trustee within your district should be enough to give you jurisdiction to investigate any link between it and the misconduct and bankruptcy fraud in WDNY. I can support that proposition with facts beyond this executive summary because I have dealt with these people for 2½ years and have read or researched and written over 1,500 pages of documents. Consequently, I respectfully request to meet with you.

Sincerely,

Dr. Richard Cordero

7

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

June 29, 2004

Mr. David Jones
Chief of the Bankruptcy Unit in Civil Matters
U.S. Attorney's Office
One St. Andrews Plaza
New York, NY 10007

Dear Mr. Jones,

Thank you for calling me last Tuesday, June 22, concerning my letter of May 6 with supporting documents to U.S. Attorney David Kelley. Therein I laid out evidence of judicial misconduct and bankruptcy fraud involving judges in the U.S. Bankruptcy and District Courts in Rochester and the Court of Appeals for the Second Circuit as well as trustees and debtors there and here in NYC. As stated, despite my inquiries, my submission has not yet been found, although I mailed it on May 7 (see page iv, infra). Thus, I am grateful that you requested a copy.

Since this is an on going case in both cities, herewith is an update. It concentrates on the workings of a bankruptcy fraud scheme (1A, infra) and the analysis (16-27a) of financial documents from bankruptcy petitioners (28-58). Their petition (92-127) can be considered a test case that through concrete facts and identified persons can provide firm stepping stones for your investigation (8D). The analyzed documents reveal not only their suspicious incompleteness despite repeated requests that at my instigation (59-76) the private trustee belatedly made for a whole set (11-15), but also debt underreporting, account unreporting, and concealment of assets. These findings beg the questions: How could the private and U.S. trustees (77-84) approve such a meritless (8, para. 23) bankruptcy petition? How many of the *3,909 open cases* of *the same trustee* (2.B) are also meritless? Why does the bankruptcy judge keep confirming them? (4C)

Contrary to some views, the evidence contained in my initial submission, let alone as buttressed by this update, is sufficient to raise reasonable suspicion of wrongdoing, which your office can investigate to determine whether criminal activity has been or is being committed. It is not for me, as a private citizen rather than a private investigator, to go out and search for other creditors that can join me and lend credibility to my claims. In the process, I would risk a defamation lawsuit, which I could hardly defend since I lack what is required to investigate this case, such as your Office's subpoena power, manpower to conduct interviews and depositions, and the means to engage in forensic accounting and hunt for concealed assets or evidence of bribes. Nor can each piece of evidence be discarded individually as non-probative of any crime. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart to look at them collectively? Circumstantial cases in which a person can lose even his life look at the totality of circumstances. So here.

To be as persuasive as possible and enable you and your colleagues to assess this case on the best available evidence, I have included many copies of key documents; this will spare your having to search for them. However, I can provide pertinent clarifications and important details given my dealings with these people for 2½ years and familiarity with over 1,500 pages of documents. Thus, I respectfully request that you bring to Mr. Kelley's attention my cover letters, which provide executive summaries for busy decision-makers, and arrange for us to meet. Meantime, I look forward to hearing from you soon and thank you for getting the review underway.

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

August 14, 2004

Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call last Wednesday, when we briefly talked about the files that I prepared for your colleague David N. Kelley, U.S. Attorney for the Southern District of New York, and that his Chief of the Criminal Division, Karen Patton Seymour, Esq., forwarded to you. They concern a judicial misconduct and bankruptcy fraud scheme, which has shown further evidence of its existence and depth through an ongoing case in the Bankruptcy Court in your building, namely, David and Mary Ann DeLano, Chapter 13, docket no. 04-20280.

As mentioned, I have prepared a paper in the form of a motion (1-19, infra) that describes the latest developments of a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing involving judicial officers, trustees, and the local parties. The motion demonstrates how these participants have undermined the integrity of the judicial and bankruptcy systems and why this matter deserves that a file be opened and treated with high priority.

The motion's Table of Contents serves as an executive summary. Its first paragraph lets you know of two important hearings in the Court right there where you are:

1. The one next Monday, August 23, at 3:30 p.m., will reconsider Trustee George Reiber's motion to dismiss the case (21, infra) due to the Debtors' unreasonable delay in producing documents as well as my statement in opposition (23, infra), which requests his removal on account of his conflict of interests between his duty to investigate this case and his self-preservation instinct of not uncovering documents that can incriminate him in bankruptcy fraud.
2. The other hearing is set for Wednesday, August 25, at 11:30 a.m. It was noticed by the Debtors' attorney, who seeks to disallow my claim (43, infra) in order to eliminate me from the case, for I am the only creditor who insists on obtaining documents that threaten to expose bankruptcy fraud, particularly concealment of assets. I will oppose him and again ask that the Hon. John C. Ninfo, II, issue the proposed order for the Debtors to produce certain documents (34, infra), which the Judge knew I had requested so that he had me fax the order to him only to refuse to issue it by citing the "expressed concerns" of the Debtor's attorney (39, infra), who nevertheless had earlier failed to preserve any objection to the order.

I trust that this overview will enable you to realize the importance of those two hearings for the parties and the future of this case. Hence, I respectfully urge you to attend them or have the attorney reviewing my files do so. Attending those hearings will also give you an opportunity to witness the interaction between the local parties and Judge Ninfo in their courtroom while I am absent appearing by phone from New York City. Therefore, I look forward to hearing from you as soon as you have decided whether to open a file in this matter and to attend the hearings.

Sincerely,

Dr. Richard Cordero

TABLE OF EXHIBITS

1. **Dr. Richard Cordero's motion of August 14, 2004, for docketing and issue, removal, referral, examination, and other relief 1**
    a. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004 16
    b. **Proposed order** for docketing and issue, removal, referral, examination, and other relief 17
    c. Dr. Cordero's **telephone bill** showing faxes to Judge Ninfo's fax machine at no. (585)613-4229 on July 20 and 22, 2004..... 19

Background documents

2. Trustee George **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004 21
3. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition 23
    a. Relief: contents of document production order requested to issue 29
4. Dr. **Cordero**'s letter of **July 19**, 2004, faxed **to** Judge **Ninfo** 33
    a. **Proposed order** for production of documents by the DeLanos and their attorney, Christopher Werner, Esq., obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004 34
5. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, **objecting** to Dr. Cordero's **proposed order** because it "extends beyond the direction of the Court" 39
6. Judge **Ninfo**'s order of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" 41
7. Att. **Werner**'s **notice** of hearing and order of **July 19**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it 43

U.S. Department of Justice

United States Attorney
Western District of New York

620 Federal Building
100 State Street
Rochester, New York 14614

(585) 263-6760
FAX(585) 263-6226

August 24, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 12208-1515

Dear Dr. Cordero:

We have reviewed the materials sent to us from the Southern District of New York regarding your allegations of bankruptcy fraud and judicial misconduct. Please be advised that we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so. Accordingly, we are returning your original documents to you with this letter.

Sincerely,

MICHAEL A. BATTLE
United States Attorney

By: RICHARD A. RESNICK
Assistant U.S. Attorney

RAR/kmp
Enclosure

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

August 31, 2004

Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call today. I appreciate your agreement to examine the documents concerning the above captioned matter that were forwarded to you weeks ago by the Office of Mr. David N. Kelley, U.S. Attorney for the Southern District of New York.

You gave them to your assistant, Richard Resnik, Esq., to review. I called him last Tuesday, August 24. He told me then that he had not taken a look at them and could not do so at that time because he was busy preparing to go to Washington, D.C. the next day; that he would review them upon his return and thereafter we would discuss them on the phone. However, that same day he wrote me a letter dated August 24 where he stated that "we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so". Together with that letter he returned all the files, including the August 14 update that I had sent to you.

It is remarkable how Mr. Resnik made a sudden change of time management to review the 250 pages in the files submitted to you, including more than 30 pages of the bankruptcy petition with 10 schedules and a Statement of Financial Affairs, which upon analysis reveal their declarations and figures to be so incongruous as to render them suspicious; disposed of the matter right away; and even wrote me. I hope that when you examine them, you will allow yourself more time to consider that petition, other Debtors' documents, my analyses of them, and the account of their suspicious handling by bankruptcy and judicial officers that did not want to scrutinize them. Your investment of time in a deliberate examination of these documents is warranted by the stakes, namely, the integrity of the bankruptcy and the judicial systems.

In our conversation today you mentioned that Ms. Kathleen Dunivin Schmitt, the Assistant U.S. Trustee that has her office in your building, did not consider that there were grounds for an investigation of my complaint. I informed her of it since it stems from the DeLano bankruptcy petition, no. 04-20280 WBNY. It is to be hoped that in your conversation with her, an interested party, her views were not deemed deserving of implicit credibility and a substitute for an examination of the evidence, much less the justification for not going where the evidence would lead an objective observer who did not know her. Even if Ms. Schmitt were found not involved in the complained-about bankruptcy fraud scheme, her opinion that there is no need to investigate it or her trustee George Reiber, who has 3,909 *open* cases and failed to vet the DeLanos' petition, or his attorney James Weidman, Esq., who prevented me from examining the DeLanos at the meeting of creditors, might put her at fault. If your personal relation to her and trust in her word render my evidence just "speculations", as you put it, and cause your reluctance to examine it, not to mention investigate her, your objectivity might be compromised. If so, I respectfully request that you recuse yourself and support my referral to the Fraud Section of the U.S. Department of Justice, Criminal Division. I look forward to your statement one way or the other.

Sincerely,

Dr. Richard Cordero

Evidentiary Files

containing the bankruptcy petition of January 26, 2004
filed by David and Mary Ann DeLano
in the Bankruptcy Court for the Western District of New York
and other financial documents produced by them
with the analyses of Dr. Richard Cordero
that reveal evidence of a judicial misconduct and bankruptcy fraud scheme

Forwarded to Bradley E. Tyler, Esq.
U.S. Attorney in Charge
of the U.S. Attorney's Office in Rochester
by David N. Kelley,
U.S. Attorney for the Southern District of New York,
returned to Dr. Cordero from the Rochester Office
by Richard Resnik, Esq., on August 24, 2004
and sent back for review by Att. Tyler
on August 31, 2004

1. Copy of letter of May 6, 2004, and file sent to David N. Kelley, U.S. Attorney for the Southern District of New York ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley with letter of same date to his Chief of the Bankruptcy Unit in Civil Matters, David Jones, Esq. ..... 128 pages
3. Letter of August 14, 2004, and file sent to Bradley E. Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester, ... 46 pages
   250 pages
4. Letter of August 31, 2004, in this file sent to U.S. Attorney Tyler with the following updates:
   a) Objection of July 19, 2004, by Christopher Werner, Esq., Attorney for the DeLanos, to Dr. Cordero's Claim, Notice of Hearing and Order 1
   b) Dr. Cordero's reply of August 17, 2004, to Debtors' objection to claim and motion to disallow it 3
   c) Dr. Cordero's application of August 20, 2004, for sanctions on and compensation from Att. Werner and his law firm for violation of FRBkrP Rule 9011(b) 13

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, on January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case"); and

WHEREAS, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692(the "Premier Case"); and

WHEREAS, prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

WHEREAS, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

WHEREAS, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

WHEREAS, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

WHEREAS, on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

WHEREAS, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

WHEREAS, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

WHEREAS, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

WHEREAS, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

WHEREAS, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

WHEREAS, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

WHEREAS, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

WHEREAS, at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) the Claim Objection on its face is compelling, because the Cordero Claim and its attachments

set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

WHEREAS, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

WHEREAS, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED,** that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

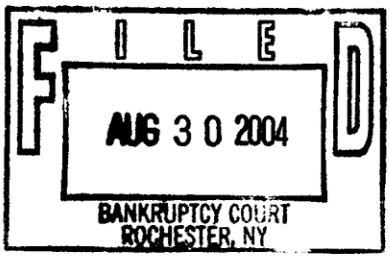
3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004

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



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

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

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

Statement of relief sought:

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

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

OPPOSSING PARTY: See next

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

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:
Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004

ORDER

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

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

Date: _____ **By:** _____

RB:97

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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

In re PREMIER VAN LINES, INC.,
Debtor

Case no. 03-5023

JAMES PFUNTER,
Plaintiff

Adversary Proceeding
Case no. 02-2230

-v-

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

RICHARD CORDERO
Third party plaintiff

-v-

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

Third party defendants

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

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.

2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfuntner v. Gordon et al, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens the case under suspicious circumstances and thereby forestalls the decision that this Court may take, including the removal of the case from him; wears down Dr. Cordero, a pro se litigant, thus rendering an eventual decision by this Court to retry the claim against Mr. DeLano, not to mention the whole Pfuntner case, moot; and makes a mockery of the appellate process.

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

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

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

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

TABLE OF CONTENTS

I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process **25**

II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. Delano from the case before this Court because after Dr. Cordero filed

proof of claim, a presumption of validity attached to his claim **26**

A. Mr. Delano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection to it on July 19, 2004 27

B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim 28

C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount 29

D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing 29

III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thus denying him access to judicial process and requiring this Court to step in **31**

IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero **31**

V. A mechanism for many bankruptcy cases to generate money, lots of it **34**

V. Relief requested **35**

****

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

6. The case on appeal in this Court originates in the Adversary Proceeding Pfuntner v. Gordon et al., all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousers, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

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

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

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

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

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

> §101. Definitions
>
> (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…
>
> (15) "entity" includes person…

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

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

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

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

(a) Proof of Claim

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

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

(f) Evidentiary effect

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

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

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

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

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

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

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

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition,

they knew the nature of Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

19. It was only after Dr. Cordero's July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). How-ever, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims 'to have been in this business for 28 years', must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

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

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the $291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero's insistence the Judge issued on July 26 (E-107, 103).

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

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

> If a joint petition is filed, state whether husband, wife, both of them, or the

> marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

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

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

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

27. Case law has interpreted this requirement thus:

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

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

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

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

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

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

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

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

> …shall determine the amount of such claim…and shall allow such claim in such amount…

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

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim "because such claim is contingent or unmatured". It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim's contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

34. If the judge cannot determine the claim's amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

> (c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case…shall be estimated.

35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim's value when liquidating the claim "would unduly delay the closing of the estate".

36. But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero's claim because Judge Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) "to ensure that the case is handled expeditiously and economically" and under §1325(a)(3), to ascertain whether the DeLanos' 'plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law'. These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public's interest in bankruptcies free of fraud, which trumps a debtor's private interest in avoiding a

claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition's good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos' petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero's request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909[2] *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)

39. Intent can be inferred from a person's conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

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

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

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

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

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

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

43. If Judge Ninfo 'is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property' (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September *2002*, is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

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

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

45. By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

> In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction…

46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero' property could also have been stolen or damaged.

47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.

48. While Judge Ninfo blames Dr. Cordero for 'not taking possession and securing his property' (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and protracting the resolution of the case enormously.

49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

> Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano…(E-151)

50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

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

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

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

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

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

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

55. How does Judge Ninfo know that the Debtors believe anything "honestly" since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document

production; **2)** Trustee Reiber moved to dismiss the case "for unreasonable delay" in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero's claim now?

56. Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.

57. Do Judge Ninfo's statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero's position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

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

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

59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos' petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos'.

61. There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy

petitioners from having to account for $291,470; **2)** allows them to disobey his document production order with impunity; **3)** prejudges in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

VI. Relief requested

62. Therefore, Dr. Cordero respectfully requests that this Court:

a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;

b) Refer the Premier, the Pfuntner v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:

1. Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and
2. Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;
3. David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;

c) Disqualify Judge Ninfo from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

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

Respectfully submitted on:

September 9, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by fax or United States Postal Service on the following parties copies of my motion to quash the Order of WBNY Judge John C. Ninfo, II, of August 30, 2004:

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

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

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

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) 263-5812
fax (585) 263-5862

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

Mr. George Schwergel
Gullace & Weld LLP
Att. for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980
fax (585)546-4241

Scott Miller, Esq.
HSBC, Legal Department
P.O. Box 2103
Buffalo, NY 14240
tel. (716)841-1349
fax (716)841-7651

Tom Lee, Esq.
Becket and Lee LLP
Agents for eCast Settlement & Associates National. Bank
P.O. Box 35480
Newark, NJ 07193-5480
tel. (610)644-7800
fax (610)993-8493

Mr. Steven Kane
Weistein, Treiger & Riley P.S
2101 4th Avenue, Suite 900
Seattle, WA 98121
tel. (877)332-3543
fax (206)269-3489

Ms. Vicky Hamilton
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Fin. Dept.
acc: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011
fax (817)461-8070

Ms. Judy Landis
Discover Financial Services
P.O. Box 15083
Wilmington, DE 19850-5083
tel. (800)347-5515
fax (614)771-7839

Dr. Richard Cordero

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

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

October 7, 2004

Ms. Jennie Bowman
Executive Assistant to the US Attorney
U.S. Attorney's Office for WDNY faxed to (716)551-3051
138 Delaware Center
Buffalo, NY 14202

Re: Resubmission to U.S. Att. Battle of appeal from Att. B. Tyler's decision

Dear Ms. Bowman,

Thank you for taking my call a few minutes ago. As agreed, I am faxing a copy of the letter that I sent to Michael Battle, Esq., U.S. Attorney for WDNY, last September 18. You indicated that you would pass it along to Duty Attorney Lynn Eilermann for review. I appreciate that and kindly request that you also bring to Att. Battle's attention the following:

1. My letter to Att. Battle was an appeal from a decision by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. It serves no purpose to send it back to Mr. Tyler for him to pass judgment on himself. See ¶18 of the Appeal.

2. My Appeal was accompanied by supporting and updating documents. They should be recovered from Att. Tyler and reviewed. If that cannot be done, let me know and I will send a copy.

3. In addition, there are four files in Att. Tyler's possession that contain supporting evidence of the complained-about judicial misconduct and bankruptcy fraud scheme. When I last spoke with Att. Tyler on September 15, I specifically requested that he forward those files to Att. Battle so that the latter may consider them in the context of my appeal. Indeed, I told Att. Tyler that I wanted to appeal his decision and asked who his supervisor was and he gave me Att. Battle's name and phone number. I also specifically asked Att. Tyler to write to me a letter stating why he had decided not to investigate the case. He said that he would send it to me with copy to Att. Battle. I have received no letter. Now I find out from you that he did not forward the files either. Att. Tyler's questionable conduct in not providing those files to Att. Battle and not sending me the promised letter only adds to his questionable conduct already pointed out in the appeal.

4. This case is not being investigated by Assistant U.S. Trustee Kathleen Dunivin Schmitt in Rochester. Nor can she do so because of her conflict of interests: She cannot want to find her supervisee, Trustee George Reiber, to have rubberstamped the meritless bankruptcy petition of David and Mary Ann DeLano, docket no. 04-20280. If so, she would be confronted with the question how many of Trustee Reiber's 3,909 *open* cases he also rubberstamped. If it were to be uncovered that Trustee Reiber approved other meritless cases, the next question would be not only why and on what incentive, but also why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes. Nor can Att. Tyler investigate this case either because he has a vested interest in a certain outcome.

I trust that you realize the seriousness of this matter and will have Att. Battle decide it. Meantime, I look forward to hearing from him.

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

September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler's decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and the motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

Sincerely,

Dr. Richard Cordero

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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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tel. (718) 827-9521; CorderoRic@yahoo.com

September 18, 2004

Appeal

to Michael Battle, Esq., U.S. Attorney for WDNY from the decision taken by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made

submitted by Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.

2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero's "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.

3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero's complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt's opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter's cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:

5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos' earnings before 2001.

6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is accommodating or has a workload of 3,909**[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor's debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee's interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos'…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler's eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero's "allegations" without being able to state concretely what it is that he supposedly 'alleged'. That inability stems from his failure to review the files, as shown by these facts:

    a) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;

    b) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero's call and he could not have reviewed their 250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by

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same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and

c) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.

9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?

10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made your decision and that he would remain, that it was up to me to consult a lawyer

> and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra)). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, although such examination is the Meeting's sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.

12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini's strong determination to close this matter and of her shooting down Trustee Schmitt's agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss' decision and refer the matter to the FBI anyway. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins'.)

13. In this vein, **if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt's reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon**. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt Dr. Cordero's complaint about Trustee Gordon's reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in Pfuntner v. Gordon, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler's suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.

15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy is predicated on the debtor's inability to pay his debts because his assets are not enough to meet his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earn-

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

ings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.

16. Moreover, if Att. Tyler had reviewed Dr. Cordero's Objections, contained in the June 29 file, page 59, to the DeLanos' Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?

17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files** before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero's files and instead rely only on Trustee Schmitt's assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero's complaint.

19. Therefore, Dr. Cordero respectfully requests that:

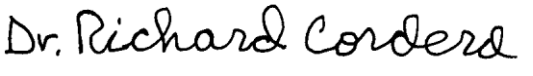
    a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;

    b) the investigation be conducted by officers who belong to neither the U.S. Attorney's nor the FBI's Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and

    c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on

September 18, 2004



59 Crescent Street
Brooklyn, NY 11208

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

TABLE OF CONTENTS AND EXHIBITS

for the Appeal of September 18, 2004,
to U.S. Attorney Michael Battle, Esq., U.S. Attorney for WDNY

by Dr. Richard Cordero

I. THE APPEAL

1. Dr. Richard **Cordero**'s appeal of **September 18**, 2004, **to** Michael **Battle**, Esq., U.S. Attorney for WDNY, **from** the **decision** taken by Bradley **Tyler**, Esq., U.S. Attorney in Charge of the Rochester Office, **not to open** an **investigation into** the complaint about a judicial misconduct and bankruptcy fraud **scheme** and **statement** of the **questionable circumstances** under which that **decision** was **made** 1

II. DOCUMENTS SUPPORTING THE APPEAL

2. Dr. **Cordero**'s letter of **May 6**, 2004, to David N. **Kelley**, U.S. Attorney for the **Southern District** of NY, to submit evidence of bankruptcy fraud and judicial misconduct and request and investigation and a meeting 6

3. Dr. **Cordero**'s updating letter of **June 29**, 2004, to U.S. Attorney **Kelley** containing, among others, Dr. Cordero's Analysis of June 26, 2004, A **Trustee With *Thousands*** of Open **Cases** and **One Case** that **Opens** a **Window into** the Operation of the Bankruptcy Fee **Scheme**, and his Annotated **Table** of June 26, 2004, **Comparing** Claims on the Bankruptcy **Petition** of David and Mary Ann DeLano **and other Documents** Produced by them or Created by the Bankruptcy Court 7

    a) Dr. **Cordero**'s letter of **June 29**, 2004 **to** David **Jones**, Esq., Chief of the Bankruptcy Unit in Civil Matters at the U.S. Attorney's Office in New York 8

4. Dr. **Cordero**'s letter of **August 14**, 2004, **to** U.S. Attorney in Charge Bradley E. **Tyler**, Esq., to inform him of the hearings on August 23 and 25, 2004, and request his attendance 9

5. Letter of Richard **Resnik**, Esq., Assistant U.S. Attorney, in the U.S. Attorney's Office in Rochester, of **August 24**, 2004, **returning to** Dr. **Cordero** the **files** on the judicial misconduct and bankruptcy fraud scheme 11

6. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler to send back** to him the **files** that were returned to Dr. Cordero by Att. Resnik 12

III. DOCUMENTS UPDATING THE COMPLAINT

7. Interlocutory **Order** of WBNY Bankruptcy Judge John C. **Ninfo**, II of **August 30**, 2004, requiring Dr. Cordero to take **discovery** of his claim

against Debtor **DeLano** arising from the Pfuntner v. Gordon et al. **case on appeal** in the Court of Appeals for the Second Circuit to try it in the DeLano case, docket no. 04-20280 14

8. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** the **order** of Bankruptcy Judge Ninfo of August 30, 2004, to **sever** a **claim from** the case on appeal **Pfuntner** v. Gordon et al. in the Court of Appeals for the purpose of **try**ing **it in** the **DeLano** case 22

IV. FILES SUBMITTED BY DR. CORDERO AND TO BE FORWARDED BY ATT. TYLER TO U.S. ATTORNEY BATTLE

1. Copy of letter of May 6, 2004, and file sent to U.S. Attorney Kelley ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley ..... 128 pages
3. Letter of August 14, 2004, and file sent to Att. Tyler ..... +46 pages

   Subtotal 250
4. Letter of August 31, 2004, and file sent to Att. Tyler ..... 25 pages

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

October 19, 2004

Mary Pat Floming, Esq. faxed to (716)551-3052
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for returning my call today in which I inquired about the status of my appeal to U.S. Attorney Michael Battle from the decision of the U.S. Attorney in Charge of the Office in Rochester, Bradley Tyler, Esq. not to investigate my above-referenced complaint. Based on the facts stated in the appeal, it can be concluded that Mr. Tyler did not even read the cover letters of the two files forwarded to him from the office of Mr. David N. Kelley, U.S. Attorney for SDNY, on or around August 5. Instead, he relied on his conversations with one of the parties who could not have an interest in this matter being investigated because she could end up being investigated herself, namely, Assistant U.S. Trustee Kathleen Schmitt. Mr. Tyler and Ms. Schmitt work in the same small federal building in Rochester, where people can easily become acquaintances or friends, their word can be substituted for evidence, and an investigation can constitute betrayal.

It was only because of my repeated calls to Mr. Tyler and submissions of two written updates to him that I found out in a phone conversation with him on September 15 that he would not investigate my complaint. On that occasion, I told him that I would appeal to Mr. Battle and asked that he send me his decision in writing and forward the four files to Mr. Battle. Mr. Tyler agreed to do so. Yet, he has failed to send me any letter. Nor has he forwarded any files to Mr Battle, as stated to me by Mr. Battle's Executive Assistant, Mrs. J. Bowman, and you.

I appealed in writing to Mr. Battle on September 18. Nothing happened. So I called Mr. Battle's office and eventually found out from Mrs. Bowman that my appeal file had been sent back to Mr. Tyler! One need not work at the U.S. Attorney's Office or know 28 U.S.C. §47 – Disqualification of trial judge to hear appeal: No judge shall hear or determine an appeal from the decision of a case or issue tried by him- to realize that an appeal cannot be determined by the person appealed from. I faxed a letter to that effect to Mrs. Bowman on October 7, together with a copy of my appeal so that, as agreed, Mrs. Bowman would bring it to Mr. Battle's attention. On October 12 I found out from her that she had forwarded that material to you. You have stated that is not the case. I have recorded messages for Mrs. Bowman, which have not been replied to.

Something is not right here. You can find out what it is by, as agreed, informing Mr. Battle directly of the complaint and the appeal. While at it, you can do better than that FBI Agent who learned from a flight school instructor that some foreigners wanted to learn just how to fly large airplanes but not how to take them off or land them. The agent just told his superior rather than pursue the matter all the way to the top on the good-sense intuition that something was not right and the stakes were too high to leave it to protocol. He missed his once-in-a-lifetime chance to prevent the 9/11 tragedy and become a hero of moral courage and civic responsibility. This is your chance, Ms. Floming, to become a heroine by finding out why the four complaint files have been kept from Mr. Battle and how widespread bankruptcy fraud has become…as the appeal and the files show, there is so much money to spread around! Rest assured I will pursue this matter.

Sincerely,

Dr. Richard Cordero

RB:121

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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Brooklyn, NY 11208-1515
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September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
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Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, Esq., U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler's decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and the motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

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

September 18, 2004

Appeal

to Michael Battle, Esq., U.S. Attorney for WDNY from the decision taken by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made

submitted by Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.

2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero's "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.

3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero's complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt's opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter's cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:

5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos' earnings before 2001.

6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is accommodating or has a workload of 3,909**[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor's debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee's interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos'…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler's eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero's "allegations" without being able to state concretely what it is that he supposedly 'alleged'. That inability stems from his failure to review the files, as shown by these facts:

    a) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;

    b) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero's call and he could not have reviewed their 250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by

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relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and

c) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.

9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?

10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made your decision and that he would remain, that it was up to me to consult a lawyer

> and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra)). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, although such examination is the Meeting's sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.

12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini's strong determination to close this matter and of her shooting down Trustee Schmitt's agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss' decision and refer the matter to the FBI anyway. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins'.)

13. In this vein, **if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt's reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon**. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt Dr. Cordero's complaint about Trustee Gordon's reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in Pfuntner v. Gordon, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler's suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.

15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy is predicated on the debtor's inability to pay his debts because his assets are not enough to meet his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earnings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.

16. Moreover, if Att. Tyler had reviewed Dr. Cordero's Objections, contained in the June 29 file, page 59, to the DeLanos' Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?

17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files** before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero's files and instead rely only on Trustee Schmitt's assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero's complaint.

19. Therefore, Dr. Cordero respectfully requests that:

a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;

b) the investigation be conducted by officers who belong to neither the U.S. Attorney's nor the FBI's Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and

c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on

September 18, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

TABLE OF CONTENTS AND EXHIBITS

for the Appeal of September 18, 2004,
to U.S. Attorney Michael Battle, Esq., U.S. Attorney for WDNY

by Dr. Richard Cordero

I. THE APPEAL

1. Dr. Richard **Cordero**'s appeal of **September 18**, 2004, **to** Michael **Battle**, Esq., U.S. Attorney for WDNY, **from** the **decision** taken by Bradley **Tyler**, Esq., U.S. Attorney in Charge of the Rochester Office, **not to open** an **investigation into** the complaint about a judicial misconduct and bankruptcy fraud **scheme** and **statement** of the **questionable circumstances** under which that **decision** was **made** 1

II. DOCUMENTS SUPPORTING THE APPEAL

2. Dr. **Cordero**'s letter of **May 6**, 2004, to David N. **Kelley**, U.S. Attorney for the **Southern District** of NY, to submit evidence of bankruptcy fraud and judicial misconduct and request and investigation and a meeting 6

3. Dr. **Cordero**'s updating letter of **June 29**, 2004, to U.S. Attorney **Kelley** containing, among others, Dr. Cordero's Analysis of June 26, 2004, A **Trustee With *Thousands*** of Open **Cases** and **One Case** that **Opens** a **Window into** the Operation of the Bankruptcy Fee **Scheme**, and his Annotated **Table** of June 26, 2004, **Comparing** Claims on the Bankruptcy **Petition** of David and Mary Ann DeLano **and other Documents** Produced by them or Created by the Bankruptcy Court 7

    a) Dr. **Cordero**'s letter of **June 29**, 2004 **to** David **Jones**, Esq., Chief of the Bankruptcy Unit in Civil Matters at the U.S. Attorney's Office in New York 8

4. Dr. **Cordero**'s letter of **August 14**, 2004, **to** U.S. Attorney in Charge Bradley E. **Tyler**, Esq., to inform him of the hearings on August 23 and 25, 2004, and request his attendance 9

5. Letter of Richard **Resnik**, Esq., Assistant U.S. Attorney, in the U.S. Attorney's Office in Rochester, of **August 24**, 2004, **returning to** Dr. **Cordero** the **files** on the judicial misconduct and bankruptcy fraud scheme 11

6. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler to send back** to him the **files** that were returned to Dr. Cordero by Att. Resnik 12

III. DOCUMENTS UPDATING THE COMPLAINT

7. Interlocutory **Order** of WBNY Bankruptcy Judge John C. **Ninfo**, II of **August 30**, 2004, requiring Dr. Cordero to take **discovery** of his claim

against Debtor **DeLano** arising from the Pfuntner v. Gordon et al. **case on appeal** in the Court of Appeals for the Second Circuit to try it in the DeLano case, docket no. 04-20280 14

8. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** the **order** of Bankruptcy Judge Ninfo of August 30, 2004, to **sever** a **claim from** the case on appeal **Pfuntner** v. Gordon et al. in the Court of Appeals for the purpose of **try**ing **it in** the **DeLano** case 22

IV. FILES SUBMITTED BY DR. CORDERO AND TO BE FORWARDED BY ATT. TYLER TO U.S. ATTORNEY BATTLE

1. Copy of letter of May 6, 2004, and file sent to U.S. Attorney Kelley ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley ..... 128 pages
3. Letter of August 14, 2004, and file sent to Att. Tyler ..... +46 pages

   Subtotal 250
4. Letter of August 31, 2004, and file sent to Att. Tyler ..... 25 pages

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

October 7, 2004

Ms. Jennie Bowman
Executive Assistant to the US Attorney
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3051

Re: Resubmission to U.S. Att. Battle of appeal from Att. B. Tyler's decision

Dear Ms. Bowman,

Thank you for taking my call a few minutes ago. As agreed, I am faxing a copy of the letter that I sent to Michael Battle, Esq., U.S. Attorney for WDNY, last September 18. You indicated that you would pass it along to Duty Attorney Lynn Eilermann for review. I appreciate that and kindly request that you also bring to Att. Battle's attention the following:

1. My letter to Att. Battle was an appeal from a decision by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. It serves no purpose to send it back to Mr. Tyler for him to pass judgment on himself. See ¶18 of the Appeal.

2. My Appeal was accompanied by supporting and updating documents. They should be recovered from Att. Tyler and reviewed. If that cannot be done, let me know and I will send a copy.

3. In addition, there are four files in Att. Tyler's possession that contain supporting evidence of the complained-about judicial misconduct and bankruptcy fraud scheme. When I last spoke with Att. Tyler on September 15, I specifically requested that he forward those files to Att. Battle so that the latter may consider them in the context of my appeal. Indeed, I told Att. Tyler that I wanted to appeal his decision and asked who his supervisor was and he gave me Att. Battle's name and phone number. I also specifically asked Att. Tyler to write to me a letter stating why he had decided not to investigate the case. He said that he would send it to me with copy to Att. Battle. I have received no letter. Now I find out from you that he did not forward the files either. Att. Tyler's questionable conduct in not providing those files to Att. Battle and not sending me the promised letter only adds to his questionable conduct already pointed out in the appeal.

4. This case is not being investigated by Assistant U.S. Trustee Kathleen Dunivin Schmitt in Rochester. Nor can she do so because of her conflict of interests: She cannot want to find her supervisee, Trustee George Reiber, to have rubberstamped the meritless bankruptcy petition of David and Mary Ann DeLano, docket no. 04-20280. If so, she would be confronted with the question how many of Trustee Reiber's 3,909 *open* cases he also rubberstamped. If it were to be uncovered that Trustee Reiber approved other meritless cases, the next question would be not only why and on what incentive, but also why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes. Nor can Att. Tyler investigate this case either because he has a vested interest in a certain outcome.

I trust that you realize the seriousness of this matter and will have Att. Battle decide it. Meantime, I look forward to hearing from him.

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

October 25, 2004

Mary Pat Floming, Esq.
U.S. Attorney's Office for WDNY
138 Delaware Center faxed to (716)551-3052
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for letting me know that you brought to U.S. Att. Michael Battle's attention my appeal from Att. Bradley Tyler's decision not to investigate the misconduct and bankruptcy fraud scheme evidenced in my four files and his failure to forward the latter to Mr. Battle.

This is an update showing Trustee George Reiber's factually and legally untenable allegations for refusing to examine under 11 U.S.C.§341 the DeLanos, who are the debtors in the case (dkt. no. 04-20280) that opens a window into the scheme. His motive for refusing is to prevent the DeLanos' fraud from being established. If it were, it would provide grounds for him to be investigated for having approved without any review a clearly questionable petition, for Mr. DeLano is a bank industry insider who has been for 15 years and still is a bank *loan* officer, and his numbers in the schedules are so incongruous as to red-flag his petition as highly suspicious. This would logically call for determining how many of his 3,909 *open* cases (as of April 2, 2004, according to PACER) Trustee Reiber approved that were also meritless or even fraudulent.

Such an investigation would entail a risk for Trustee Reiber's supervisor, Assistant U.S. Trustee Kathleen Schmitt. Indeed, she could also be investigated for having failed to provide adequate supervision and allowed one trustee to concentrate in his hands such an overwhelming and unmanageable workload. Could you read the petitions, check them against supporting documents, and monitor *monthly* plan repayments of thousands of cases? Bottlenecking thousands of cases through one person is outright questionable. It confers enormous power to control and generates a strong incentive to obey in a symbiotic relationship where supervisor and supervisee derive their respective benefits from prioritizing the approval of petitions and the concomitant unobstructed flow of percentage fees over compliance with Bankruptcy Code requirements.

Consequently, an investigation of the fraud scheme cannot limit itself to asking Trustee Schmitt to give her opinion about the evidence in the files, for she is unlikely to make any self-incriminating admission. The same applies to her supervisor, U.S. Trustee for Region 2 Deirdre A. Martini. In the first and only call that she has ever taken from me or returned, she was adamant that she would keep Trustee Reiber on the case and that she wanted me to stop calling her office because she wanted "closure". How odd, for the case had just started!: It was March 17 and only on March 8 had Trustee Reiber approved the suspicious termination by his attorney, James Weidman, Esq., of the §341 examination of the DeLanos after I, the only creditor present, had asked two questions but would not answer his insistent questions of how much I knew about their having committed fraud. Did Trustee Martini too not want me to examine the DeLanos?

I respectfully request that you share this update with Mr. Battle so that you both may **1)** realize that just as Mr. Tyler cannot investigate my appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme; instead, they should be investigated; and **2)** use the influence of your Office with the Executive Office of the U.S. Trustees to replace Trustee Reiber with an independent trustee to hold a §341 examination of the DeLanos. I look forward to hearing from you and receiving Mr. Battle's call.

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

October 20, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to (585)427-7804

Re: §341 examination of the DeLanos, dkt. no. 04-20280 WBNY

Dear Mr. Reiber,

In your reply of October 13 to my fax of October 12, you stated in your first point that:

> I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.

However, I sent you a copy of my motion to quash of September 9, which clearly states in its front page, at the top, just in its second line:

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

That motion alerted you to the fact that Judge Ninfo had issued a written order following what you call his "Bench Order", which you must have heard at one of the two August hearings. With due diligence and the professional interest in knowing the contents of a written order that, as you put it, "changed the entire approach to the procedures [in the DeLano case] "dramatically"", you could have asked for a copy of it, had you not obtained one already. Indeed, it would have been extremely easy for you to do so since you go to the courthouse and appear before Judge Ninfo very often; this follows from the fact that as of last April 2, you had 3,909[1] *open* cases, and of them 3,907 were reported to be before Judge Ninfo.

What is more, there is evidence that you were served with Judge Ninfo's August 30 Order. The certificate from the Clerk of Court joined hereto and which I received together with a copy of that Order states as follows:

Case No.: 2-04-20280-JCN

> PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on August 30, 2004. The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.
>
> Dated: August 30, 2004
>
> Paul R. Warren
> Clerk, U.S. Bankruptcy Court
>
> By: P. Finucane
> Deputy Clerk

029674 Form ntcentry Doc 62

[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

There is additional evidence to believe that official certificate's statement that you were served with the August 30 Order over your allegation that you were not. At stake are your credibility and motives.

Thus, for weeks you pretended to have served me with a letter that you had sent to the Debtors' attorney, Christopher Werner, Esq. In his letter to you of March 19 he stated:

> As discussed, of the dates you proposed, the following are available on my schedule for an adjourned 341 Hearing with respect to the above Debtors:…

Thereby he attested to a communication between you and him, which you did not extend to me so that you failed to propose any such dates to me. I protested against this lack of evenhandedness to you and to Assistant U.S. Trustee Kathleen Dunivin Schmitt. Rather than send me the letter as you said you would do, you tried to pass off for copies of that letter copies of letters that I had expressly stated to you in writing that I had already received. Only because I kept pointing this out to you and asking you for the letter(s) that you had not sent me did you send me as late as May 18 a copy of your letter to Mr. Werner of March 12, 2004.

That letter comes back, once more, to haunt you, for there you stated:

> I have decided to conduct an adjourned §341 hearing at my office. At the regularly scheduled §341 hearing, Mr. Cordero indicated a desire to ask more questions than the constraints of time would permit. I have reviewed [Mr. Cordero's] written objections which were filed with the Court on or about March 8, 2004. I believe there are some points within those objections which it is proper for him to question the debtors about.
>
> To that end, I would request that each of you provide me with dates when you will be available for the hearing.
>
> It would also be helpful if Mr. Cordero could transmit to Mr. Werner a list of any documents which he may desire prior to the hearing.

This letter impugns your credibility. The fact is that lack of time was not the reason why I could not ask my questions at the meeting of creditors last March 8. The reason was that your attorney, James Weidman, Esq., whom you unlawfully had preside over the meeting, repeatedly asked me how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining them although I had asked only two questions and was the only creditor at the meeting so that there was ample time for me to keep asking questions. You know this because I protested against his action in open court and for the record and you ratified your attorney's action, although it was also unlawful and highly suspicious.

In line with your ratification, you have held no §341 hearing of the DeLanos. Even though I proposed dates, you now pretend that the court prevents you from holding it. But the August 30 Order that you alleged not to have received does not prevent you from doing so at all. Moreover, for the legal reasons that I stated in my October 12 letter, the court cannot prevent you from holding it. Among those reasons is the obvious one implied in what the Bankruptcy Code (11 U.S.C.) provides under:

> §341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

The court cannot prevent a meeting from taking place which by law it is forbidden even to attend.

But even your own "notes", stated in your second point of your October 13 letter, attest to this:

> My notes of the August 23, 2004 Hearing specifically state that "all Delano Chapter 13 Court Proceedings except for the Objection to the Proof of Claim are suspended."

Without my implying the truth of your "notes", what it states is that "Court Proceedings" were suspended, but a §341 meeting is definitely not a court proceeding, as shown by the above-quoted text of §341(c). Rather, it is a meeting for the creditors to examine the debtors, one at which you must preside and do so in person, not by delegation to anybody else, including your attorney, cf. C.F.R. §58.6(a)(10). Consequently, by your own "notes" you know that you are not prohibited by any "Bench Order" from holding a §341 meeting for the DeLanos to be examined.

What is more, you may have known that from the August 30 Order itself, for in the third point of your letter of October 13 you wrote:

> I would note that the Motion [to quash] that you made is in the "Premier Van Lines Case;" however, as an attorney, I am sure you are aware that the Judge's Order of August 30, 2004, has nothing to do with the appeal which you have pending in the Second Circuit. It is not a final Order, and it is not appealable until a final decision is made regarding your claim in Premier Van Lines. If you have a dispute with my legal analysis, then it is best left to the Appellate Court at the appropriate time.

How can you make such a categorical statement when you stated in the first point in that same letter that

> I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.

Either you had received the August 30 Order and had even engaged in its "legal analysis" to reach that categorical conclusion in your letters to me and the Court of Appeals of October 1, or you have not received it "to date" and then you lacked any basis to 'reply to my letter and motion in the previous manner'. You cannot have it both ways. You have impeached yourself in a single letter of one page!

One day this case will come to trial and I will call you to the witness stand. Do you get a feeling of what it will be like when I examine you as a hostile witness? If you cannot manage in merely one letter your versions of facts about your own actions, how can you possibly handle, let alone do so effectively, 3,909 cases?!

How many other statements have you made that are liable to impeachment? I have already pointed out how you pretended in the letter of yours that I received on April 15 –which was undated either out of carelessness or by design– to be investigating the DeLanos, as I had requested in my Objection to Confirmation of March 4, the Memorandum of March 30, and conversations on March 8 and 12. In my letter to you of April 15, I asked that you either state what it was that you were investigating and its scope or let me know that you were not investigating anything and stop making me wait in vain. It was only thereafter, in your letter of April 20, that you for the first time asked for the DeLanos to produce documents relating to their bankruptcy petition. You had been investigating nothing! So much so that you had received no documents before that letter and received none after it to the point that on June 15 you moved to dismiss the DeLano case "for unreasonable delay" in the production of documents.

You had misled me into thinking that you were investigating the DeLanos. No wonder you did not want to send me a copy of your letter of March 12 to Att. Werner, for you soon realized that what you did not want to ask the DeLanos to produce and they did not want to produce either, neither wanted me to be able to ask directly Att. Werner to produce.

Do you sense how it is possible, even likely, that you may have already provided other issues on which I will impeach you?…to your surprise, of course. What about the risk of what may come out through an examination of the DeLanos? Can you want me to examine Att. Weidman in his capacity as the presiding officer at the March 8 meeting and as a §327 professional person? Attorney-client privilege is not a bar to his disclosing what he learned and did while rendering services or unlawfully substituting for you at that meeting. In other cases too?

This brings us to your motives. As I have pointed out before, you have a conflict of interests: If through a diligent and effective investigation of the DeLanos or through my examination of them at a §341 meeting evidence were to come out showing that their bankruptcy petition was meritless, let alone fraudulent, then you would be investigated in turn for having readied their plan of debt repayment for confirmation by Judge Ninfo. That is why you now allege in your self-contradictory way that neither the "Bench Order" nor the August 30 Order of Judge Ninfo allows you to hold that meeting: You do not want me to examine the DeLanos anymore than your attorney, Mr. Weidman, wanted me to do so as early as after my second question on March 8. Actually, your risk from what I may ask and the DeLanos may answer is greater, for now you know that I have shown on the basis of the few documents belatedly produced by them that they have engaged in concealment of assets and that you could have determined that had you only reviewed their petition. Hence, my examination would now be much more focused and incisive.

It follows from these facts that you have so impaired your credibility and have revealed such improper motives that you are unfit to continue as trustee in this case. If instead of cutting your losses by recusing yourself from this case you persist in staying on, you will only keep digging yourself into a deeper hole from which you will not be able to extricate yourself. It would be wishful thinking to expect the other parties to come to your rescue, for the time is approaching when it will be every man for himself. Take this as a hint: After several of my motions in the Court of Appeals for the Second Circuit in the context of my appeal there, i.e., In re Premier Van Lines, docket no. 03-5023, requesting his recusal, the Chief Judge of that Court, the Hon. John M. Walker, Jr., has recused himself from further consideration of that case.

Therefore, I respectfully request that:

1. you disqualify yourself from the DeLano case; otherwise,

2. take the necessary steps to hold a §341 meeting of the DeLanos on the following dates:

Wednesday, November 3, 2004; Thursday, November 4, 2004

or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, to Assistant U.S. Trustee Schmitt, and to me your legal authority and arguments to refuse to hold such meeting and request that they take a position on the issue.

I look forward to hearing from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:		Case No.: 2-04-20280-JCN
David G. DeLano Mary Ann DeLano	SSN/Tax ID: xxx-xx-3894 xxx-xx-0517	Chapter: 13
Debtor(s)		

NOTICE OF ENTRY

PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on August 30, 2004 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: August 30, 2004

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: P. Finucane
Deputy Clerk

Form ntcentry
Doc 62

029674

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

October 13, 2004

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

RE: David & Mary Ann DeLano; BK#04-20280

This is in reply to your letter faxed to me dated October 12, 2004.

1. I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.
2. My notes of the August 23, 2004 Hearing, specifically state that "all Delano Chapter 13 Court Proceedings except for the Objection to the Proof of Claim are suspended." The Court further stated that the Objection to your claim changed the entire approach to the procedures "dramatically" and that the primary question now is whether you are a creditor and whether you have standing in the Delano case.
3. I did in fact receive a copy of your motion as part of the mailing you sent to me previously. I would note that the Motion that you made is in the "Premier Van Lines Case;" however, as an attorney, I am sure you are aware that the Judge's Order of August 30, 2004, has nothing to do with the appeal which you have pending in the Second Circuit. It is not a final Order, and it is not appealable until a final decision is made regarding your claim in Premier Van Line. If you have a dispute with my legal analysis, then that is best left to the Appellate Court at the appropriate time.

At this point in time, I am awaiting a final determination as to your status as a creditor with standing in the Delano matter.

Very truly yours,

GEORGE M. REIBER

GMR/mb

U. S. Department of Justice

United States Attorney
Western District of New York

Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

716-843-5700
FAX 716-551-3052

PHONE: (716) 843-5814
Fax: (716) 551-3051
Michael.Battle@usdoj.gov

November 4, 2004

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

Dear Dr. Cordero:

Upon a careful review of the documentation which you have submitted to my office and in relation to our recent conversation, I find no basis for your claim of bankruptcy fraud. Thank you for bringing this matter to my attention. Best of luck to you.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney
Western District of New York

MAB/jlb

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

November 15, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I am in receipt of your letter of November 4 in which you state that you find no basis for my claim of bankruptcy fraud and have closed this case. However, this is not in keeping with what you told me in our conversation on Monday, November 1, that you would do.

In that conversation you indicated that you had not yet received the files that I sent to the U.S. Attorney in Charge of the Rochester Office, Bradley Tyler, Esq., but that you would ask for them; that that you have very skilled people that would look into whether there was bankruptcy fraud; that it would take them several weeks to complete their review; and that after you reached your conclusion you would let me know and we would discuss them. I believed what you told me, not because I am naïve, but rather because I believe that the word of an attorney of the United States is not given lightly and should be taken seriously. Yet, what you told me that you would do could not have been done between November 1 and 4.

Indeed, you asked me what evidence I had of bankruptcy fraud and I told you that it was documentary evidence contained in the files that I sent to Mr. Tyler. I appealed to you on September 18 precisely because of the evidence that neither he nor his assistant, Richard Resnik, Esq., reviewed them, but instead relied on a building co-worker's assertion that no investigation was needed, that is, Assistant U.S. Trustee Schmitt, who has a vested interest in not having this matter investigated. But even that appeal to you, bound with supporting documents, was sent to Mr. Tyler for him to review an appeal against himself!, a decision that defies common sense and legal practice. So the only material that you could have reviewed was that 5-page appeal without supporting documents that I resubmitted by fax to you and which dealt with the questionable circumstances of Mr. Tyler's decision rather than with the evidence of the judicial misconduct and bankruptcy fraud scheme. So, you did not have the documentation to support your statement that "[You] find no basis for [my] claim of bankruptcy fraud"? No wonder you asked me at the beginning of our conversation to tell you what this was all about and what I wanted you to do.

That you had no other documentation, let alone reviewed it, can be inferred from the facts. Thus, after I sent you my appeal of September 18, I did not hear from your office in Buffalo or Rochester. I had to call you several times but could only speak with your Executive Assistant, Ms. J. Bowman, who eventually found out that the appeal file had been sent to Mr. Tyler. After I faxed her only the appeal and made more calls, her statement that it had been assigned to Mary Pat Floming, Esq., proved inaccurate. I made more calls requesting to speak with you.

Then on Wednesday, October 27, Ms. Bowman called me and said that you wanted to talk to me the next day at 3:00 p.m. I agreed. But on Thursday, that time came and went and you did not call. I called to find out what happened and Ms. Bowman said that you had been called to court urgently. She asked whether the conference could be rescheduled for Friday, at 9:00 a.m. I

agreed. But you did not call either. Instead, at 9:42 Ms. Bowman called to say that you were on a video conference with Washington, and whether you could call me at anytime later that day. I agreed. But you did not call either.

On Monday, November 1, I called and Ms. Bowman said that you had a 9:30 a.m. meeting and asked whether you could call me between 10:30 and 10:45. I agreed. But at about 11:02 she called back to reschedule your call for 11:45 a.m. When you finally called and although our conversation lasted some 12 minutes, you grew impatient toward the end of it, particularly when you asked me what type of evidence I had and I told you that it was the documents in the files and asked whether you had retrieved them from Mr. Tyler. Then you stated what you were going to do and put and end to the conversation.

If somebody told a jury or a fair-minded public servant how you ignored for well over a month an appeal made to you and then how you made appointments to discuss it only to successively ignore or reschedule them, could they reasonably believe that such hands-off treatment and informality revealed, or was intended to send the message of, how unimportant you considered the matter? If the answer is yes, would it be naïve or wishful thinking to expect them to believe that after our conversation on that Monday you dropped everything that you were doing, asked for the files from a person in another city, precisely the one who for over three months failed to deal with the four original files and the appeal, but who nevertheless dropped everything he was doing to send you five files with over 315 pages, which you reviewed and by Thursday you had with due diligence reached the decision that there was no basis for the claim of bankruptcy fraud? You even totally missed the other part of the scheme: judicial misconduct!

You could allow yourself to become hostile toward me because of this statement of facts, but that would be the wrong reaction. For one thing, I am not the suspect of criminal wrong-doing, but rather a responsible citizen appealing for your help. I need it and deserved it because for over two years I have suffered tremendous loss and aggravation at the hands of a group of powerful officers and have meticulously collected and analyzed evidence pointing to their motive therefor, money! Moreover, you are the top law enforcement officer in that area and your decision affects the public at large, for at stake here is the integrity of top judicial and bankruptcy officers and of systems set up for the common good, not for their private gain. In addition, it is not fair for you to ask me for evidence -particularly since you have not looked at what I already presented- since the law, at 18 U.S.C. §3057(a), does not even ask judges for evidence before they can make a report to a U.S. attorney about bankruptcy fraud, but just asks that they have "reasonable grounds for believing…that an investigation should be had in connection therewith".

Therefore, I respectfully request that you:

1. retrieve the five files from Mr. Tyler;
2. entrust them and the investigation of a judicial misconduct and bankruptcy fraud scheme, not to him or his office, for the reasons in my appeal, but as you said, to the very skilled people that you have and were going to assign to it; or request that the Acting Attorney General appoint outside investigators, such as from Washington, D.C., or Chicago; and
3. let me talk to them because both I know a file that now has over 1,500 pages so that I can facilitate their work and this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme.

Sincerely, Dr. Richard Cordero

U.S. Department of Justice

United States Attorney
Western District of New York

Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

716-843-5700
FAX 716-551-3052
Writer's Extension: 814
Writer's E-Mail Address: michael.battle@usdoj.gov

November 29, 2004

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

Dear Dr. Cordero:

Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who have had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather, it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

Nevertheless, as previously indicated, having more clearly examined your concerns, I do not find there is a legal basis for the challenges that you now raise. The employees of this office have adequately reviewed any and all documentation, including court records of prior proceedings. While you may be unhappy with the result, it is my opinion that the court's decision is unlikely to be disturbed. Litigants and parties who do not get the results they hope for in cases, commonly react the way that you have and that is understandable. You have asked for review and oversight by this office, which I have undertaken, and at this time, I would like to reiterate that I find there to be no impropriety.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney

MAB/sas

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

December 6, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I received your letter of November 29. In your opening paragraph you stated as follows:

> Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who [sic] had had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

First, your reference to "our most recent telephone conversation" is misleading because in all the months that I have been pursuing this matter, and wrote to you, and made numerous calls to you, and left messages with your Executive Assistant, Mrs. J. Bowman, we have had one single conversation, i.e., the one that you quickly ended on November 1, which from the perspective of your writing on November 29 –triggered only by my message that day- is hardly recent.

Then you stated that you took what I "said and requested very seriously", thereby revealing once more that when we spoke you did not know the facts of my case because you had not read **1)** my Appeal to you of September 18 (E*-139), which despite appealing from the decision under questionable circumstances of Att. Tyler not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme, you sent back to him so that contrary to common sense and legal practice he could deal with a complaint about himself –which he has failed to do to date- nor had you read **2)** any of the copies of that Appeal that I faxed to you. Had you taken "very seriously" what I "said and requested" in my Appeal, you would have mentioned it at least once and realized how injudicious it was to rely on the word of those complained-about.

Evidence that you did not read the Appeal, let alone any of the four evidentiary files (E-137) that upon my request Att. Tyler agreed on September 15 to forward to you but failed to do so, is your statement that you "met with the other staff from who [sic] have had previous involvement with your case". But my Appeal discusses precisely the evidence that Att. Tyler failed to involve himself with the files because, following your example, he passed them on to an assistant, Att. Richard Resnick, whom the evidence shows not to have had the material possibility (E-136) of reviewing them before he wrote to me on August 24 (E-135) that no investigation would be opened and returned the four files. What they did is what you failed to read in ¶2 of the Appeal: "...neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself." Had you taken this matter seriously, you would have known that they did not involve themselves with my evidence and would have tried to determine with what they involved themselves and why.

It was not with the facts that they involved themselves, these "trusted professionals" whose word you accept uncritically. Indeed, you wrote next thus:

> During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

What are you talking about?! No action to which I am a party has been "resolved by a bankruptcy judge": The Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY, has been on appeal in the Court of Appeals for the Second Circuit since April 200*3*, from where it will go to the Supreme Court; and In re D. & M. DeLano, dkt. no. 04-20280, WBNY, has been reduced to the determination of the DeLanos' July 19 motion to disallow my claim (E-73), including all appeals, as stated by Judge John C. Ninfo, II, in his **Interlocutory** Orders of August 30 (E-101) and November 10 (E-244). What "final legal resolution" did your "trusted professionals" or you are referring to? How can you possibly qualify as 'appropriate' a decision that does not yet exit?

Or does it already exist? The implication of so interpreting your gross mistake of fact is that your "trusted professionals" have had direct ex parte or indirect contact with Judge Ninfo and know the outcome of a case still in process. This would confirm what I have asserted (E-109): that the DeLanos' motion, allowed by Judge Ninfo despite being untimely and barred by laches, is a subterfuge that by disallowing my claim against Mr. DeLano will remove me from the DeLano case so that I have no standing to ask for discovery of the DeLanos' documents that will show how their January 27 bankruptcy petition (E-167) is fraudulent (E-57, E-63) but supported by judicial misconduct that forms part of a bankruptcy fraud scheme. No wonder Judge Ninfo has allowed Mr. DeLano, a bank *loan* officer for 15 years who must know too much to be exposed to discovery, to deny me all documents that I requested (E-234-246) and even to disobey his order for document production of July 26 (E-81). The whole process is a sham!…and you have the evidence!

While in order to keep you quiet your "trusted professionals" may have told you that an 'appropriate' "final legal resolution" had been reached, you have constructive knowledge that such could not be the case. You claim that "Immediately after our conversation" on November 1 you talked to Att. Tyler and the others involved with my case and wrote to me on November 4 that "I find no basis for your claim of bankruptcy fraud" (E-147). Yet, on November 15, I wrote to you "let me talk to [outside investigators] because...this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme". That is the last clause of the last sentence of the letter, which you did not read either!

This much analysis of your letter should suffice to let any fair-minded prosecutor realize how perfunctorily you have treated this matter: The issue that I posed to you was not even whether I was "in agreement with" any decision, let alone a "final legal resolution", but, as stated in the caption, whether there is "a judicial misconduct and bankruptcy fraud scheme". This affects "the people of the United States", not just me. Therefore, if you take "very seriously" that you are "tasked with the responsibility of representing" all of them, I respectfully request that you:

1) refer the accompanying Request* and Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and **2)** copy me to the referral.

* Exhibits=E and Request sent by mail

Sincerely,

Dr. Richard Cordero

RB:143

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

December 6, 2004

REQUEST

TO Michael A. Battle, Esq.

U.S. Attorney for the Western District of New York

TO REPORT TO THE ACTING U.S. ATTORNEY GENERAL FOR INVESTIGATION THE EVIDENCE OF A JUDICIAL MISCONDUCT AND BANKRUPTCY FRAUD SCHEME

TAB LE OF CONTENTS

I. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated 1

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial 2

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets 5

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law 8

II. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme 11

A. How a bankruptcy fraud scheme works 11

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme 13

III. The need for investigators to be unacquainted with any party that may be investigated 14

IV. A. Starting points for an investigation into the scheme 16

V. Relief requested 17

Table of Exhibits i

* * * * * *

I. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated

1. The evidence of judicial wrongdoing linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a

summary of it can be provided here. Likewise, only the most pertinent documents have been referenced, many of which have already been submitted in five previous files. However, all of those included in the Table of Exhibits (i, infra) but not attached hereto, and those referred to in the ones attached are available on request.

2. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to call for an investigation and conduct it. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, **a)** a trustee sued for negligence and recklessness who had before the Judge some 3,000 cases! –how many do you have?-; **b)** an already defaulted bankrupt defendant against whom an application for default judgment was brought; **c)** parties who have disobeyed his orders, even those that they sought or agreed to; and **d)** debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

    2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the fraud scheme.

    3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial

3. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery

(Exhibit page 1=E-1) in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY docket no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

4. By that time, Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2§II)

   a) Indeed, the statistics on PACER as of November 3, 2003[1,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[2] cases before Judge Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

5. Could you handle competently such an overwhelming number of cases, increasing at the rate of 1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive "yes!", it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee's motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon's negligence and recklessness in this case…and in how many others of their thousands of cases? There is a need to investigate what is going on between those two…and the others, (cf. E-3§§B-E; E-86§II).

6. Judge Ninfo denied Dr. Cordero's timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY docket no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero's

[1] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.

[2] Id.

property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's complaint. In his denial of Dr. Cordero's application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Thus, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Plaintiff Pfuntner!

a) Judge Ninfo would not compel Bankrupt Owner Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4§§C-D).

7. At the instigation of Mr. Pfuntner, who said that property had been found in his warehouse that might belong to Dr. Cordero, Judge Ninfo ordered Dr. Cordero to travel from New York City all the way to Avon, outside Rochester, to conduct an inspection of it within a month or the Judge would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less!

8. Yet, for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr.

Cordero? (E-5§E; E-90§III)

9. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets

10. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; WBNY docket no. 04-20280 (E-167). The values declared in their schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

    a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

    b) The DeLanos incurred scores of thousands of dollars in credit card debt;

    c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

    d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

    e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F (E-167 et seq.);

    f) owe also a mortgage of $77,084;

    g) but have near the end of their work lives equity in their house of only $21,415;

    h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-199);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65§III; cf. 18 U.S.C. § 152(9)).

11. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64§II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64§III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117§B) How extraordinary! given that:

    a) The DeLanos had treated Dr. Cordero as a creditor for six months;

    b) They were the ones who listed Dr. Cordero's claim in Schedule F (E-167 et seq.)…for good reason because

    c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into Pfuntner v. Gordon et al. as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115§A)

12. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33§II)

13. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's claim is a desperate attempt to remove belatedly from their case Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; E-199) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80**;** E-204). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92§IV), he refused to even docket it (E-80; E-84§I; 90§III) and only issued a watered down version on July 26 of Dr. Cordero's proposed order (E-76; E-81) that he then allowed the DeLanos to disobey by not producing the documents requested in the Judge's order! If not for leverage, what was it issued for?

14. Dr. Cordero moved (E-83) that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (E-107; E-121§III) That could take years! during which the other 20 creditors are prejudiced by not receiving any payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interests of creditors and the public so as to protect the DeLanos needs to be investigated.

15. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. (cf. E-245¶2) To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero

access to judicial process! (E-121§§III-IV) The stakes must be very high!

16. Thus, in his August 30 order (E-101) Judge Ninfo required Dr. Cordero to prove his claim against Mr. DeLano, though he cited no legal basis therefor and ignored the legal basis for not doing so. (E-109) Yet, to comply with it, Dr. Cordero requested Mr. DeLano to produce documents (E-204; E-225). Mr. DeLano alleged that they were irrelevant to Dr. Cordero's claim against him and produced none. (E-230). Dr. Cordero raised a motion (E-234) where he discussed the scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1). (E-237§II) He argued that he can request discovery not only to prove his claim against Mr. DeLano, but also to defend against the DeLanos' motion to disallow it by showing that it is a blatant attempt to remove him from the case before he can demonstrate that the DeLanos' petition is fraudulent and masks, among other things, concealment of assets.

17. The response to that motion of November 4 was ever so swift: On November 9, Mr. DeLano filed a response denying production of every document requested, alleging them to be irrelevant or not in his possession (E-242) and on November 10, without any hearing, Judge Ninfo entered an order stating that "The Cordero Discovery Motion is in all respects denied". (E-244) Neither the Judge nor the attorney for Mr. DeLano, Att. Werner, engaged in any legal discussion, much less cited any legal provision, (cf. E-40-42) for why waste time and effort researching and discussing the law, rules, and facts when the judge is on your side and he has no inhibition about resorting to conclusory statements to achieve his objective: to prevent at all costs Dr. Cordero from discovering information that can link judicial misconduct (E-1) to a bankruptcy fraud scheme. Would you feel proud of having written that order or rather, for standing up for your belief that just and fair process and the integrity of the judiciary require that an investigation should be had?

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

18. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-163). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[3] *open* cases! He cannot be all the time where he should be.

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

19. So at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-42)

20. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65§III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64§II) and perfunctorily (E-66§IV).

21. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F (E-167 et seq.) that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years, according to their 1040 IRS forms, despite having declared to have in hand and on account only $535! (E-66§IV; E-167 et seq.)

22. Despite Dr. Cordero's repeated requests that Trustee Reiber hold an adjourned meeting of creditors. (E-201; E-214; E-228**)** The Trustee has refused alleging that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined (E-213). What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo. (E-215)

23. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were

established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of the U.S. Trustees Schmitt and Martini (E-71¶32; E-93§V & §VI¶34d; E-224), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. No wonder he has been so flagrantly disingenuous in pretending that he cannot hold a §341 examination of the DeLanos because Judge Ninfo's order does not allow him to. (E-215; E-219; cf. E-214)

24. So has been Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Private Trustees Reiber and Gordon. Dr. Cordero asked her in writing (E-224) and in messages left on her voice mail and with her assistants that she instruct Trustee Reiber to hold a §341 examination of the DeLanos or state why neither she or he will do so. She has failed to return his calls or write to him. Instead, she had an assistant state that she "is planning to contact George Reiber, Esq., so they can coordinate setting up an adjourned meeting of creditors in the [DeLano case]…and will contact you [when she will be in] the office on November 17 to handle court appearances…or prior to it". (E-227) However, although she has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI (cf. 14§III, infra), and she did appear in court on November 17, according to her assistants, and can get a hold of Trustee Reiber there and on the phone, and summon him to her office, she failed to contact Dr. Cordero on that date, prior to it or thereafter, and will not return his messages.

25. Trustee Schmitt has an interest in not letting that examination take place. If Dr. Cordero, as a creditor, examined the DeLanos and found out that their petition was fraudulent, not to mention that Trustee Reiber knew it, and Trustee Reiber were investigated, she too could be investigated for having allowed her Supervisee Reiber –just as she did her Supervisee Gordon- to accumulate thousands of bankruptcy cases that he cannot possibly handle competently, but from each of which he receives a fee. Why? How does she figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases –and Trustee Gordon his 3,383 cases-, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? How could she expect those trustees to have time to do anything more than rubberstamp petitions and cash in? (11§IIA, infra) What was she thinking!? Certainly, what she has been doing with those trustees needs to be investigated.

26. So does the kind of supervision that U.S. Trustee for Region 2 Deirdre A. Martini has been or not been exercising over Assistant U.S. Trustee Schmitt. (E-68§V) Dr. Cordero has served on her every paper that he has written in the DeLano case since the unlawful termination of the March 8 meeting of creditors by Trustee Reiber and his attorney, Mr. Weidman; in addition, he has written to her specifically. She has actual and constructive knowledge of the details of this case. In fact, as early as March 17 and without any investigation of the motives for preventing Dr. Cordero from examining the DeLanos, she stated categorically to him that she would not remove Trustee Reiber from the DeLano case, as Dr. Cordero had requested, and that instead she just wanted "closure". How odd, for the case had just gotten started! Then she engaged in deception to avoid sending him information that could allow him to investigate the case on his own. (E-141¶10)

27. More recently, Trustee Martini has failed to state, as requested by Dr. Cordero, whether she will ask Trustee Schmitt to instruct Trustee Reiber to hold an examination of the DeLanos at an adjourned meeting of creditors. She too has failed to write to Dr. Cordero thereon as promised in their phone conversation on November 1, the second one that she has deigned to take from him (E-224; E-247), just as Trustee Schmitt failed to contact Dr. Cordero on that subject, as she let him know she would (E-227).

28. Something is not right here…or rather a lot. Why none of them wants Trustee Reiber to investigate the DeLanos and all have countenanced his failure to do so calls for an investigation. No doubt, Mr. DeLano, a loan officer for 15 years, knows and could say too much under examination.

II. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme

A. How a bankruptcy fraud scheme works

29. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. (cf. fraudulent intent may be proven circumstantially. *United States v. Goodstein*, 883 F.2d 1362, 1370 (7th Cir. 1989), *cert. denied*, 494 U.S. 1007 (1990)) It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so

many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

30. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

31. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

32. As for a standing trustee, who is a private professional, not a federal employee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the debt repayment plan of each debtor'. Thus, after receiving a petition, the trustee is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves his plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

33. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

34. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred",

§586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not as if he really had no money.

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme

35. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case in violation of 18 U.S.C. §152(6) and does not accuse anybody thereof. But just as a jury is entitled to "put two and two together" at the time of deciding upon depriving a bankruptcy fraudster of his property or even his freedom (DoJ US Attorneys' Manual, Title 9, Criminal Resources Manual §840), Dr. Cordero too is entitled to use common sense in drawing reasonable inferences from what he does know and affirm:
    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER (¶¶4a and 18, supra;
    b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document (E-64§I);
    c) chose to dismiss the case rather than subpoena the documents requested but not produced (E-62, E-65§III);
    d) has refused to trace the substantial earnings of the DeLanos' (E-68§V); and
    e) after ratifying the unlawful termination of the meeting of creditors (E-40-42), refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero (E213, E-215).
36. Moreover, there is something fundamentally suspicious when a bankruptcy judge:
    a) protects bankruptcy petitioners from a default judgment and from having to account for $291,470 (E-234, E-244);
    b) allows the local parties to disobey his orders with impunity (E-234, E-244; ¶8, supra);

c) before any discovery has taken place, prejudges in his August 30 order that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud scheme (E-66¶¶17-20);

d) yet shields them from discovery by suspending all further process until their motion to disallow Dr. Cordero's claim is finally determined (E-107) and agreeing that they may not produce any documents at all, not even those that he had ordered them to produce! (E-81, E-92§IV; E-114§II); cf. 18 U.S.C.§154(2)); and

e) engages and allows other court officers to engage in inexcusable docket manipulation (E-75, E-80, E-84§§I-II) and knowingly makes onerous requests on Dr. Cordero for no purpose at all (E-84§III; ¶6, supra) and disregards the law, the rules, and the facts (E-1; E-40-42; E-114§II) so repeatedly and consistently to the detriment of Dr. Cordero, the only pro se and non-local party, and to the benefit of the local parties (E-121§IV) so that his and their acts form a pattern of non-coincidental, intentional, and coordinated wrongdoing.

37. These facts and circumstances together with those of the DeLanos (¶10, supra; §IV, infra) support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had (cf. 18 U.S.C. §3057(a)). That investigation should be an official one because

> 18 U.S.C. §152 was enacted to serve the important interests of government, not merely to protect individuals who might be harmed by the prohibited conduct [to that end, §152] attempts to cover *all the possible methods* by which a bankrupt *or any other person* may attempt to defeat the Bankruptcy Act through an effort to keep assets from being equitably distributed among creditors, *Stegeman v. United States*, 425 F.2d 984, 986 (9th Cir.), *cert. denied*, 400 U.S. 837 (1970)(citation omitted; emphasis in original).

III. The need for investigators to be unacquainted with any party that may be investigated

38. If that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out

by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building, as do the U.S. attorneys and FBI agents, or live in the same small community in Rochester or Buffalo, NY. They too may fear the consequences of admitting that right under their noses such a scheme developed. The evidence contained in letters and conversations between Dr. Cordero and U.S. officers (E-135-152) justifies such request and warrants the following remarks.

39. A competent investigation cannot limit itself to asking officers, whether they be trustees, U.S. attorneys, or FBI agents, to file a report on what they and others have done concerning this matter. It should be quite obvious that they would not write a mea culpa incriminating themselves. Could any reasonable person expect them to do so? Rather, what they will choose to write down, or say upon being questioned or interrogated, will bear the spin that they have put on it in order to make themselves appear to have discharged their trustees duties adequately and their investigative or supervisory functions appropriately. The same goes for what judicial officers have written in their orders or decisions. One must read them between lines, both in the context of everything else in the cases in question and with a basic understanding of what motivates people's conduct. The former provides knowledge of the facts and the latter calls for intuition, common sense, and a feeling for what is just, fair…and you would like done to you.

40. So equipped, a forensic investigator can apply the principle of plausible explanations, which says that if two explanations adequately explain the same set of circumstances and observations, neither can be discarded without further investigation that brings to light new relevant circumstances or observations that show one explanation to be less adequate than the other because, for example, to a substantial degree it is inconsistent with, or incapable of explaining, the new elements. That principle is of such paramount importance in decision making that it provides the foundation of our criminal law in the form of the standard of beyond a reasonable doubt.

41. Thus, one of two plausible explanations for the conduct of people under investigation cannot be preferred over the other because those people are assumed to be honest and competent, if that is precisely what the evidence cast doubt on and what the investigation must determine. To make such assumption and systematically give the benefit of the doubt to them because they are judges or other U.S. officers is to conduct a pro forma exercise guided by a preconceived idea

that they can do no wrong and their word is implicitly truthful and correct. While a person is presumed to be innocent until proven guilty, that is not the same as assuming that he or she is honest, let alone incapable of a lapse of judgment, immune from the temptation of an illegal gain or advantage too good to be missed, and has the integrity not to indulge in abuse of power to obtain it. Such assumption does not lead an investigation to ascertaining the facts, but rather reaches the intended objective of a whitewash.

42. Nor can a competent investigation proceed on the assumption that the complainant is fundamentally dishonest and nothing but a nuisance. That attitude betrays a bias against him, born of the mentality that 'we protect our own from outsiders that attack any of us'. Such way of thinking is inimical to the mentality of a public servant, one who welcomes the opportunity to serve a member of the public. But when the aim is to get rid of any of them, the first thing to go is his credibility, which results in discounting his statements as unreliable. Consequently, his statements are not used to check the reports received from the officers, which are accepted at face value, for why confront the truth and accuracy of "trusted professionals" (E-150) against the mere "allegations" (E-135)-of just 'another unhappy litigant' (E-150)?

43. Such uncritical acceptance of whatever officers say, which arbitrarily ignores the realistic possibility that their statements may be colored by their vested interests (cf. ¶¶4-5, supra), causes the investigator to follow them as if drawn by the nose, unaware of walking over a path strewn with gross mistakes of fact and reasoning, never caught because never searched for because always conceived as non-existent. The infirm conclusions arrived at by going through such motions of an investigation are not only unjust and unfair to the complainant, who is left to suffer even more abuse and bias (E-43 ftnts. 2-5 and related text), but they also protect the officers from being exposed and thereby affords them the sense of security that encourages them to persist in their ways (cf. E-42). If their ways are the twisted ones of wrongdoing and substandard performance, the situation complained-about only worsens until it explodes into a scandal.

44. Hence, an investigation conducted by those so involved with people to be investigated that, at best, they trust them more than the evidence (E-136, E-143¶17), and at worse, they excuse or look the other way for fear of being investigated themselves (E-143¶18), is fundamentally flawed. Let out-of-towners, unrelated to any potential investigative target, conduct all aspects of the investigation.

IV. Starting points for an investigation into the scheme

45. Such investigation should take into account 18 U.S.C. § 152 and start by:

a) subpoenaing the bank account and *debit* card statements of the DeLanos to establish the flow of their earnings since the date they alleged their financial problems began, that is, "1990 and prior credit card purchases" (E-167 et seq., Scheduled F; cf. 18 U.S.C. §152(9) and DoJ US Attorneys Manual, Title 9, Criminal Resources Manual §867);

b) ascertaining the whereabouts of the $291,407 earned in just the 2001-03 fiscal years according to their 1040 IRS forms (cf. 11 U.S.C. §542(a));

c) establishing the nature and use of $118,000 borrowed from Manufacturers & Traders Trust (MT&T) and ONONDAGA Bank, in two $59,000 charges that, according to the Equifax credit report of May 8, 2004, for Mrs. DeLano, appear on accounts opened in March 1988; were paid in little over 10 years; and are noted by Equifax as "Current status-Pays as agreed". Since the DeLanos have been late in paying their debts more than 232 times, according to that Equifax report and the one for Mr. DeLano of April 26, 2004, this money must have gone into something sufficiently important for the DeLanos not to risk losing it by failing to pay "as agreed". Where did $118,000 go or in which asset(s) is it? It is certainly not accounted for by their mere $21,415 home equity or their meager $2,910 worth of household goods (E-167 et seq., Schedules A and B)…near the end of two lifetimes of work! Will they retire to old-age poverty or to a golden nest?;

d) establishing the circumstances of their $10,000 loan to their son, undated and already declared uncollectible by the DeLanos, none too concerned by their financial security although at the time of their bankruptcy they declared only $535 "cash on hand" and in accounts (E-167 et seq. Schedule B; cf. 18 U.S.C. § 152(7) and Criminal Resources Manual §§858 and 862); and

e) examining the DeLanos under oath, for what a veteran bank loan officer and his technically-oriented wife know could lead to cracking a far-reaching bankruptcy fraud scheme!

V. Relief requested

46. Therefore, Dr. Cordero respectfully requests that you:

a) report this Request and Exhibits to the Acting U.S. Attorney General (28 U.S.C. §526(a)(1)) for an investigation (cf. 18 U.S.C. § 3057(b)) into the evidence of a judicial misconduct and bankruptcy fraud scheme, which has emerged in connection with the following cases:

   1) Premier Van Lines, CA2 docket no. 03-5023;
   2) Mr. Palmer's Premier Van Lines case, WBNY docket no. 01-20692;
   3) Pfuntner v. Gordon et al., WBNY docket no. 02-2230; and
   4) David and Mary Ann DeLano, WBNY docket no. 04-20280;

b) recommend to the Acting U.S. Attorney General that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties that may be investigated in order to insure that they can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way and that to that end, they be from U.S. Attorney or FBI Offices other than those in Rochester and Buffalo, NY, such as those in Washington, D.C. or Chicago;

c) copy Dr. Cordero to your report and referral letter.

Respectfully submitted on,

December 6, 2004

Dr. Richard Cordero

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

TABLE OF EXHIBITS

in support of a

REQUEST

to Michael A. Battle, Esq.
U.S. Attorney, WDNY

TO REPORT TO THE ACTING U.S. ATTORNEY GENERAL FOR INVESTIGATION THE EVIDENCE OF A JUDICIAL MISCONDUCT AND BANKRUPTCY FRAUD SCHEME

submitted on December 6, 2004

by Dr. Richard Cordero

Table Summary

I. Files submitted by Dr. Cordero that were to have been forwarded by Att. Tyler to U.S. Attorney Battle; but available on demand ii

II. Documents provided herewith iii

A. Complaint About WBNY Judge J.C. Ninfo, CA2 docket no. 03-8547 iii

B. Complaint About CA2 Chief Judge J.M. Walker, Jr., CA2 docket no. 04-8510 v

C. Descriptive and Evidentiary Documents Supporting Both Complaints and Pointing to a Judicial Misconduct and Bankruptcy Fraud Scheme v

D. Basis for Requesting that the Investigators Be Appointed From Outside the Buffalo or Rochester Offices vii

E. The DeLanos' Bankruptcy Petition viii

F. Updating documents that show the efforts of Judge Ninfo, Trustee Reiber, and other parties to prevent discovery that would incriminate the DeLanos and them in the bankruptcy fraud scheme ix

* * * * * *

I. Files submitted by Dr. Cordero that were to have been forwarded by Att. Tyler to U.S. Attorney Battle; but available on demand

1. Dr. Richard **Cordero**'s letter of **May 6**, 2004, to David N. **Kelley**, U.S. Attorney for the **Southern District** of NY, to submit **evidence** of bankruptcy **fraud** and judicial **misconduct** and request and investigation and a meeting ..... 76 pages

2. Dr. **Cordero**'s updating letter of **June 29**, 2004, **to** U.S. Att. **Kelley** containing, among others, Dr. Cordero's ..... 128 pages

    a) **Analysis** of **June 26**, 2004, A **Trustee** With **Thousands** of Open **Cases** and **One** Case that **Opens** a **Window into** the Operation of the Bankruptcy Fee **Scheme**, and his

    b) Annotated **Table** of June 26, 2004, **Comparing Claims** on the Bankruptcy Petition of David and Mary Ann DeLano and other Documents Produced by them or Created by the Bankruptcy Court

        1) The DeLanos' **bankruptcy petition** no. 04-20280 WBNY of January 26, 2004
        2) Incomplete **Equifax credit reports** of April 26 and May 8, 2004
        3) **Claims register** of the bankruptcy court for the DeLanos' case as of June 23, 2004
        4) Incomplete credit card **statements of account** as of between July and October 2003, one of each of the eight credit card issuers holding claims larger than $5,000
        5) **Creditors matrix** for the DeLanos' case as of June 23, 2004, in the bankruptcy court

    c) Dr. **Cordero**'s letter of **June 29**, 2004 **to** David **Jones**, Esq., Chief of the Bankruptcy Unit in Civil Matters at the U.S. Attorney's Office in New York

3. Dr. **Cordero**'s letter of **August 14**, 2004, to Bradley E. **Tyler**, Esq., Attorney in Charge of the U.S. Attorney's Office in Rochester, to inform him of the **hearings** on August 23 and 25, 2004, and request his attendance, with file of relevant documents ..... 46 pages

4. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler**, to **send back** to him the unread **files** that were **returned** to Dr. Cordero **by** Assistant U.S. Attorney Richard **Resnick** ..... [but letter at 136, infra] 25 pages

II Documents provided herewith

A. Complaint About WBNY Judge J.C. Ninfo, CA2 docket no. 03-8547

5. Dr. Richard **Cordero**'s judicial misconduct **complaint about** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on **August 11**, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit.....1

6. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence 7

7. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made 9

8. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** about Judge **Ninfo**.....10

9. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** about Judge **Ninfo**, CA2 docket no. 03-8547.....11

10. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review 15

11. **Rule 17(a) and (b)** of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers 16

12. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints.....19

13. Dr. **Cordero**'s letter of **July 1**, 2004, to Fernando **Galindo**, Chief Deputy of the Clerk of Court, **concerning** the warning to him by **Mrs. Harris**, Head of the In-take Room, that if he nodded a third

time in the reading room while reading misconduct orders, she would **call the marshals on him** 21a

14. Acting Clerk of Court Fernando **Galindo**'s letter of **July 9**, 2004, **returning** Dr. **Cordero'**s 10-page **petition** for review **of July 8**, 2004, because the Court's "long-standing practice…[is to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages" 22

15. Dr. **Cordero**'s **petition to** the **Judicial Council** of the Second Circuit of July 8, reformatted and resubmitted **on July 13**, 2004, for review of the dismissal of his **complaint** about Judge **Ninfo**, and addressed to Acting Clerk Galindo **with** a separate **volume of exhibits** after the exhibits attached to the July 8 petition were not accepted.....23

16. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **July 16,** 2004, to Dr. Cordero **acknowledging** receipt of his **petition** for review to the Judicial Council, wrongly dating it as of February 13, and **returning** the also unaccepted separate **volume** of exhibits 28

17. Dr. **Cordero**'s letter of **July 30**, 2004, to the **members** of the **Judicial Council** to let them know that neither the **volume** of exhibits nor the **table of exhibits** accompanying the petition for review was accepted but instead were **returned unfiled** and sending each a copy of the table as well as of the 5-page petition 29

18. Clerk **MacKechnie**'s letter by Deputy **Allen** of **August 13**, 2004, accompanying the **return** of Dr. Cordero's copies of July 30, 2004, to Chief Judge **Walker** of the table of exhibits and the 5-page petition.....30

19. Dr. **Cordero**'s letter of **August 27**, 2004, **to** the Judicial **Council updating** the petition to review with information pointing to **money** generated by fraudulent bankruptcy petitions as the force **driving** the complained-about **judicial misconduct** 31

20. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **October 6**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review 36

21. **Judicial Council**'s **order** of **September 30**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his complaint about Judge Ninfo, CA2 docket no. 03-8547 37

B. Complaint about CA2 Chief Judge J.M. Walker, Jr., docket no. 04-8510

22. Dr. **Cordero**'s judicial misconduct **complaint** of **March 19**, 2004, as reformatted and resubmitted on March 29, **about** the Hon. John M. **Walker**, Jr., Chief Judge of the Court of Appeals for the Second Circuit 39

23. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **September 28**, 2004, to Dr. Cordero accompanying the order of **dismissal** of his **complaint about** CA2 Chief Judge **Walker** 44

24. Acting Chief Judge **Jacobs**' **order** of **September 24**, 2004, dismissing Dr. Cordero's misconduct **complaint about** Chief Judge **Walker**, CA2 docket no. 04-8510 45

25. Dr. **Cordero**'s **petition** of **October 4,** 2004, **to** the **Judicial Council** of the Second Circuit, for **review** of the **dismissal** of his judicial misconduct **complaint** about Chief Judge **Walker**, addressed to Clerk MacKechnie 47

26. Dr. **Cordero**'s letter of **October 14**, 2004, **to** the **Judicial Council submitting exhibits** in support of the petition to review the dismissal of the complaint about Chief Judge Walker **and requesting** an **investigation** 52

27. Clerk **MacKechnie**'s **letter** by Deputy **Allen** of **October 20**, 2004, **returning** to Dr. Cordero the **exhibits** submitted on October 14 and stating that complaints cannot be supplemented 53

28. Clerk **MacKechnie**'s cover **letter** by Deputy-**Allen** of **November 10**, 2004, to Dr. Cordero accompanying the order of the **Judicial Council denying** his **petition** for review of the dismissal of his **complaint about** Chief Judge **Walker** 54

29. **Judicial Council**'s **order** of **November 10**, 2004, **denying** Dr. Cordero's **petition** for review of the dismissal of his **complaint about** Chief Judge **Walker** 55

C. Descriptive and Evidentiary Documents Supporting Both Complaints and Pointing to a Judicial Misconduct and Bankruptcy Fraud Scheme

30. Dr. **Cordero**'s **Objection** of **March 4**, 2004, to **Confirmation** of the Chapter 13 Plan of Debt Repayment 57

31. Trustee **Reiber**'s **motion** of **June 15**, 2004, **to dismiss** the DeLanos' Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004 62

32. Dr. **Cordero**'s **Statement** of **July 9**, 2004, in **opposition** to Trustee's motion to **dismiss** the DeLano petition and containing in the relief the text of a **requested order** 63

33. Att. **Werner**'s **notice** of hearing and order of **July 19**, 2004, objecting to Dr. Cordero's **claim** and moving to **disallow** it 73

34. Dr. **Cordero**'s cover letter of **July 19**, 2004, faxed **to** Judge **Ninfo** and accompanying:....75

    a) Dr. **Cordero**'s **Proposed order** for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004 76

35. Att. **Werner**'s letter of **July 20**, 2004, **to** Judge **Ninfo**, delivered via messenger, objecting to Dr. Cordero's proposed order because it "extends beyond the direction of the Court" 79

36. Dr. **Cordero**'s letter of **July 21**, 2004, faxed **to** Judge **Ninfo,** requesting that he issue the proposed order as agreed at the hearing on July 19, 2004....80

37. Judge **Ninfo**'s **order** of **July 26**, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" 81

38. Dr. **Cordero**'s **motion** of **August 14**, 2004, in the Bankruptcy Court, WDNY, for docketing and issue, removal, referral, examination, and other relief 83

    a) **Proposed Order** For Docketing and Issue, Removal, Referral, and Examination 98

39. Judge **Ninfo's Order** of **August 30**, 2004, to **sever** Dr. **Cordero's claim** against Mr. DeLano arising in Pfuntner v. Gordon et al., which is on appeal (Premier Van Lines, docket no. 03-5023, CA2) and require Dr. Cordero to take discovery of Debtor **DeLano** for the purpose of determining the motion to **disallow that claim** raised in the DeLano case (docket no. 04-20280, WBNY)....101

40. Dr. **Cordero**'s motion of **September 9**, 2004, to **quash** Judge **Ninfo's Order** of **August 30**, 2004....109

41. **Order** of the **Court of Appeals** of **October 13**, 2004, **denying** Dr. Cordero's motion to **quash** Judge **Ninfo's** O**rder** of **August 30**, 2004, and stating that **Chief Judge** Walker **recused himself** from further consideration of the Premier Van Lines case 127

42. Dr. **Cordero**'s **motion** of **November 2**, 2004, in the Court of Appeals to **stay** the **mandate** following denial of the motion for panel rehearing and **pending** the filing of a **petition** for a writ of certiorari in the **Supreme Court** 128

D. Basis for Requesting that the Investigators Be Appointed From Outside the Buffalo or Rochester Offices

43. Letter of Richard **Resnick**, Esq., Assistant U.S. Attorney, of **August 24**, 2004, **to** Dr. **Cordero** stating that the U.S. Attorney's Office in Rochester will **not investigate** Dr. Cordero's "allegations of bankruptcy fraud and judicial misconduct" **and returning** to him all the **files** 135

44. Dr. **Cordero**'s letter of **August 31**, 2004, **to** Att. **Tyler**, to **send back** to him the unread **files** that were **returned** to Dr. Cordero **by** Assistant U.S. Attorney Richard **Resnick** 136

45. Dr. **Cordero**'s cover letter of **September 18**, 2004, to Michael A. **Battle**, Esq., U.S. Attorney for WDNY, accompanying: 138

    a) Dr. **Cordero**'s **Appeal** of **September 18**, 2004, **to** Att. Battle **from** the **decision** taken **by** Att. **Tyler** not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made 139

46. Dr. **Cordero**'s letter of **October 7**, 2004, **to** Jeannie **Bowman**, Executive Assistant to U.S. Att. Battle, accompanying the **resubmission of the appeal** to Att. Battle from the decision of Att. Tyler and stating that the latter was to have forwarded Dr. Cordero's files to Att. Battle and why he should not investigate the case 144

47. Dr. **Cordero**'s letter of **October 19**, 2004, **to** Mary Pat **Floming**, Esq., Assistant U.S. Attorney at the U.S. Attorney's Office in Buffalo, requesting that she sees to it that the accompanying appeal to Mr. Battle gets to him and requesting her assistance 145

48. Dr. **Cordero**'s letter of **October 25**, 2004, **to** Att. **Floming** with an update about why Trustee **Reiber** is **refusing** to hold an **examination** of the DeLanos and stating that just as Mr. Tyler cannot investigate Dr. Cordero's appeal from his decision, neither of Trustees **Schmitt, Martini, or Reiber** can investigate the bankruptcy fraud scheme, but instead, they **should be investigated** 146

49. U.S. Att. **Battle**'s letter of **November 4**, 2004, to Dr. Cordero stating that he **reviewed** the **documentation** and **found no** basis for Dr. Cordero's claim of bankruptcy **fraud** and closing the matter.....147

50. Dr. **Cordero**'s letter of **November 15**, 2004, **to** U.S. Att. Battle showing that as of November 1 Mr. Battle did **not have the documentation** and **could not** have **retrieved it** from the Rochester office **and reviewed** over 315 pages by November 4, and requesting that he obtain the files and assign the case to skilled bankruptcy fraud investigators as he had said on November 1 that he would do 148

51. Att. **Battle's** letter of **November 29**, 2004, to Dr. Cordero stating that his trusted professionals indicated that Dr. Cordero was a party to a bankruptcy that was later appropriately resolved by a bankruptcy judge.....150

52. Dr. **Cordero**'s letter of **December 6**, 2004, **to** U.S. Att. **Battle** showing that **either** he committed a gross **mistake of fact or** his "trusted professionals" had direct or indirect contact with the judge and **learned** the **outcome** of a **case still in process** 151

153-162 reserved

E. The DeLanos' Bankruptcy Petition

53. **Notice** of the §341 **Meeting of Creditors** for March 8, 2004, in the Chapter 13 case of **DeLanos**, filed on February 6, 2004.....163

54. **Petition for Bankruptcy,** with Schedules, under Chapter 13 of the Bankruptcy Code, 11 U.S.C., filed by David and Mary Ann **DeLano**, on **January 27**, 2004, in the WDNY Bankruptcy Court, docket no. 04-20280.....167

55. The DeLanos' Chapter 13 **Plan of Debt Repayment**, dated January 26, 2004.....199

F. Updating documents that show the efforts of Judge Ninfo, Trustee Reiber, and other parties to prevent discovery that would incriminate the DeLanos and them in the bankruptcy fraud scheme

56. Dr. **Cordero**'s letter of **September 22**, 2004, **to** Trustee **Reiber** proposing dates to **examine** the **DeLanos** under §341 and describing the broad scope of the examination as provided under FRBkrP Rule 2004(b) 201

57. Att. **Werner**'s letter of **September 28**, 2004, **to** Trustee **Reiber** informing him that he would **not submit dates for the examination** of the DeLanos in response to Dr. Cordero's September 22 letter until the Trustee instructs him to do so....203

58. Dr. **Cordero**'s letter of **September 29**, 2004, **to** Att. **Werner** requesting **production of documents** pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals 204

59. Trustee **Reiber**'s letter of **October 1**, 2004, **to** Dr. **Cordero** stating that he does **not** think that he has **authority** under Judge Ninfo's bench order **to examine the DeLanos** until the matter of the allowability of Dr. Cordero's claim has been resolved....213

60. Trustee **Reiber**'s letter of **October 1**, 2004, **to CA2 Motions Attorney Arthur Heller** stating that he is not aware of any notice of appeal filed in the Second Circuit and that and that he does **not** believe that Judge Ninfo's Bench Order is **appealable** because it is **not a final order**....214

61. Dr. **Cordero**'s letter of **October 12**, 2004, **to** Trustee **Reiber** setting out the factual and legal reasons why Judge Ninfo's order does not prevent the Trustee from conducting a §341 examination of the DeLanos 215

62. Trustee **Reiber**'s letter of **October 13**, 2004, **to** Dr. **Cordero** stating that he only had Judge Ninfo's bench order, not the August 30 written version and that the latter has nothing to do with the appeal of the Premier case to the Court of Appeals....218

63. Dr. **Cordero**'s letter of **October 20**, 2004, **to** Trustee **Reiber** showing that the Trustee's letter of October 13 belies his statement that he did not have Judge Ninfo's written order of August 30 and once more requesting the §341 examination of the DeLanos 219

64. Dr. **Cordero**'s letter of **October 21**, 2004, **to** Trustee **Schmitt** and to Trustee **Martini** requesting each to instruct Trustee Reiber to hold a §341 examination of the DeLanos 224

65. Dr. **Cordero**'s letter of **October 27,** 2004, **to** Att. **Werner** to make a good faith effort under FRCivP 37(a)(2) to **obtain discovery** from Mr. David DeLano before moving for an order to compel such and for sanctions 225

66. Trustee **Reiber**'s letter of **October 27**, 2004, **to** Dr. **Cordero** requesting a copy of the order by which the Chief Judge of the Court of Appeals recused himself from the Premier Van Lines case 226

67. Ms. Christine **Kyle**'s letter of **October 27**, 2004, stating that Trustee **Schmitt will contac**t Dr. **Cordero** on November 17 when she comes back to the office or before concerning her discussion with Trustee Reiber on the request that the Trustee hold the §341 examination of the DeLanos 227

68. Dr. **Cordero**'s letter of **October 28**, 2004, **to** Trustee **Reiber** providing Trustee Reiber with **dates for** holding the §341 **examination** of the DeLanos and accompanying a 228

69. Statement of **Chief Judge** Walker's **recusal** from the Premier Van Lines case 229

70. Att. **Werner**'s letter of **October 28**, 2004, **to** Dr. **Cordero** stating that Dr. Cordero's **discovery** demands are largely **irrelevant** to his alleged claim against Mr. DeLano, that Mr. DeLano objects thereto, and that the **DeLanos object** to the demand for discovery of their finances 230

71. Response to **discovery** demand of Richard Cordero-Objection to Claim of Richard Cordero, denying as **not relevant all documents** requested and stating that the item concerning Mr. Palmer is **not in** Mr. DeLano's **possession** 231

72. Trustee **Reiber**'s letter of **November 2**, 2004, **to** Dr. **Cordero** stating that he has **nothing to add** to his position concerning Dr. Cordero's request that the Trustee hold the §341 **examination** of the **DeLanos** 233

73. Dr. **Cordero**'s notice of **motion** and supporting brief of **November 4**, 2004, **to enforce** Judge Ninfo's **Order** of August 30, 2004, by ordering Mr. **DeLano** to **produce** the requested documents and declaring that the Order does not and cannot prevent Trustee **Reiber** from holding a §341 **examination of the DeLanos** 234

74. Att. **Werner**'s **statement** of **November 9**, 2004, to the court on behalf of the DeLanos to oppose Cordero [sic] motion regarding **discovery** and request that it **be denied in all respects** 242

75. Judge **Ninfo's** Interlocutory **Order** of **November 10**, 2004, **denying** in all respects Dr. **Cordero's motion** of November 4 and holding the hearing, noticed for November 17, to be moot 244

76. Dr. **Cordero**'s letter of **November 14**, 2004, **to** Trustee **Martini requesting** that she **send** him the **letter** that she agreed to send him to confirm her position that she will not remove Trustee Reiber and requesting that she **instruct** Trustee **Reiber** to conduct a §341 **examination** of the **DeLanos** 247

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

August 11, 2003

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. The issues presented

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

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

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

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

Dr. Richard Cordero

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

February 2, 2004

Hon. John M. Walker, Jr.
Chief Judge
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Judicial conduct complaint 03-8547

Dear Chief Judge,

In August 2003, I filed a judicial conduct complaint under 28 U.S.C. §§372 and 351 concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York. Your Clerk of Court, Ms. Roseann B. MacKechnie, through her Deputy, Ms. Patricia Chin-Allen, acknowledged the filing of it by letter of September 2, 2003. To date I have not been notified of any decision that you may have taken in this matter.

I respectfully point out that Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules is that action will be taken expeditiously.

Indeed, this follows from the provisions of the law itself. Thus, 28 U.S.C. 372(c)(1) provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge shall transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall **promptly**- (A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added).

Despite these provisions in law and rules requiring prompt and expeditious action, this is the seventh month since the filing of my complaint but no notice of any action taken has been given to me or perhaps not action has been taken at all. Therefore, with all due respect I request that you let me know whether any action has been taken concerning my complaint and, if so, which, in order that I may proceed according to the pertinent legal provisions.

In the context of the misconduct complained about, I hereby update the evidence thereof through incorporation by reference of my brief of November 3, 2003, case 03-5023 [www.ca2.uscourts.gov], supplementing the evidence of bias against me on the part of Judge Ninfo. This Court granted leave to file this brief by order of November 13, 2004.

Similarly, in that complaint I submitted that the special committee should investigate whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to my detriment, the only non-local pro se party. To buttress the need for that investigation, I point out that since December 10, 2003, I have requested from the clerk's office of Judge Ninfo's court copies of key financial and payment documents relating Premier Van Lines, which must exist since they concern the accounts of the debtor and the payment of fees out of estate funds and are mentioned in entries of docket no. 01-20692. Yet, till this day the clerk has not found them and has certainly not made them available to me.

1. The court order authorizing payment of fees to Trustee Kenneth Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72.
2. The court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97.
3. The financial statements concerning Premier prepared by Bonadio & Co., accountants, for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16.
4. The statement of M&T Bank of the proceeds of its auction of assets of Premier's estate on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89.
5. The information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70.
6. The Final report and account referred to in entry no. 67 and ordered to be filed in entry no. 62.

A court that cannot account for the way it handles money to compensate its appointees and make key decisions concerning the estate calls for an investigation guided by the principle of "follow the money" in order to determine whether it "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts".

Sincerely,

Dr. Richard Cordero

Cc: Letter of acknowledgment from Clerks MacKechnie and Chin-Allen; and order granting the motion to update evidence of bias.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

February 4, 2004

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

Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your letter, with attachments, dated February 2, 2004, addressed to Chief Judge John M. Walker, Jr.

I am returning your documents to you. A decision has not been made in the above-reference matter. You will be notified by letter when a decision has been made.

Sincerely,
Roseann B. MacKechnie, Clerk

By: Patricia C. Allen
Patricia C. Allen, Deputy Clerk

Enclosures

RB:180

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

June 8, 2004

Mr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Judicial Conduct Complaint, Docket No. 03-8547

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed June 8, 2004, dismissing your judicial conduct complaint.

Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351, you have the right to petition the judicial council for review of this decision.

A petition for review should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . . "

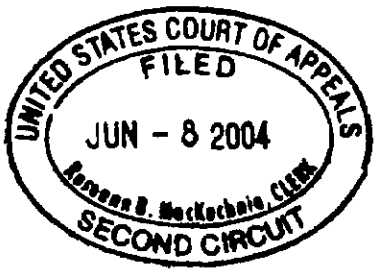
The petition for review must be received in the Clerk's Office **no later than July 9, 2004.**

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

ORIGINAL

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re:
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 03-8547

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Dennis Jacobs, Acting Chief Judge:

On August 28, 2003, Complainant filed a complaint with the Clerk's Office of the U.S. Court of Appeals for the Second Circuit, pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act, 28 U.S.C. § 351 (formerly § 372(c)) (the "Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a Bankruptcy Court Judge (the "Judge") of this Circuit with misconduct.

Background

A review of the docket sheet in this case indicates that in September 2002, Complainant, in addition to several others, was named as a defendant in an adversary proceeding in Bankruptcy Court. After his cross-claims against the trustee were dismissed in December 2002, Complainant filed a motion for default judgment as well as a notice of appeal. In February 2003, the Bankruptcy Court denied a motion for an extension of time to file the notice of appeal, and in March 2003, the District Court granted a motion by the trustee to dismiss the appeal. Since that time, Complainant has filed numerous motions, including a motion for reconsideration, a renewed motion for default judgment,

a motion for sanctions, and a motion to recuse. The motion for reconsideration was denied, and it appears from the docket sheet that hearings were scheduled on the other motions. One was conducted in October 2003, after which Complainant's motion for recusal was denied. In addition, the Second Circuit recently denied Complainant's related mandamus petition.

Allegations

The Statement of Facts recites that the Judge "fail[ed] to move the case along its procedural stages." Specifically, Complainant alleges that the Judge failed to hold conferences, issue orders, schedule discovery, rule on motions, "impose[] consequences on a [defaulted] party;" and that the Judge took no action on Complainant's request that the judge review the trustee's performance and fitness to serve. Complainant also alleges that the Judge dismissed his cross-claims "with no regard to the legitimate questions of material fact regarding the [t]rustee's negligence and recklessness[.] Indeed, [the Judge] even excused [the trustee's] defamatory and false statements . . . thus condoning the [t]rustee's use of falsehood and showing gross indifference to its injurious effect on [Complainant]." He also asserts that the Judge has exhibited "bias and prejudice against" him and that the Judge allowed the other parties "to violate two discovery orders and submit disingenuous and false statements while charging [Complainant] with burdensome obligations." He adds that the District Court Judge, who is not named on the complaint form, "totally disregarded the fact that the damages have nothing to do with a Rule 55 application for default judgment where liability is predicated on defendant's failure to appear."

The Statement of Facts further alleges that: the Trustee's performance was "negligent and reckless; the court reporter "tried to avoid submitting the transcript"; the "Clerk of Court and Case

Administrator disregarded their obligations in handling [Complainant's] application for default judgment"; and that the court officers made efforts to "derail" Complainant's appeals "to the detriment of [his] legal rights."

Disposition

Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." *See* Local Rules 1(b) and 4(c)(1).

Complainant's statements concerning the treatment of motions, the handling of scheduling matters, and various rulings amount to a challenge to the merits of a decision or a procedural ruling. However, "[t]he complaint procedure is not intended to provide a means of obtaining a review of a judge's or magistrate's decision or ruling in a case. The judicial council of this circuit . . . does not have the power to change a decision or ruling. Only a court can do that." Local Rule 1(e); *see* Local Rule 1(b) (the Act does not cover "wrong decisions - even very wrong decisions - in the course of hearings, trials or appeals"). Allegations relating to the merits of the case must be pursued through normal appellate procedures. Similarly, a judicial misconduct complaint may not be used to force the Bankruptcy Judge to rule on Complainant's motions or other aspects of the case. *See* Local Rule 1(e).

Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. *See* 28 U.S.C. § 352(b)(1)(A)(iii); Local Rule 4(c)(3).

Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges of the United States courts of appeals, district courts, and bankruptcy courts, as well as

United States magistrate judges. *See* Local Rule 1(c).

For the reasons stated above, the complaint is dismissed. The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

DENNIS JACOBS
Acting Chief Judge

Signed: New York, New York
June 8, 2004

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

June 19, 2004

Hon. John M. Walker, Jr.
Chief Judge of the U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re request for complaint orders & materials required to be publicly available

Dear Mr. Chief Judge,

Last Wednesday, June 16, I went to the Take-in Room 1803 of the Court and requested of the head of that Room, Ms. Harris, to see the judicial misconduct orders and supporting memoranda. Ms. Harris did not know what I was talking about so I showed her the printed set of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers and drew her attention to Rule 17(a) and (b). After searching for them, Ms. Harris could not produce them. Those orders have not been made available to me yet although they are supposed to be made publicly available by this Court.

Indeed, on that occasion Ms. Harris told me that she would have to find out when I could see them and would call me the following morning to let me know. At that time I wrote down my name, phone number, and Rules that I was invoking. I pointed out to Ms. Harris that I also wanted to find out whether I could get access to the reports provided for under Rule 4(g). Ms. Harris failed to call me on Thursday morning and when I called her in the afternoon she still had not asked. She told me that she would ask and call me within the hour to let me know. She failed to do so too. When I called her again she said that she had been told that the orders had to be examined to determine whether they complied with the requirement concerning the disclosure of the name of the complainant and the complained-about judge. I told her that her statement was wrong since the determination of whether to disclose those names is made before the orders are requested by a member of the public, not upon his request; otherwise, the orders are not in fact been made publicly available, as required. Ms. Harris would not give me the name of the person who gave her that statement, but transferred me to Mr. Fernando Galindo.

Mr. Galindo said that he would find out what orders could be made available to me and call me the next morning. I brought to his attention that I am working to a filing deadline imposed by this Court and need to have access to those orders without further delay. Yet, Mr. Galindo failed to call me on Friday morning. When I called him in the afternoon, he said that he had talked to his Clerk of Court and had been told that the orders had to be submitted to you to determine which complied with the name disclosure requirement and could be made available to me. For the reasons that I had already explained to him on Thursday, I told Mr. Galindo that his statement was wrong, that the Court was not in compliance with its own Governing Rules, and was making me waste time that I need to prepare to meet the deadline.

Therefore, I respectfully request that:

1. pursuant to Rule 17(a), the "the docket-sheet record of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council" be made available to me;
2. it be determined whether I can obtain access to the reports under Rule 4(g); and
3. the deadline of July 9, for me to file a petition for review of the Order, filed June 8, 2004, dismissing my judicial conduct complaint, docket no. 03-8547, be extended by the same number of days from June 16 to the day of your mailing your reply, plus an additional three days, cf. FRAP 26(c).

Sincerely,

Dr. Richard Cordero

RULES OF THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT GOVERNING COMPLAINTS AGAINST JUDICIAL OFFICERS UNDER 28 U.S.C. § 351 et. seq.

Preface to the Rules

Section 351 et. seq. of Title 28 of the United States Code provides a way for any person to complain about a federal judge or magistrate judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. These rules have been adopted under that authority.

Complaints are filed with the clerk of the court of appeals on a form that has been developed for that purpose. Each complaint is referred first to the chief judge of the circuit, who decides whether the complaint raises an issue that should be investigated. (If the complaint is about the chief judge, another judge will make this decision; see Rule 18(c).)

The chief judge will dismiss a complaint if it does not properly raise a problem that is appropriate for consideration under § 351. The chief judge may also conclude the complaint proceeding if the problem has been corrected or if intervening events have made action on the complaint unnecessary. If the complaint is not disposed of in any of these ways, the chief judge will appoint a special committee to investigate the complaint. The special committee makes its report to the judicial council of the circuit, which decides what action, if any, should be taken. The judicial council is a body that consists of the chief judge and six other judges of the court of appeals and the chief judge of each of the district courts within the Second Circuit.

The rules provide, in some circumstances, for review of decisions of the chief judge or the judicial council.

Chapter I: Filing a Complaint

RULE 1. WHEN TO USE THE COMPLAINT PROCEDURE

(a) The Purpose of the Procedure. The purpose of the complaint procedure is to improve the administration of justice in the federal courts by taking action when judges or magistrate judges have engaged in conduct that does not meet the standards expected of federal judicial officers or are physically or mentally unable to perform their duties.

referred to in documents made public pursuant to rule 17.

RULE 17. PUBLIC AVAILABILITY OF DECISIONS

(a) **General Rule.** A docket-sheet record of orders of the chief judge and the judicial council and the texts of any memoranda supporting such orders and any dissenting opinions or separate statements by members of the judicial council will be made public when final action on the complaint has been taken and is no longer subject to review.

(1) If the complaint is finally disposed of without appointment of a special committee or of it is disposed of by council order dismissing the complaint for reasons other than mootness, or because intervening events have made action on the complaint unnecessary, the publicly available materials will not disclose the name of the judge or magistrate judge complained about without such judge's consent.

(2) If the complaint is finally disposed of by censure or reprimand by means of private communication, the publicly available materials will not disclose either the name of the judge or magistrate judge complained about or the text of the reprimand.

(3) If the complaint is finally disposed of by any other action taken pursuant to rule 14(d) or (f) except dismissal because intervening events have made action on the complaint unnecessary, the text of the dispositive order will be included in the materials made public, and the name of the judge or magistrate judge will be disclosed.

(4) If the complaint is dismissed as moot at any time after the appointment of a special committee, the judicial council will determine whether the name of the judge or magistrate judge is to be disclosed.

(5) The name of the complainant will not be disclosed in materials made public under this rule unless the chief judge orders such disclosure.

(b) **Manner of Making Public.** The records referred to in paragraph (a) will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals at the United States Courthouse, Foley Square, New York, New York 10007. The clerk will send copies of the publicly available materials to the Administrative Office of the United States Courts, Office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20544, where such materials will also be available for public inspection. In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published.

(c) **Decisions of Judicial Conference Standing Committee.** To the extent consistent with the policy of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, opinions of that committee about complaints arising from this circuit will also be made available to the public in the office of the clerk of the court of appeals.

(d) **Special Rule for Decisions of Judicial Council.** When the judicial council has taken final action on the basis of a report of a special committee, and no petition for review has been filed with the Judicial Conference within thirty days of the council's action, the materials referred to in paragraph (a) will be made public in accordance with this rule as if there were no further right of review.

(e) **Complaints Referred to the Judicial Conference of the United States.** If a complaint is referred to the Judicial Conference of the United States pursuant to rule 14(e), materials relating to the complaint will be made public only as may be ordered by the Judicial Conference.

RULE 18. DISQUALIFICATION

(a) **Complainant.** If the complaint is filed by a judge, that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant. If the complaint is filed by a judge, or identified by the chief judge pursuant to 28 U.S.C. § 351(a), that judge will be disqualified from participation in any consideration of the complaint except to the extent that these rules provide for participation by a complainant.

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

June 30, 2004

Hon. John M. Walker, Jr.
Chief Judge of the U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re CA2 violation of Rule requiring public availability of complaint orders

Dear Mr. Chief Judge,

Since June 16, I have requested that the judicial misconduct orders and related material that are required to be made publicly available under Rule 17(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers be made available to me. I even put in writing my request to you in my letter of June 19, 2004, a copy of which is attached hereto. Therein I brought to your attention, among other things, that my judicial conduct complaint, docket no. 03-8547, was dismissed by an Order, filed June 8, 2004, and that the deadline for me to file a petition for review is July 9. I have not yet received your answer to my letter. Thus, since sending that letter and for the purpose of finding out whether your answer had been sent and, if not, when it would be, I placed calls that went unanswered to Chief Deputy of the Clerk of Court Fernando Galindo, to whom my initial request was transferred from the In-take Room 1803 where the orders and related materials should have been publicly available.

Finally, on June 29, Mr. Galindo called me to let me know that the orders would be available to me on June 30. During the conversation and in response to my questions elicited by the implications of Mr. Galindo's statements, it came out that the orders are not being made available, except for the marginal fraction of those issued in the current and previous two years out of those that have been issued since the enactment of the Judicial Conduct and Disability Act of 1980. When I inquired about where I could consult the others, Mr. Galindo let me know, for the first time too, that I would have to request in writing that they be retrieved from storage and to that end, pay a fee of $35. Actually, when I went to the In-take Room of the Court on June 30 and inquired about retrieving the stored bulk of those orders, the Head of that Room, Mrs. Harris, let me know that it would cost $45 to retrieve them and it would take at least 10 days. But my deadline is July 9! So I asked to speak with Chief Deputy Galindo.

Through the Chief Deputy's explanation of why it would take so long to obtain access to those orders, it came out that the "publicly available" orders are not stored in the Court's building, they are not stored in any annex to the building, they are not stored in any building in the City of New York, they are not even stored in the State of New York, for they are stored in the state of Missouri, in the National Archives! This is a clear violation of Rule 17(b), which provides thus:

> Rule 17(b) The records referred to in paragraph (a) will be made public by placing them in a **publicly accessible file** in the office of the clerk of the court of appeals at the **United States Courthouse, Foley Square, New York, New York 10007**. The clerk will send copies of the publicly available materials to the **Administrative Office of the United States Courts, office of the General Counsel, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E.**

> **Washington, DC 20544**, where such materials will also be *available for public inspection.* In cases in which memoranda appear to have precedential value, the chief judge may cause them to be published. (emphasis added)

The specificity of those addresses as the places where those records will be maintained in a file and the clearly stated purpose for keeping them there raise the reasonable expectation that if a person goes to either of those addresses and asks to consult those records, they will then and there "be available for public inspection"…not pursuant to a written request, after payment of a $45 fee, and at least 10 days later or whenever it is that they arrive from Missouri. The unambiguous language used in Rule 17(b) shows that the Judicial Council intended for those records to be kept on site and available upon demand as materials of current interest. That language is incompatible with considering such records as only of historical value to be preserved in an archive. It must be reasonably presumed that the Judicial Council was aware that our legal system is based on precedent and that those records would be used, among other purposes, to prepare petitions for review that comply with its own requirements in Rule 6(a), where the Council provided that:

> A petition for review must be received in the office of the clerk of the court of appeals within 30 days of the date of the clerk's letter to the complainant transmitting the chief judge's order.

Chief Deputy Galindo tried to explain the archiving of the orders in Missouri by saying that there is no space in the Court's building to keep them there. To begin with, the Rules of the Judicial Council establish a procedural right for the benefit of the public. The Court cannot abridge that right on the by comparison irrelevant administrative consideration of space. This is particularly so given that those records are not publicly available elsewhere, as opinions are available by subscription to a reporter, and at the public libraries, and through internet access to WestLaw or Lexis.

But even the Chief Deputy's explanation is factually untenable. Indeed, the marginal fraction of orders made available are kept in three 2" round ring binders. As shown in the attached copy of the OfficeDepot catalog page that deals with binders, such binders can hold 375 pages. What is more, the same 2" binder with locking rings can hold 540. Yet, the Court uses the round ring binders that have the smallest sheet capacity of the four types available on the market. Worse yet, the Court does not use any of those binder to its full capacity, for the criterion that it uses is rather the year in which the record was made. Not only is that an equally irrelevant storage criterion in light of the intended purpose of making the records publicly available, but it is also an administratively wasteful criterion. As a result, each of those three binders for the years 2002, 2003, and 2004, respectively, was more than three quarters empty. Bottom line is: the Court has not made the reasonable effort, even in application of its irrelevant excuse of lack of space, to use to the fullest the space that it has arbitrarily set aside to "comply", or more factually to avoid complying, with the legal requirement that it made those records publicly available.

But not even the irrelevant criterion of limited filing space can justify why the Court does not make available "A docket-sheet record of orders of…".Chief Deputy Galindo admitted that he could not produce such record. Again, given that there is no digest of such orders, such as the digests prepared for the published opinions and which are invaluable for engaging in legal research, the docket-sheet record is a necessary, if sorely poor, legal research tool.

Likewise, in what I have thus far being able to consult, I have not found any of the

"dissenting opinions or separate statements by members of the judicial council", which under Rule 17(a) are to be made publicly available. It is very suspect that judges in three-member panels who regularly write dissenting opinions, when they get together in the larger body of the Judicial Council they write no dissenting opinions or separate statements. By the same token, the nine-member Supreme Court should write no dissenting opinions.

In brief, I am discovering information about the Court's violation of Rule 17 piecemeal and only because I have kept asking questions. The word violation is used advisedly, for the law recognizes that a man intends the reasonable consequences of his acts. The consequences of the Court's handling of those orders are that they are not made publicly available and dissuade any person from requesting and consulting them.

I also asked Chief Deputy Galindo whether I would be allowed to bring in a portable photocopier, plug it in, and copy the orders. He said that first I would have to find out whether the Marshals would allow me to bring it in and if they did, he would find out from you. I found out that the Marshals will allow me to bring a portable photocopier into the building if they receive an authorization from you.

Therefore, I respectfully request that:

1. the Court recognize that it has denied public access to the records that it is required to make publicly available under Rule 17;
2. it has made me waste two weeks waiting for such access although it knows that it has not made the records publicly available;
3. it bring at its own expense such orders to the Courthouse on Foley Square and make them publicly available there upon demand and at no charge;
4. make available the docket-sheet record;
5. extend the deadline for me to file my petition for review by two weeks and the additional three days provided under FRAP 26(c) if notice is given to me by letter;
6. it authorize the Marshals to allow me to bring in a portable photocopier;
7. allow me to plug in such photocopier in the review room opposite the counter in the In-take Room 1803 or another room similarly accessible and suitable for the intended purpose;
8. provide an answer before I have done the necessary research and writing to comply with the deadline of July 9;
9. disclose all other bits and pieces of information about its handling of such records so that I am not subject anymore to any more unfair and very upsetting surprises.

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

July 1, 2004

Mr. Fernando Galindo
Chief Deputy of the Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

As agreed, I went today to the In-take Room 1803 and filed a second letter to Chief Judge Walker concerning both the new obstacles to my accessing all the "publicly available" judicial misconduct orders and my unanswered June 19 letter requesting them. Thanks to you, there was no problem. I guess you must have talked to Mrs. Harris, the head of that Room. When she saw me, she came over and took charge of my filing; she also date-stamped my copy of that second letter. I asked her to let you know that I had brought it, as yesterday you had requested that I put also those concerns in writing to the Chief Judge and I stated to you that I would.

Then, as if enough obstacles to my accessing those orders had not been raised despite the impending date of July 9 for filing my petition of review to the Judicial Council of the dismissal of my misconduct complaint, the following happened. Mrs. Harris asked me whether I was done with the available misconduct orders. I said no and that I wanted to check out the 2003 binder. She told me to fill out a card and give her my I.D. card. It was about quarter past noon when I went with the binder through the entrance of the doorless glass panel, which is parallel to and across from the In-take counter, to the adjoining reading room, where I sat at a table and began to read and take notes. Sometime later a male clerk came in and asked me whether I was waiting for somebody or something similar. I said no. He also told me that there was no sleeping in the room. I realized that I must have been nodding. He went out of the reading room and back to the clerk's room behind the counter. I went on reading and taking notes for several hours.

Then somebody called me. I looked to my right and it was Mrs. Harris standing by the other reading table next to mine. She said that I was sleeping and that there was no sleeping in the reading room. I told here that I had not gone there to sleep, but rather that I must have fallen asleep. She replied that I had already been warned and that if I fell asleep again, she would call the marshals. I said nothing and she left. I went on reading and taking notes…in shock!

Mrs. Harris would call the marshals on me because I was nodding in the reading room, thereby treating me as if I were a homeless bum that had gone there just looking for a place where to sleep, though I was reading documents that I had checked out through her! What a disproportionate, heavyhanded, and embarrassing public exercise of raw power! Because I was nodding, she would have the marshals escort me out of the reading room and thus, of the courthouse, for it is reasonable to assume that she would not call them to ask that they bring me a cup of coffee or take me down to their room in the lobby to share their coffee with me. What a humiliating experience that would have been! Would the Chief Judge stop listening to and asking questions during a court session to tell a person who he knew was there waiting to deliver oral argument, and thus, engaged in bona fide business of the court, that he would call the marshals on him because he was nodding?

I was nodding shortly after noon due to, among other understandable reasons, mental fatigue. Indeed, I was trying to concentrate on reading and analyzing the orders despite the many distractions in the reading room, which, by contrast, Mrs. Harris, or the other clerks for that matter, could not escape noticing and yet tolerated, as they do routinely. To begin with, a corner office of the In-take Room shares one side with the reading room, from which it is divided by a wood panel that, like the glass panel to which it is perpendicular, does not reach the ceiling. Just as on many previous occasions on which I have been there, a radio was turned on to popular rock music and could distinctly be heard across and over the panel some ten feet away at the table at which I was reading. Ask yourself what is more offensive: that the clerks keep a radio on in an office where clerks of a court of appeals must carefully pay attention to their processing of documents that affect directly and substantially the life, liberty, and property of members of the public or that a member of the public nods while reading those documents?

Likewise, in the clerks' room the clerks were talking business among themselves and with people that came in to file or check out documents and they also bantered among themselves. A female clerk that sits by a window and right outside Mrs. Harris' cubicle was talking particularly loud and frequently. The clerks' talk and banter could on that occasion, as it can normally, be clearly heard across and over the glass panel, which has no door closing off the reading from the clerks' room. What would be a more justifiable housekeeping measure:

1. for Mrs. Harris to instruct her clerks to keep their voices down and limit their banter so that they can concentrate on their important work and not distract readers, or
2. to instruct a clerk or the clerks to keep an eye looking across the glass panel to see if a reader nods, stop what they are doing to go there and tell him not to nod, and keep an eye to see whether he commits nodding again so that they can stop what they are doing and report it to Mrs. Harris, for her to stop what she is doing and go from her cubicle to the reading room to tell the reader that he has already been warned against nodding and next time he nods she will call the marshals, for them to stop their work of protecting federal employees and the public in the building by mainly operating the metal detectors to prevent criminals, particularly terrorists, from bringing in weapons, such as bombs or detonating devices in cellular phones or portable photocopiers, and come up to the 18th floor to take custody of a reader threatening everybody in the reading and clerks' rooms with nodding?

Your turn. Would you, Mr. Galindo, or Clerk of Court MacKechnie or Chief Judge Walker want to stand up and defend before the jury Mrs. Harris's personnel and resource management and public relations skills as well as her priorities and discretion in exercising power? If not, let me bring to your attention other sources of noise that I was trying to shut off my mind while trying to concentrate on the reading and that contributed to the mental fatigue that made me nod.

To my right were people dropping coins into, and operating, the two console photocopiers some eight feet away from me. Right above me was a noisy utility pipe, which conducts perhaps the air of the roaring air conditioner by the windows; that pipe can be seen because a 2 sq. ft. tile of the covering ceiling is missing. To my left was a young woman some four feet from me by the window keyboarding on a beeping pager.

That she was able to bring it in past the marshals may point to her being an employee. A young man walked in and sat next to her by the row of computers through which other people could access court documents. They began to chat about what they had eaten with their friends and their next activities, just as loudly as if they were in their living room, not a reading room. I

turned around and looked at the young man several times, but he did not get the hint. So I went to the counter and told the male clerk that had first warned me against nodding that this couple was talking loudly and that "It is very distracting." Yet, neither he nor Mrs. Harris came into the reading room to ask them to stop their banter, let alone call the marshals on the young woman to confiscate her pager and interrogate her on how she had gotten it into the building past security.

Could Mrs. Harris' nonsensical and discriminatory treatment of people in the reading room be explained by the fact that the day before I had pointed out to her that her statement about the archiving of misconduct orders was not in harmony with Rule 17 of the Rules Governing Misconduct Orders and she rebuked me in public for trying to tell her what the Rules were? When you and I talked subsequently, you admitted that neither you nor the clerks were familiar with those Rules and I brought to your attention Mrs. Harris' all the more unjustified rebuke. You said that you would talk to her about it. Was she retaliating against me? To that end, was she inventing a prohibition on nodding, which is not posted anywhere in the reading room? Note that, by contrast, at least 5 types of notices, including one on "No eating or drinking in this area", are posted, some in several copies, throughout the room, thus revealing the relative unimportance of nodding.

I cannot control nodding, specially in such a noisy environment, just as neither you, nor Mrs. MacKechnie, nor Chief Judge Walker can give any assurance that none of you will nod, be it while reading, watching TV, or even doing something as dangerous as driving a car, for nodding is an involuntary physiological state. But I can deliberately not go to that reading room to avoid exposing myself to the humiliating experience and grave consequences of having the marshals lead me away upon Mrs. Harris charging me with the crime of nodding while reading.

Therefore, for my protection and the Court's from the poor judgment and excesses of its agents while performing by its appointment and under color of apparent authority, I respectfully request that you give me assurances:

1. that if I go to the reading room to read court documents and it happens that I nod, neither Mrs. Harris nor any other clerk will disturb me, let alone call the marshals on me;
2. that neither Mrs. Harris nor them will rebuke me for any reasonable conduct on my part, such as pointing to a Court rule as support for a procedural right that I invoke;
3. that on the contrary, Mrs. Harris and the other clerks will treat me with the professionalism and courtesy that anybody that goes to that room, including a prudent and polite person like myself, is entitled to, particularly from public servants employed by an institution headed by officers whose function it is precisely to judge people by the standard of the conduct of a reasonable person;
4. that you take notice of the positive aspects of my comments about noise in the reading room and will consider the possibility of taking appropriate remedial action; and
5. I also request that your assurances, though expected to be given timely generally, be given taking particular account of the timeliness required by the Court-imposed deadline of July 9 for me to research, write, print, and file my petition for review.

Sincerely, Dr. Richard Cordero

d) E-21c Dr. Cordero's letter of July 1, 2004, to Chief Deputy Clerk Galindo

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

July 9, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

This letter is to acknowledge receipt of your petition for review.

I am returning your petition for review, unfiled. It is not in the proper form under these rules. Rule 6(b) states the petition for review must be in the form of a letter. Rule 6(e) states "The letter should set forth a brief statement." It has been the long-standing practice of this court to use the authority of Rule 2(b) as a guideline and establish the definition of ***brief*** as applied to the ***statement of grounds for petition*** to five pages. "It should not repeat the complaint; the complaint will be available to members of the circuit council considering the petition."

Please resubmit ONLY your petition letter, **by no later than July 24, 2004.** If your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken. Should that be the case, please note that the Rules do not provide for any further relief in this matter.

Sincerely,

Fernando Galindo
Acting Clerk of Court

Enclosures

Dr. Richard Cordero

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

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

July 8, resubmitted on July 13, 2004

Mr. Fernando Galindo
Acting Clerk of Court
U.S. Court of Appeals, 2nd Circuit
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

I hereby petition the Judicial Council for review of the Chief Judge's order of June 8, 2004, dismissing my judicial misconduct complaint, docket no. 03-8547 (the Complaint).

The dismissal of the Complaint was so out of hand that it did not even acknowledge the two issues presented or how a pattern of non-coincidental, intentional, and coordinated wrongful acts by judicial and non-judicial officers is within the scope of 28 U.S.C. §351 et seq. and this Circuit's Rules Governing Judicial Misconduct Complaints (collectively referred to as the Complaint Provisions) and in need of investigation by a special committee

The dismissal of my complaint is an example of why Supreme Court Chief Justice William Rehnquist appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee and why, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation" (Exhibits-67, 69[1]).

[1] The source for this and every other statement made in this letter is contained in a 125-page bound volume of exhibits. When timely submitted on July 8, it was prefaced by my original 10-page petition letter. Nevertheless, both that letter and the exhibits were returned to me with your letter of July 9 emphasizing that I should "resubmit ONLY your petition letter...[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." Your letter invokes "the authority of Rule 2(b) as a guideline [to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages".

However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) in the context of petition letters, it would have so provided. By not doing so, it indicated that "brief" is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page letter, containing a table of contents, headings, and quotations from §351 et seq., the Rules, and statements by persons to support my arguments and facilitate their reading. Moreover, the July 9 letter is inconsistent in that it applies by analogy to petition letters the Rule 2(b) 5-page limit on complaints but fails to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint.

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the court has failed to give petitioners notice thereof. Yet, this court has had the opportunity to give them notice of its practice in the notification that it is required under Rule 4(f)(1) to give them of the dismissal and their right to appeal; it should have done so in light of the public notice requirement under §358(c). Instead, the court lets petitioners waste their time guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness.

Likewise, "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant". Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed. They should be available to any judicial council member under Rule 8(c). To that end, I am submitting the exhibits as a separate volume. But if it were to prevent the filing of the

Given that such systematic dismissal of complaints regardless of merits has been recognized as a problem so grave as to warrant action by the top officers of the judicial branch, there is little justification for considering seriously the stock allegations for dismissing my Complaint. The latter is just another casualty added to a phenomenon that defies statistical probabilities: While the 2003 Report of the Administrative Office of the U.S. Courts highlights that another record was set with federal appeals filings that grew 6% to 60,847, and civil filings in the U.S. district courts of 252,962 (E-66), the three consecutive reports of the Judicial Conference for March 2004, and September and March 2003 (E-60), astonishingly indicate that, as the latter report put it, the Conference "has not received any petitions for review of judicial council action, …nor are there any petitions for review pending from before that time" (E-59).

It is shocking that the judicial councils would abuse so blatantly their discretion under §352(c) to deny all petitions for review of chief judges' orders, thus barring their way to the Judicial Conference; (E-59; cf. Rule 8(f)(2)). One can justifiably imagine how each circuit makes it a point of honor not to disavow its chief judge and certainly never refer up its dirty laundry to be washed in the Judicial Conference. It is as if the courts of appeals had the power to prevent each and every case from reaching the Supreme Court and abused it systematically. In that event, instead of the Supreme Court reporting 8,255 filings in the 2002 Term –an increase of 4% from the 7,924 in the 2001 Term (E-66)- the Court would be caused to report 0 filings in a term! (E-60-65) Sooner or later the Justices would realize that such appeals system was what the current operation of the judicial misconduct complaints procedure is: a sham!

This is so evident here because Chief Judge Walker has repeatedly violated unambiguous obligations even under his own Circuit's Rules (E-119). To begin with, the Chief Judge violated his obligation under §352(a) to act "promptly" and "expeditiously" (E-76-77), taking instead 10 months to dispose of the Complaint (E-71) despite the circumstantial and documentary evidence that not even a Rule 4(b) "limited inquiry" was conducted (E-22-24). Secondly, Chief Judge Walker lacked authority under the Complaint Provisions to delegate to Judge Dennis Jacobs, who actually disposed of the Complaint, his obligation under §352(b) and Rule 4(f)(1), to handle such complaints and write reasoned orders to dispose of them. Thirdly, the Chief Judge violated his obligation under Rule 17(a) to make misconduct orders "publicly available", keeping all but those of the last three years, neither in the shelves, nor in a storage room of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, but rather in the National Archives in Missouri! (E-28, 29, 33)

For violating so conspicuously the Complaint Provisions, the Chief Judge has a personal interest: to facilitate the dismissal of the related complaint against him submitted to Judge Jacob by Dr. Cordero on March 19, 2004, dkt. no. 04-8510 (E-22). If under that complaint the Chief Judge were investigated, the severe §359(a) Restrictions on individuals subject of investigation would be applicable and weigh him down even for years until the complaint's final disposition.

Indeed, if the Complaint, the one about Bankruptcy Judge John C. Ninfo, II, (E-71) were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker too disregarded for 10 months the law imposing on him the promptness obligation, thereby allowing the continuation of 'a prejudice "to the administration of the business of the courts"' so serious

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petition letter, consider that volume withdrawn, send it back to me, and file the letter, as we agreed on July 12.

as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, dismissed too without investigation, would have been investigated by a law-abiding officer not biased toward his peers. Similar questions could spin the investigation out of control quite easily.

Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than himself, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed. The fact is that the Complaint was dismissed by another, that is, Judge Jacobs, who likewise has disregarded his obligation to handle "promptly" and "expeditiously" the complaint of March 19, 2004, about his peer, the Chief Judge (E-22).

The appearance of a self-serving motive for dismissing the Complaint arises reasonably from the totality of circumstances. It is also supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Nor can they do so reliably. Their interest in preventing a precedent that one day could be applied to them if they were complained about as well as their loyalties in the context of office politics will induce or even force insiders to close ranks against an 'attack' from an outsider. Only independent investigators whose careers cannot be affected for better or for worse by those investigated or their friendly peers can be expected to conduct a reliable investigation.

Instead the constant found in Judge Jacobs' dismissal of the Complaint was the sweeping and conclusory statements found in other dismissals ordered in the last three years (E-57):

1) Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." [Citing a standard and saying that it was not met, without discussing what the requirements for meeting it have been held to be –our legal system is based on precedent, not on 'because I say so'- and how the evidence presented failed to meet it, does not turn a foregone conclusion into a reasoned order.]

2) Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling. [This is a particularly inane dismissal cop-out because when complaining about the conduct of judges as such, their misconduct is most likely to be related to and find its way into their decisions. The insightful question to ask is in what way the judge's misconduct biased his judgment and colored his decision.]

3) Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. [Brilliantly concise legal definition and careful application to the facts of the lazy catch-all term 'frivolous'!]

4) Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…

That last statement is much more revealing because it shows that Judge Jacobs did not even know what the issues presented were, namely 1) whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of the Debtor's Owner, namely, David Palmer; and 2) whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other

court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of Dr. Cordero, the only non-local and pro se party.

Judge Jacobs failed to recognize the abstract notion of motive and how it could lead Judge Ninfo to take decisions that only apparently had anything to do with legal merits. What is less, he did not even detect, let alone refer to, the concrete and expressly used term "pattern". Had he detected it, he could have understood how acts by non-judges, and thus not normally covered by the Complaint Provisions, could form part of unlawful activity coordinated by a judge, which would definitely constitute misconduct, to put it mildly. But he remained at the superficial level of considering each individual act in isolation and dismissing each singly. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart so that they can be looked at collectively?

Circumstantial evidence is so indisputably admitted in our legal system that cases built on it can cause a person to lose his property, his freedom, and even his life. Such cases look at the totality of circumstances. The Complaint describes those circumstances as a whole. It is supported by a separate volume of documentary evidence consisting of more than 500 pages –referred to as A-#– which was discussed in greater detail in another separate 54 page memorandum that laid out the facts and showed how they formed a pattern of activity. This memorandum is referred to as E-# in the 5-page Complaint, which is only its summary. Just the heft of such evidence and its carefully intertwined presentation would induce an unbiased person –one with no agenda other than to insure the integrity of the courts and to grant the complainant a meaningful hearing– to entertain the idea that the Complaint might be a thoughtful piece of work with substance to it that should be read carefully. Judge Jacobs not only failed to make reference to that material, but he did not even acknowledge its existence. Is it reasonable to assume that he did not waste time browsing it if he only intended to write a quick job, pro-forma dismissal?

The totality of circumstances presented in the Complaint is sufficient to raise reasonable suspicion of wrongdoing. There is no requirement that the complainant, who is a private citizen, not a private investigator, build an airtight criminal case ready for submission by the district attorney to the judge for trial. That is the work that a special committee would begin to do upon its appointment by a chief judge or a judicial council concerned by even the appearance of wrongdoing that undermines public confidence in their circuit's judicial system. Unlike the complainant, such committee can conduct a deeper and more extensive investigation because it has the necessary subpoena power.

A more effective investigation can be mounted in cooperation with the FBI through a simultaneous referral to it. Indeed, the FBI has not only subpoena power, but also the required expert manpower and resources to interview and depose large numbers of persons anywhere they may be and cross-relate their statements; engage in forensic accounting and trace bankruptcy debtors' assets from where they were to wherever they may have ended up; and flush out and track down evidence of official corruption, such as bribes. What motives could Chief Judge Walker and Judge Jacobs have had to fail to set in motion either investigation given the stakes?

Had they appointed a special committee, it would have found at least the following:

1) Chapter 7 Trustee K. Gordon was referred to Judge Ninfo for a review of his performance and fitness to serve; then sued for failure to realize that storage contracts were income producing assets of the estate, which would have allowed him to find Dr. Cordero's property

lost by the debtor. Disregarding the genuine issues of material fact, the Judge dismissed all claims. Was he protecting a well-known Trustee who had no time to find out anything, for according to Pacer[2], the Trustee has *3,383 cases!*, all but one before Judge Ninfo? (E-126)

2) What is more, Chapter 13 Trustee George Reiber has, again according to Pacer, 3,909 *open* cases! He also cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith. So on what basis does he accept petitions and ready them for confirmation of their plans of debt repayment by Judge Ninfo, before whom he appears time and again?

3) A petition for bankruptcy, dated January 26, 2004, was filed by David and Mary Ann DeLano; (E-82 et seq.). Though internally riddled with red flags as to its good faith (E-79), it was accepted by Trustee Reiber without asking for a single supporting financial document; and was readied for confirmation by Judge Ninfo (E-22-24). This is a test case that will blow up the cover of everything that is wrong in that bankruptcy district.

My Complaint too is a test case whether, as expected, this petition is denied, upon which I will submit it to Justice Breyer's Committee; or it is granted and a special committee is appointed. If the latter happens, it is necessary that its investigation appear to be and actually be independent as much as possible. Thus, I respectfully request that:

1) Neither the Chief Judge appoint himself nor Judge Jacobs be appointed to the review panel;

2) The review panel refer the petition to the full membership of the Judicial Council;

3) The Judicial Council itself take the "appropriate action" under Rule 5 of appointing a special committee to investigate and that neither Chief Judge Walker nor Judge Jacobs be members of such committee, but its members be experienced investigators unrelated to the Court of Appeals and the WDNY Bankruptcy and District Courts and be capable of conducting an independent, objective, and zealous investigation;

4) The special committee be charged with conducting an investigation to determine:

   a) the involvement in a pattern of non-coincidental, intentional, and coordinated acts of disregard for the law, rules, and facts on the part of judges, administrative staff, debtors as well as both private and U.S. trustees in WDNY and NYC;

   b) the link between judicial misconduct and a bankruptcy fraud scheme involving the approval for legal and illegal fees of numerous meritless bankruptcy petitions; and

   c) the participation of district and circuit judges in a systematic effort to suppress misconduct complaints in violation of §351 et seq. and this Circuit's Complaint Rules;

5) This matter be simultaneously referred to the FBI for cooperative investigation; and

6) This petition together with the Complaint and the documentary evidence submitted with each be referred to the Judicial Conference of the United States; (cf. Rule 14(a) and (e)(2).

Sincerely,

Dr. Richard Cordero

[2] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

July 16, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

We hereby acknowledge receipt of your revised petition for review, dated February 13, 2004 and received in the Clerk's Office on February 14, 2004.

Your petition for review of the June 8, 2004 Order of the Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351.*

You will be notified by letter once a decision has been made.

Your exhibits volume is returned.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

Dr. Richard Cordero

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

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

July 30, 2004

[to the judges of the
Judicial Council of the Second Circuit]

Re: judicial misconduct complaint, docket no. 03-8547

Dear Judge…,

Last July 8, I submitted and on July 13 resubmitted to the Clerk of Court of the Court of Appeals for the Second Circuit a petition for review of the dismissal on June 8 of my complaint, filed on August 11, 2003. In connection with that petition, this letter is a communication properly addressed to you under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq., which provides thus:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

In support of my petition, I submitted bound with it exhibits, which were returned to me unfiled. Upon resubmitting the petition, I submitted the exhibits in a separate bound volume, which was also returned to me unfiled while the petition was accepted. I was not allowed to attach to the petition even the table of exhibits.

There is no provision, whether in the Rules or in §351 et seq., that prohibits the submission of exhibits with a review petition. On the contrary, by analogy to Rule 2(d) allowing the submission of documents as evidence supporting a complaint, they should have been filed. They should also have been accepted in application of the general principle that evidence, such as that contained in exhibits, accompanying a statement of arguments submitted to judges for determination of their legal validity, is not only welcome as a means to lend credence to such arguments, but also required as a way to eliminate a party's unfounded assertions and allow the judges to ascertain on their own the meaning and weight of the arguments' alleged source of support. The exhibits should also have been accepted so that the clerk of court could make them available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" How can the clerk make documents available if she does not even file them?

In any event, what harm could conceivably result from filing exhibits with a petition for review? Why would the clerk take it upon herself in the absence of any legal or practical justification, to deprive a petitioner of his right to do what he is not prohibited from doing, whether expressly or by implication, and in the process deprive the members of the Judicial Council of what could assist them in performing their duty to assess the merits of a petition?

Therefore, I am hereby communicating to you the table of exhibits so that you may request any or all of them from the clerk of court, to whom I am resubmitting them once more, or from me directly. For context and ease of reference, I am also including a copy of the petition.

Sincerely,

Dr. Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

August 13, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Your letter, dated July 30, 2004, addressed to Chief Judge John M. Walker, Jr., has been forwarded to this office for response.

Your petition for review of the dismissal of your judicial misconduct complaint in the above-referenced matter is pending before the judicial council. Copies of the documents filed in this matter were forwarded to the council members for their review in accordance with the Rules governing this procedure.

You will be notified by letter once a decision has been filed.

Sincerely,
Roseann B. MacKechnie, Clerk

By: _____
Patricia Chin-Allen, Deputy Clerk

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

August 27, 2004

[to the judges of the
Judicial Council of the Second Circuit]

Update to review petition re complaint about J. Ninfo, dkt. no. 03-8547

Dear Judge…,

Last July 16 my petition was filed (Exh. 1, infra) for review of the dismissal of the above-captioned complaint, filed on August 11, 2003. This is a permissible communication with you[1] that updates it with recent events that raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo and the 3,382 that Trustee Kenneth Gordon likewise has.

This update is compelling because of the strongly suspicious way in which Judge Ninfo has handled the flagrantly bogus petition of David and Mary Ann DeLano, docket no. 04-20280: Mr. DeLano has been for 15 years and still is a bank *loan* officer, that is, he is an insider of the lending industry and an expert in how to assess and maintain his borrowing clients' creditworthiness; yet he owes with his wife more than $98,000 on 18 credit cards; in the last three years alone they earned $291,470, yet declared household goods worth only $2,910, and cash totaling merely $535.50. Where is the rest of their earnings during a lifetime of work? (See §I, infra.)

Disregarding the law again, Judge Ninfo has refused to require the DeLanos to produce documents to show the whereabouts of hundreds of thousands of dollars unaccounted for (§I ¶2) Although they listed me as a creditor in their petition of January 26, 2004, and their attorney has treated me as such for 6 months, at the latter's instigation Judge Ninfo has now taken steps to remove me as a creditor and has stayed all proceedings in their case (Exh. 2, entry 61), including my request for account statements that could show concealment of assets. To that end, he has required that I prove in this case the claim that I brought against Mr. DeLano in Pfuntner v. Gordon et al, docket no. 02-2230, precisely the case that I appealed to and is in the Court of Appeals and that gave rise to this complaint because, among other things, 11 months after its filing he had failed to comply with FRCivP Rule 26, so that no discovery was ever taken of Mr. DeLano and other parties. Yet, Judge Ninfo requires me to try that Pfuntner case within this DeLano case (§II), thus making a mockery of the Appeals Court and process by forestalling the order that I requested for the removal of the Pfuntner case to Albany due to his participation in the pattern of wrongdoing and his bias against me. Why would Judge Ninfo not ask the DeLanos to produce concurrently their financial documents and instead ignores their contempt for his own July 26 order of production? (§III) Did money drive the decision in this and other similar cases?

What else would it take for you to feel that this petition presents evidence of misconduct, let alone, of a threat to the judicial system, that warrants the appointment of a special committee?

Sincerely,

Dr. Richard Cordero

I. Numbers and circumstances of the DeLanos' bankruptcy petition are so incongruous that Judge Ninfo had to realize that it was bogus yet it was approved by Trustee Reiber, who did not want to investigate it just as the DeLanos disobeyed his order for document production, whereupon he had the obligation to safeguard the integrity of the financial system and the duty under 18 U.S.C. §3057(a) to report them to the U.S. Attorney as under suspicion of collusion to commit bankruptcy fraud...but instead he took steps to remove Dr. Cordero as creditor, the only one who requested and analyzed documents and discovered evidence of concealment of assets, debt underreporting, accounts non-reporting, and a voidable preferential transfer to the Debtors' son!

1. Judge for yourself from the following salient numbers and circumstances whether Judge John C. Ninfo, II, WBNY, had reason to suspect the good faith of the DeLanos' bankruptcy petition:

   a) Mr. DeLano has been *a bank loan officer for 15 years!* His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in ways to remain solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines.
   b) The DeLanos incurred scores of thousands of dollars in credit card debt;
   c) carried it at the average rate of 16% or the delinquent rate of over 23% for over 10 years;
   d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;
   e) have ended up owing $98,092 to 18 credit card issuers listed in their petition's Schedule F;
   f) owe also a mortgage of $77,084;
   g) but have at the end of their work life equity in their home worth merely $21,415;
   h) declared these earnings in their 1040 IRS forms in just the last three years:

2001	2002	2003	total
$91,229	91,655	108,586	$291,470.00

   i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!; why kind of purchases could they possibly have made with all those 18 credit cards?;
   j) their cash in hand or on account declared in their petition was only $535.50;
   k) the rest of their tangible personal property is just two cars worth a total of $6,500;
   l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;
   m) make a $10,000 loan to their son, declare it uncollectible, and do not provide even its date;

n) and offer to repay only 22 cents on the dollar without interest for just 3 years.

2. In Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let's assume that in 1989 the combined income of Bank Loan Officer DeLano and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what they owned before 1989, let alone their credit card borrowing and two loans totaling $118,000. Where did the money go? Where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement have they been planning for and where?

3. It is reasonable to assume that Trustee Reiber's attorney, James Weidman, Esq., knows. The Trustee has the duty to conduct 11 U.S.C. §341 meetings of creditors personally, cf. 28 CFR §58.6. However, in violation thereof he appointed Att. Weidman to conduct the one held in this case last March 8 in Rochester. He became quite nervous when out of the 21 creditors of the DeLanos, Dr. Cordero was the only one to turn up at the meeting and tried to examine them. But Att. Weidman prevented Dr. Cordero from doing so by terminating the meeting after he had asked only two questions of the DeLanos but would not reveal what he knew when Att. Weidman asked him repeatedly –as if Dr. Cordero were under examination!- what evidence he had that the DeLanos had committed fraud. What did he know that he could not afford Dr. Cordero to find out from the DeLanos under oath? That same day Dr. Cordero complained in open court to Judge Ninfo about this violation, but he unquestioningly adopted Att. Weidman's pretense that he had ran out of time…after just two questions from the only creditor!

II. Indisputable evidence supports the reasonable assumption that other clients of Bank Loan Officer DeLano went bankrupt and were accommodated by the trustees without regard for the Bankruptcy Code and Rules and with Judge Ninfo's approval, so that Mr. DeLano knew that his meritless petition would be approved without examination by Trustee Reiber and the Judge; but Dr. Cordero analyzed the DeLanos' documents and put it together, whereupon the DeLanos moved to disallow his claim in order to remove him from the case with the assistance of Judge Ninfo, who stayed all bankruptcy proceedings and required him to prove his claim by first trying another case that is on appeal to the Court of Appeals and under consideration by the Judicial Council

4. How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants' financial documents, have thought that it would be deemed in good faith to submit his palpably meritless petition? Did Mr. DeLano put his knowledge and experience as a bank loan officer to good use in living it up with his family and closing down all collection activity of 18 credit card issuers by filing for bankruptcy? Did he have any reason to expect Trustee Reiber not to analyze his petition but just to rubberstamp it 'approved'?

5. There is evidence for the assumption that Mr. DeLano knew how clients of his at M&T Bank had ended up filing for bankruptcy and being accommodated by the trustees and Judge Ninfo. Indeed, one such client was David Palmer, the owner of the moving and storage company Premier Van Lines. On its behalf, Mr. Palmer filed for voluntary bankruptcy under Chapter 11, docket no. 01-20692, precisely on the day when a judgment was going to be enforced against him, which smacks of abuse of bankruptcy law to avoid a single debt. Nevertheless, Judge Ninfo stayed the enforcement. A few months later, Mr. Palmer disappeared from all further proceedings. Although his home address at 1829 Middle Road, Rush, New York 14543, was known, Judge Ninfo would not bring him back into court to face his obligations. His case was converted to one under Chapter 7 and entrusted to Chapter 7 Trustee Kenneth Gordon, who according to PACER, has other 3,382 case before Judge Ninfo.[*]
6. Trustee Gordon was sued by James Pfuntner, the owner of the warehouse where Mr. Palmer abandoned his clients' property, including Dr. Cordero's, which was contained in storage containers bought by Mr. Palmer with a loan made to him by M&T Bank Loan Officer DeLano. Warehouser Pfuntner also sued others, including Dr. Cordero and M&T Bank. Mr. DeLano handled that matter so negligently and recklessly that Dr. Cordero brought him as a third-party defendant into Pfuntner v. Gordon et al., docket no. 02-2230, by a complaint served on November 21, *2002*. Since then Mr. DeLano has known the nature of Dr. Cordero's claim against him, but never contested it except by filing together with M&T Bank a general denial.
7. That is why Mr. DeLano included Dr. Cordero as a creditor in his petition of January 26, 2004. He treated Dr. Cordero as a creditor for 6 months and tolerated his requests for documents since so few were actually produced to the point that Trustee Reiber moved on June 15 to dismiss the case for "unreasonable delay". Even so, Dr. Cordero analyzed those documents and on July 9 filed a statement indicating bankruptcy fraud, particularly concealment of assets. Soon thereafter the DeLanos came up with an idea to eliminate the threat that Dr. Cordero posed.
8. Mr. DeLano, a lending industry insider, knew that by distributing his borrowing among 18 credit cards he would make it cost-ineffective for any issuer to incur the expense of having lawyers object to his repayment plan, let alone travel to the meeting of creditors, or request and analyze documents…but Dr. Cordero, with all his objections, requests, and document analysis, threatened to spoil it all for the DeLanos, his attorney, Trustee Reiber, and Judge Ninfo. So to get rid of him, they moved to disallow his claim. For his part, Judge Ninfo stayed any bankruptcy proceedings to prevent any further discovery of documents, which could have shown their approval of a fraudulent petition and open the door for an investigation that could uncover their judicial misconduct and bankruptcy fraud scheme.

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

[*] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

9. At a hearing last July 19, Judge Ninfo asked Dr. Cordero to convert his July 9 requested order for the DeLanos to produce documents into a proposed order and fax it to him so that he could sign and issue it immediately to the DeLanos. Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed. Dr. Cordero's letter of protest of July 21, though acknowledged by a clerk received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received.

10. Judge Ninfo's requests on other occasions of documents, whose contents he likewise knew, for Dr. Cordero to prepare and submit only to do nothing upon receiving them show that the Judge never intended to issue that proposed order. Was it just to up the ante with the DeLanos?

11. The fact is that upon Dr. Cordero's protest, Judge Ninfo issued an order on July 26, one inexcusably watered down by comparison with Dr. Cordero's proposed order. Indeed, despite the evidence of concealment of assets by the DeLanos, the Judge's order failed to require them to produce bank or *debit* account statements that could have revealed their earnings' trail and whereabouts; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could possibly justify preventing document production from being used to ascertain the facts and the petition's good faith?

12. However watered down Judge Ninfo's order of July 26 was, the DeLanos did not comply with it and did so with total impunity! Dr. Cordero complained about it at the hearing on August 25[2] to argue the DeLanos' motion to disallow Dr. Cordero's claim. Judge Ninfo found nothing more revealing to say than that if Dr. Cordero had not claim, he could not ask for documents. Thereby the Judge showed that he accorded priority to the DeLanos' interest in getting rid of Dr. Cordero over his own duty to insure respect for court orders and to protect the benefit that inures to all other creditors as well as to the integrity of the bankruptcy system from Dr. Cordero's work of document analysis and discovery of a bankruptcy fraud scheme.

August 27, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

[1] The Judicial Council is entitled to accept and review this update because it constitutes a communication properly addressed to you and your colleagues under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq.:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

[2] The transcript of this hearing as well as of that on August 23 to argue Trustee Reiber's motion to dismiss and Dr. Cordero's motion to remove the Trustee must be read by any investigators of this matter, for they are most revealing of how Judge Ninfo argued from the outset the motions of the DeLanos and the Trustee and became Dr. Cordero's opposing counsel, thus abdicating his role as neutral arbiter. But given the manipulation of the transcript of the hearing on December 18, 2002, already complained about, the accuracy of those transcripts must be checked against the stenographer's tapes themselves.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

October 6, 2004

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

Re: Judicial Conduct Complaint, 03-8547

Dear Mr. Cordero:

Enclosed please find a copy of the September 30, 2004 Order of the Judicial Council of the Second Circuit denying your petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

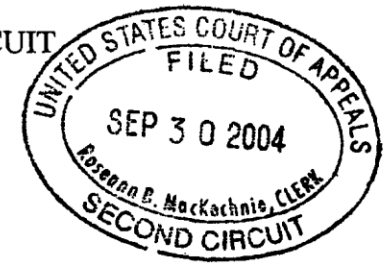
Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 03-8547

Before the Judicial Council of the Second Circuit:

A complaint having been filed on August 8, 2003, alleging misconduct on the part of a Bankruptcy Judge of this Circuit, and the complaint having been dismissed on June 8, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on July 14, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated June 8, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Bankruptcy Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: September 30, 2004
New York, New York

RB:211

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 19, 2004

STATEMENT OF FACTS

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

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

of the Court of Appeals for the Second Circuit

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

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

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

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

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

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

[1] The separate volume of evidentiary documents is not included here.

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

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

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

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

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

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

him a copy of his written objections.

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

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

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

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

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

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the

territory of the Second Circuit and which they defend by engaging in non-coincidental, intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

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

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

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

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

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

Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

waste of effort[2], time[3], and money[4], and inflicting upon him tremendous emotional distress[5] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[6] and dismiss the facts[7] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[8], Judge Larimer[9], court personnel[10], trustees[11], and local attorneys and their clients[12], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

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

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

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

Dr. Richard Cordero

March 19, 2004

59 Crescent Street
Brooklyn, NY 11208

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

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[2] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[3] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[4] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[5] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[6] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[7] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[8] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[9] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[10] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[11] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[12] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 28, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed September 24, 2004, dismissing your judicial conduct complaint.

Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351, you have the right to petition the judicial council for review of this decision.

A petition for review should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . . "

The petition for review must be received in the Clerk's Office **no later than October 29, 2004.**

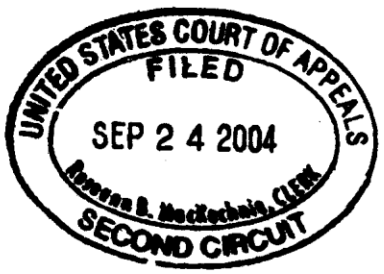
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



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In re **Docket No. 04-8510**
CHARGE OF JUDICIAL MISCONDUCT

----------X

DENNIS JACOBS, Acting Chief Judge:

On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a circuit court judge of this Circuit ("the Judge") with misconduct.

Background and Allegations:

The Complainant alleges that in August 2003, he filed a judicial misconduct complaint against a United States bankruptcy court judge, alleging that the bankruptcy court judge was biased against him and had failed to "move [his] case along its procedural stages." The Complainant alleges that the Judge has failed to take any action on his judicial misconduct complaint.

Disposition:

The Complainant's judicial misconduct complaint was dismissed by order entered June 9, 2004. The instant complaint is therefore dismissed as moot. See 28 U.S.C. § 352(b)(2) (judicial misconduct proceeding may be concluded if "appropriate corrective action has been taken" or "action on the [judicial misconduct] complaint is no longer necessary because of intervening events"). The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004

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

October 4, 2004

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Petition for review re complaint about C.J. Walker, 04-8510

Dear MacKechnie,

I hereby petition the Judicial Council for review of the Chief Judge's order of September 24, 2004, dismissing my judicial misconduct complaint, docket no. 04-8510 (the Complaint).

The Complaint was submitted on March 19, 2004. It states that in violation of 28 U.S.C. §351 et seq. (the Act) and this Circuit's Rules Governing such complaints (the Rules) the Hon. Chief Judge John M. Walker, Jr., failed to act 'promptly and expeditiously' and investigate a judicial misconduct complaint. Indeed, by that time it was already the eighth month since I had submitted my initial complaint of August 11, 2003, docket no. 03-8547, but the Chief Judge had taken no action. That complaint charged that U.S. Bankruptcy Judge John C. Ninfo, II, together with court officers at the U.S. Bankruptcy Court and District Court, WDNY, had disregarded the law, rules, and facts so repeatedly and consistently to my detriment, the sole non-local party, a resident of New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against me. That initial complaint was dismissed by the Hon. Circuit Judge Dennis Jacobs 10 months after its submission although it was not investigated at all. Judge Jacobs alleges that such dismissal has rendered this Complaint moot and warrants that it be dismissed too.

I. Since nothing wrong under the Misconduct Act or Rules was found in the initial complaint, its dismissal cannot amount to "appropriate corrective action" that would render moot this Complaint, which charges a different kind of misconduct

1. The first remark that follows from the paragraph above is that the initial complaint and this Complaint charge misconduct that is different and independent from each other: The former concerns a pattern of wrongdoing by Judge Ninfo; the latter the disregard for the promptness obligation and the duty to investigate a misconduct complaint by Chief Judge Walker. The dismissal of the former does not negate the misconduct of the latter and, consequently, does not render it moot. The Complaint remains to be determined on its own merits.

2. In addition, who ever heard that dismissing a case or a complaint amounts to taking "appropriate corrective action" under the Act or any other legal provision for that matter? It was Judge Jacobs himself who dismissed the initial complaint on the allegations that **a)** Dr. Cordero "has failed to provide evidence of any conduct 'prejudicial to the effective and expeditious administration of the business of the courts'"; **b)** Dr. Cordero's "statements…amount to a challenge to the merits…however '[t]he complaint procedure is not intended to provide a means of obtaining a review'"; **c)** "the allegations of bias and prejudice are unsupported and therefore rejected as frivolous"; and **d)** "The Act applies only to judges of the United States" rather than to other parties complained-about. Since Judge Jacobs found the counts of the complaint unsubstantiated and frivolous, and its issues and other parties outside the Act's scope, how can he possibly have taken "appropriate corrective action" to correct nothing wrong and in need of no correction!?

3. The dismissal of the Complaint, just as that of the initial complaint, is another glaring example of a quick job rejection of a misconduct complaint where the dismissal grounds have not been given even a substandard amount of reflection. Judge Jacobs not only did not "expeditiously review…and conduct a limited inquiry", as provided under §352(a), much less "promptly appoint…a special committee to investigate the facts and allegations", as provided under §353, but he also did not even review the basis of his instant September 24 dismissal, that is, his own earlier dismissal to the point that he got wrong its date, which is not June 9, but rather June 8.

II. None of the elements of the doctrine of mootness is found in the context of the initial complaint and this Complaint so that the doctrine is inapplicable

4. The quick job dismissal of the Complaint conclusorily jumps to its mootness from the dismissal of the initial complaint without pausing to consider the elements of the doctrine of mootness. It just refers to §352(b)(2) and to "intervening events" without indicating what events those are. Presumably, the dismissal of the initial complaint is meant.

5. However, the earlier dismissal is not final because it is the subject of the petition for review of July 8 -resubmitted on the 13th- to the Judicial Council. That dismissal could be vacated and the mootness allegation would be so fatally undermined that it would fall of its own weight. Thus, it would be utterly premature to allege that the intervening dismissal of the initial complaint has rendered the Complaint moot. The initial complaint is still in play and so is this Complaint.

6. If the Judicial Council calls for an investigation of the initial complaint, it can find that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing. If so, it would have reason to investigate why Chief Judge Walker failed to conduct even a limited inquiry despite not only the abundant evidence of such wrongdoing, but also the high stakes, namely, the integrity of this circuit's judicial system, which should have caused him as the circuit's foremost steward to take the complaint seriously if only out of prudence.

7. The Council's reason to investigate the Chief Judge would be strengthened by the fact that he had knowledge of the evidence of wrongdoing not only because of his duty to review the initial complaint and the many documents submitted in its support, but also because he is a member of the panel reviewing Dr. Cordero's appeal from Judge Ninfo's decisions and in that capacity he must have reviewed Dr. Cordero's numerous briefs, motions, and writ of mandamus describing the pattern of wrongful acts of Judge Ninfo and others. By so investigating the Chief Judge, the Council would be proceeding in line with the Complaint's request for relief. Since the Council could grant, whether implicitly or formally, that relief, the Complaint that asks for it is not moot.

8. Moreover, no other intervening event has changed the issues of the initial complaint and rendered a decision on the merits on this Complaint meaningless and thereby moot. Far from it, intervening events have only provided more evidence of judicial misconduct. In fact, if the Complaint had been read, it should have been noticed that it described the events that took place on March 8, 2004, seven months after the initial complaint, concerning Judge Ninfo's handling of a different type of case, that is, not an adversary proceeding, but rather a Chapter 13 bankruptcy petition filed on January 27, 2004, over five months after the initial complaint, by David and Mary Ann DeLano, docket no. 04-20280.

9. In this vein, on August 27, 2004, Dr. Cordero sent to each member of the Judicial Council an update to the petition for review of the dismissal of the initial complaint. Its very first paragraph states that:

> …recent events…raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo [out of Trustee Reiber's 3,909[1] cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383[2] cases].

10. Those intervening events have only strengthened the initial complaint by pointing to a powerful motive for the misconduct and bias: money, lots of it generated by *thousands* of cases that each of two trustees has before one judge. If you were a private trustee who is paid a fee percentage from the payments of bankruptcy debtors to their creditors, which means that you are not a federal employee paid by the federal government, could you possibly handle appropriately such an overwhelming workload? Similarly, with whom is it more likely that Judge Ninfo has developed a modus operandi that he would not want to disrupt: with these trustees as well as bankruptcy lawyers that have so many cases before him that they appear before him several times in a single session[3], or with an out of town pro se defendant that dare demand that he apply the law and even challenge his rulings all the way to the Court of Appeals?

11. But Judge Jacobs chose not to read about these events. This is a fact based on the letter of August 30 of Clerk Patricia Chin-Allen, signing for Clerk of Court Roseann MacKechnie, that

> Judge Dennis Jacobs, [sic] has forwarded your unopened letter [sic] to this office for response…Your papers are returned to you without any action taken.

12. This provides factual support to the above statement that in dismissing this Complaint, Judge Jacobs did not bother to read even his earlier order of June 8 dismissing the initial complaint. In forwarding unopened that letter, he disregarded the point made in footnote 1 of the July 8 petition for review of the dismissal of the initial complaint:

> "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant".

13. Just as Rule 8 entitles a complainant to communicate with the members of the Judicial Council, so it engenders the corresponding obligation for the members to read such communications. Those who read the August 27 update must have realized that it described relevant intervening events that raised definite and concrete facts and issues susceptible of judicial determination in their own right; they also provided further grounds for investigating the initial complaint. Thereby the intervening events precluded any allegation that the initial complaint's dismissal, which is challenged and pending review, had rendered this Complaint moot.

14. Likewise, a judicial determination of the Complaint is still appropriate because Dr. Cordero has neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

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[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

[3] Obviously, Judge Ninfo does not acquire immunity under the Misconduct Act or Rules only because he participates in widespread misconduct together with parties outside their scope of application.

15. Nor has mootness resulted from the relief requested becoming impossible. On the contrary, the update linking judicial misconduct to a bankruptcy fraud scheme has only rendered more necessary for the Council to investigate both complaints with FBI assistance, as requested.

16. The cause for misconduct has not ceased either. Far from it, the DeLano case has provided Judge Ninfo with the need to engage in further disregard for legality and more bias against Dr. Cordero, who is one of the DeLanos' creditors and the one who showed their concealment of assets. Hence, the situation that gave rise to the initial complaint is a continuing one that has not only the probability, but also the likelihood of generating subsequent complaints. Since the same misconduct can recur, it prevents the Complaint from becoming moot; *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc., 120 S.Ct. 693, 528 U.S. 167, 145 L.Ed.2d 610 (2000)*. Thus, the Judicial Council should decide the two current complaints, just as a court would decide a case despite its apparent mootness if the dispute is ongoing and typically evades review. *Richardson v. Ramirez, 94 S.Ct. 2655, 418 U.S. 24 41 L.Ed.2d 551 (1974)*.

III. The violation of the promptness obligation and the duty to investigate is so capable of repetition that it has been repeated in the handling of this Complaint

17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle 'promptly and expediently' the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.

18. Judge Jacobs's unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is "capable of repetition". The Council should not evade its review as moot precisely because the Chief Judge's violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade, 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973)*.

19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Stephen Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.

20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate "conduct prejudicial to the effective and expeditious administration of the business of the courts". What is more, mishandling complaints has severe practical consequences on the complainants and the public's perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero's case, the judges' contempt for these complaints has let him suffer for over two years Judge Ninfo's arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous

amount of effort, time, and money and inflicted upon him tremendous aggravation. It cannot be fairly and justly held that his suffering and cost have been rendered 'moot' because the Chief Judge and Judge Jacobs chose to treat contemptuously their obligations and duties under the law.

IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as "admitting of specific relief through a decree of conclusive character", cf. *Aetna Life Ins. Co. v. Haworth, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937)*, and that it:

    a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;

    b. Include in their scope of investigation:

        1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;

            b) what he should have known, as the circuit's foremost judicial officer;

            c) when he should have known it; and

            d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and

        2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;

    c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;

    d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;

    e. Take action on the complaints in light of the results of their investigation;

    f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer's Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

Let the Council take the opportunity afforded by these two complaints and petitions to honor its oath of office and apply the law impartially, blind to who the parties are and concerned only with being seen doing justice, as it proceeds, not to protect its peers, but rather to safeguard the integrity of the judicial system for the benefit of the public at large.

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

October 14, 2004

Chief Judge John M. Walker, Jr.
Member of the Judicial Council
U.S. Court of Appeals, 40 Centre St.
New York, NY 10007

Re: Exhibits for review petition re complaint about C.J. Walker, 04-8510

Dear Chief Judge Walker,

This is a communication with the members of the Judicial Council permissible under this Circuit's Rules Governing Misconduct Complaints, which contains "Rule 8, Review by the judicial council of a chief judge's order", where §8(e)(2) refers to "any communications that may be addressed to the members of the judicial council by the complainant".

On August 11, *2003*, I filed a complaint about WBNY Judge John C. Ninfo, II, concerning his disregard together with others for the law, rules, and facts in a series of instances so numerous and consistently detrimental to me (44.II; 48.III, infra), the only non-local party, and favorable to the local ones (22.IV; 50.IV), as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Although intervening events confirmed the charges of the complaint (65-67), eight months later I had still not heard from Chief Judge John M. Walker, Jr., despite his duty under 28 U.S.C. §351 et seq. and the Circuit's Rules to act "promptly" and "expeditiously". Hence, on March 19, I submitted a complaint about the Chief Judge (65) on the grounds of his disregard for that promptness obligation and his duty to investigate a complaint, whereby he allowed Judge Ninfo's wrongdoing and bias to continue to take an enormous toll on my effort, time, and money and inflict upon me tremendous aggravation. That complaint, which was also subject to the promptness obligation, was dismissed over six months later, on September 24; it was not investigated either (7). I submitted a petition for review on October 4 (1; 2).

Because the Clerk of Court refused to accept the first petition if accompanied with exhibits, this communication provides you with some documents that evidence intervening events linking judicial misconduct to a bankruptcy fraud scheme involving the most powerful driver of wrongdoing: lots of money (26.V; 51.V). I trust that if you would examine these documents, you would realize the need to investigate a series of events that undermine the integrity of both the judicial and the bankruptcy systems in WDNY and in the Court of Appeals (cf. 9¶¶1-5).

The perfunctory way in which these complaints have been handled is evidenced not only by their belatedness and lack of investigation: **1)** The Court's letter of July 16 states that a petition for review was received in February; but I submitted the petition concerning my complaint about Judge Ninfo in July (59). **2)** The Judicial Council's denial of last September 30 of my petition refers to a complaint filed on August 8, 2003; but none was filed on that date (60). **3)** The Acting Chief Judge dismissed on September 24 the complaint about the Chief Judge on the basis of his own dismissal of the complaint about Judge Ninfo, stating its dismissal date as June 9, which is wrong (8). If I came to your court and made so many mistakes, would you take me seriously? **4)** The Council in its September 30 letter merely "DENIED" my petition without providing any opinion. Is that the easy way out in which it insures that justice is seen to be done? Therefore, I respectfully request that under Rule 8(a) you cause this petition and the previous one to be placed on the Council's agenda and the respective complaints to be investigated (cf. 63).

Sincerely, Dr. Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 20, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

The "Exhibits for review petition concerning complaint . . . " has been forwarded to this office by Chief Judge John M. Walker, Jr. for response.

You cannot supplement the file in the judicial complaint procedure. There is no motion practice in this procedure

Once a decision has been filed concerning your petition for review you will be notified by letter.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

November 10, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed please find a copy of the November 10, 2004 Order of the Judicial Council of the Second Circuit denying the above-referenced petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

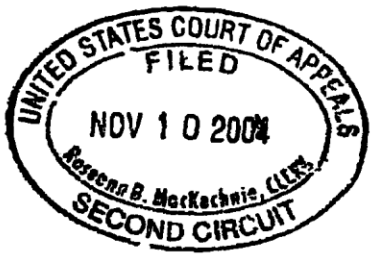
Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



In Re:

CHARGE OF JUDICIAL MISCONDUCT Docket number: 04-8510

Before the Judicial Council of the Second Circuit:

A complaint having been filed on March 29, 2004, alleging misconduct on the part of Circuit Judge of this Circuit, and the complaint having been dismissed on September 24, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on October 5, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated September 24, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Circuit Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: November 10, 2004
New York, New York

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Objection to Confirmation of the Chapter 13 Plan of Debt Repayment

1. Dr. Richard Cordero, as a party in interest, objects on the following grounds to the confirmation of the proposed plan in the above-captioned bankruptcy case. Consequently, the plan should not be confirmed. Cf. B.C. §§1324 and 1325(b)(1).

I. The bankruptcy of a loan officer with superior knowledge of the risks of being overextended on credit card borrowing warrants strict scrutiny

2. Mr. David DeLano is a loan officer of a major bank who in his professional capacity examines precisely that: loans and borrowers' ability to repay them. Thus, he has imputed superior knowledge of what being overextended or taking an excessive debt burden means and of when a borrower approaches the limit of his ability to pay. Hence, he was aware of the consequences of his own incurring such excessive credit card debt at the very high interest rate that they attract. His conduct may have been so knowingly irresponsible as to be suspicious.
3. This is particularly so since the DeLanos jointly earned in 2002 $91,655, well above the average American household income. What is more, last year their income went up considerably to $108,586. Yet, their cash in hand and in their checking and savings accounts is only $535.50 (Schedule B, items 1-2). What did Loan Officer DeLano do with his earnings?
4. Likewise, of all the money that they borrowed on credit cards and despite the monthly payments that they must have made to them over the years, they still owe 18 credit card issuers $98,092.91. However, they declare their personal property in the form of goods, the only property that could possibly have been bought on credit cards after excluding their pension and profit sharing plans (Schedule B, item 11), to be only $9,945.50. Where did the goods go and what kind of services did they enjoy through credit card charges so that now they should have so little left to show for the $98,092.91 still owing to their 18 credit card issuers?
5. These figures and facts were set forth by Loan Officer DeLano and his wife themselves with the legal assistance of their bankruptcy filing attorney. Their clash is deafening. Consequently, it is reasonable to conclude that their petition to have their debts discharged in bankruptcy must be strictly scrutinized to determine whether it has been made in good faith and free of fraud. Cf. B.C. §1325(a)(3).

II. The plan fails to require the DeLanos' best effort to repay creditors

6. The DeLanos have declared their current expenditures, including monthly charges of $55 for cable TV, $23.95 for Internet access, and $107.50 for recreation, clubs, and magazines. In addition, they indicate $62 per month for cellular phone "req. for work", which is certainly not the same as 'required by employers'. These are expenditures for a comfortable life with all modern conveniences, but they consume income that is "not reasonably necessary to be expended". Cf. B.C. §1325(b)(2). Indeed, the DeLanos intend to go on living unaffected by their bankruptcy and have used the figure of $2,946.50 current expenditures as their living expenses requirements to be deducted from the projected monthly income of $4,886.50 (Schedules J and I).

7. But that is not enough for them.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's current unemployment benefits run out in June (Schedule I)
$3,757.50	net monthly income
-2,946.50	to maintain their comfortable current expenditures (Schedule J)
$811.00	actual disposable income

8. Yet, the Delanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. Is there a reason for this?

9. Without any further explanation, the plan provides that for the last 6 months $960 will be paid monthly. This shows that the current expenditures can be reduced or that the DeLanos can project an increase in income 31 months ahead of time.

10. The bottom line is that all the DeLanos will pay under the plan is $31,335 despite their debt to unsecured creditors of $98,092.91 (Schedule F). However, this does not mean that unsecured creditors will receive roughly 1/3 of their claims and forgo interest, but barely above 1/5, for "unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors" (Chapter 13 Plan 4d(2)).

11. It is fair to say that this plan makes the unsecured creditors bear the brunt of the DeLanos' bankruptcy while they continue living on their comfortable current expenditures. What is more, or rather, less, is that the plan does not make any provision whatsoever to fund Dr. Cordero's contingent claim. If Dr. Cordero should prevail in court against Mr. DeLano, where would the money come from to pay the judgment? Is Mr. DeLano making himself judgment proof?

12. By contrast, the DeLanos make proof of their goodwill toward their son. They made him a loan of $10,000, which he has not begun to pay and which they declare of "uncertain collectibility" (Schedule B, item 15). There is no information as to when the loan was made, whether it was applied to buy an asset or the son has any other assets which the trustee can put a lien on or take possession of, or whether there is any other way to collect it. Nor is there any hint of where the DeLanos, who have in cash and in their bank accounts the whole of $535.50, got

$10,000 to lend to their son. To allow the son not to repay the loan amounts to a preferential transfer. This is all the more so because their son is an insider. Cf. B.C. §101(31)(A)(i). Therefore, the DeLanos' dealings with him must be examined with strict scrutiny for good faith and fairness.

13. It follows that the plan fails to show the DeLanos' willingness to put forth their best effort to repay their creditors, while they spare their comfortable standard of living as well as their son.

III. An accounting is necessary to establish the timeline of debt accumulation and the whereabouts of the goods bought on credit cards in order to determine the good faith and fraudless nature of a bankruptcy petition by Loan Officer DeLano

14. It is reasonable to assume that Mr. DeLano, as a loan officer, has access to the reports of credit reporting bureaus and, more importantly, that he knows how to examine them to determine the risk factor and solvability of a current or potential borrower. Likewise, bank lenders, including the 18 credit card issuers to whom the DeLanos still owe more than $98,000, regularly report to the credit reporting bureaus their cardholders' borrowing balances. They also check their cardholders' reports to assess their total debt burden and repayment patterns in order to determine whether to allow their continued use of their cards or to cancel them.

15. Thus, it is important to find out whether any or all of these 18 credit card issuers requested and examined the DeLanos' credit reports, such as those produced by Equifax, TransUnion, and Experian, and raised any concerns with the DeLanos about their total debt burden. This investigation is warranted because the DeLanos have described 14 credit card claims as "1990 and prior Credit card purchases" (Schedule F). Consequently, there has been ample time for them to have been warned about their total debt burden, not to mention for Loan Officer DeLano to have on his own realized its risks. Otherwise, how does he deal with his Bank's customers in similar situations? These facts beg the question: Is there a history of credit card issuers' announced bankruptcy and of a bankruptcy that the DeLanos were waiting to announce shortly before retirement (bottom of Schedule I)? The answer to this question affects directly the determination of the good faith of the DeLanos' bankruptcy petition.

16. In the same vein, for years the credit card issuers have had the duty and the means to find out, and must have been aware, that the DeLanos' credit card borrowing gave cause for concern. If they took no steps or took only inappropriate ones to secure repayment and even failed to stop the DeLanos from accumulating still more credit card debt, then they must bear some responsibility for this bankruptcy. As parties contributing to the DeLanos' indebtedness, they should be placed in a class of unsecured creditors different from and junior to that of Dr. Cordero, who has nothing whatsoever to do with the DeLanos' bankruptcy. Cf. B.C. §1322(b)(1)-(2). Yet, Dr. Cordero stands the risk of being deprived of any payment at all on a judgment that he may eventually recover against Mr. DeLano for his wrongful conduct precisely as a loan officer. Cf. Pfuntner v. Gordon et al, docket no. 02-2230.

17. In addition to drawing up the DeLanos' timeline of credit card debt accumulation, it is necessary to examine the DeLano's monthly credit card statements for the period in question to establish on what goods and services they spent what amount of money of which more than $98,000 still remains outstanding…plus they carry a mortgage of $77,084.49 on a house in

which their equity is only $21,415.51. (Schedule A) This is particularly justified since the DeLanos claim that they have barely anything of any value, a mere $9,945.50 worth of goods. (Schedule B). Where did all that borrowed money go?!

18. The timeline and nature of the DeLanos' credit card use will make it possible to figure out whether there must be other assets and the repayment plan is not in the best interest of creditors so that consideration must be given to:

    a. a conversion of the case to one under Chapter 7; Cf. B.C. §§1307(c) and 1325(a)(4);
    b. an extension of the plan from three to five years; Cf. B.C. §§1322(d); or
    c. dismissal for substantial abuse and bad faith under the equitable powers of the court to consider the motives of debtors in filing their petitions; Cf. B.C. §§1307(c) and 1325(a)(3).

IV. Trustee's duty to investigate debtor's financial affairs and provide requested information to a party in interest

19. Under B.C. §§1302(b)(1) and 704(4), the Trustee has the duty "to investigate the financial affairs of the debtor". Additionally, B.C. §§1302(b)(1) and 704(7) require him to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". To discharge these duties so that the interested parties may be able to make an informed decision as to what is in the best interest of creditors and the estate, the Trustee should investigate the matters discussed above, which in brief include the following:

20. Conduct an accounting based on the DeLanos' monthly credit card statements covering the period of debt accumulation. Find out how, when, and who became aware of the DeLanos' risky indebtedness and alerted them to it and with what results.

21. Determine the items and value of the DeLanos' personal property and the whereabouts and value of the goods purchased on credit cards.

22. Find out whether the DeLanos applied to M&T Bank or any other bank for a consolidation loan; if so, what was the response and, if not, why.

23. Determine what expenses are not reasonably necessary to maintain or support the DeLanos. Cf. B.C. §§1325(b)(2) and 584(d)(3).

24. State whether the DeLanos commenced making payments within 30 days of filing the plan. Cf. B.C. §§1302(b)(5) and 1326(a)(1).

25. Establish the circumstances of the DeLanos' $10,000 loan to their son and its alleged uncertain collectibility.

V. Provisions that any modified plan should contain

26. The DeLanos have shown that they do not know how to manage money in spite of the fact that Mr. Delano is a bank loan office. Therefore, their current and future income should not be allowed to be paid to them. Rather, the plan should provide for its submission to the trustee's supervision and control for his handling as is necessary for the execution of the plan. Cf. B.C. §1322(a). Whether under the plan or the order confirming it, the trustee should be the one who

makes plan payments to creditors. Cf. B.C. §1326(c). Consequently, the DeLanos' current and future employers and any entity that pays income to them should be ordered to pay all of it to the trustee. Cf. B.C. §1325(c).

27. All the DeLanos' disposable income should be applied to make payments under the plan. Cf. B.C. §1325(b)(1)(B). All income not reasonably necessary to be expended should be recovered from the DeLano's current expenditures and made available for payment to the creditors. Cf. B.C. §1325(b)(2).

28. The plan should provide for the payment of Dr. Cordero's claim. Cf. B.C. §1325(b)(1)(A).

VI. Notice of claim and request to be informed

29. Dr. Cordero gives notice of his claim to compensation for all the time, effort, and money that the Delanos have through their bankruptcy petition forced him to spend in order to protect his claim, and all the more so if it should be determined that the DeLanos did not incur that debt or file their petition in good faith and free of fraud.

30. Dr. Cordero requests that notice be given to him of every act undertaken in this case.

March 4, 2004

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (716)232-5300

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. & MARY ANN DELANO,
Debtor(s)

MOTION TO DISMISS
CHAPTER 13 PETITION

BK NO. 04-20280

George M. Reiber, Trustee, in the above named case, moves this Court as follows:

To dismiss the debtor's petition in the above case pursuant to 11 U.S.C. Section 1307 of the Bankruptcy Code for unreasonable delay which is prejudicial to creditors, or convert to a Chapter 7 proceeding. Debtor has failed to turn over the documents requested by the Trustee in the attached letters. The last confirmation hearing was scheduled on April 26, 2004. Upon information and belief, this petition has not been previously converted to or from another Chapter.

/S/
George M. Reiber
3136 S. Winton Road
Rochester, New York 14623
(585) 427-7225

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before the Honorable John C. Ninfo, II, Bankruptcy Judge, 100 State Street, Rochester, New York, on the 19th day of July, 2004 at 3:30 in the afternoon of that day or as soon thereafter as counsel can be heard.

/S/

Dated: June 15, 2004
Rochester, New York

To: Debtor
Debtor's Attorney
U.S. Trustee

Certificate of Service by Mail of SNT, /S/_____Clerk. Copies of this motion were personally mailed by me on June 15, 2004 to David & Mary Ann Delano, Christopher Werner, Esq., US. Trustee

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

Statement in Opposition to Trustee's Motion To Dismiss the DeLano Petition

Dr. Richard Cordero, creditor, states the following under penalty of perjury:

1. Last June 15, Chapter 13 Trustee George Reiber, Esq., moved the court to dismiss the above captioned DeLano bankruptcy petition because of Debtor DeLanos' unreasonable delay in submitting financial documents. Because such delay has been tolerated by the Trustee due to his unwillingness or incapacity to obtain those documents or to know what to do with those received and because there is now evidence that dismissal is contrary to both a trustee's duty to report reasonable suspicion of wrongdoing and the interests of the creditors, Dr. Cordero opposes such dismissal.

TABLE OF CONTENTS

I. Trustee Reiber Has Demonstrated Unwillingness And Incapacity To Obtain Financial Documents From The Delanos 64

II. Trustee Reiber Failed To Detect Even The Blatant Incompleteness Of The Documents That He Received On June 14, 2004 64

III. Trustee Reiber Failed And Refused To Take Appropriate Action Relating To His Request For Documents And His Receipt Of Them 65

IV. If Trustee Reiber Had Analyzed The Petition On Its Own As Well As Against The Documents Received On June 14, He Would Have Realized Its Questionable Good Faith, The Evidence Of Wrongdoing, And The Need To Report It 66

V. The U.S. Trustees And The Court Must Take Notice Of Trustee Reiber's Ineffective And Halfhearted Effort To "Investigate" The Delanos And Replace Him 68

VI. Relief Requested 69

I. Trustee Reiber has demonstrated unwillingness and incapacity to obtain financial documents from the DeLanos

2. Although in his Objection to Confirmation of March 4, 2004, Dr. Cordero requested of Trustee Reiber financial documents supporting the DeLanos' petition of January 26, 2004, Dr. Cordero had to insist with the Trustee and with his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt, for him to do so. Only in his letter of April 20, addressed to the Delano's attorney, Christopher Werner, Esq., did the Trustee request documents.

3. Even so his request was insufficient because, among other things:

   a) it covered only three years out of the 15 years that the DeLanos brought into play by claiming in Schedule F that their financial difficulties began with their "1990 and prior credit card purchases";

   b) it concerned only 8 credit cards out of the 18 listed in Schedule F; and

   c) it failed to request credit bureau reports from each of the three major bureaus, whose reports are complementary and must be read together.

4. Despite the insufficiency of Trustee Reiber's request, no documents were produced. Dr. Cordero had to insist again that the Trustee take further action to obtain them. By letter of May 18, the Trustee lamely asked of Att. Werner: "Please advise me as to the progress that you and your clients have made on obtaining the documents which I requested in my prior letter to you dated April 20, 2004".

II. Trustee Reiber failed to detect even the blatant incompleteness of the documents that he received on June 14, 2004

5. On June 14, the DeLanos submitted meager documents through Att. Werner. Even the most cursory peek at them shows their unjustifiable incompleteness:

   a) both Equifax reports are missing numbered pages!,

   b) there is only one single statement for each of the 8 credit cards covered by the request and they are from between July and October *2003!*, and

   c) each of those statements is missing the key section of names of sellers of purchased goods and services, and dates and amounts of purchase.

6. To browse through only 19 pages that you have requested and have been kept waiting to receive for months, would it have taken you more than two to three minutes to realize those defects? Only if your mind went into a spin wondering what conceivable reason could the DeLanos and their attorney have had to submit between 8 and 11 month old credit card statements but not those in between, let alone all the previous ones.

7. A closer check of those documents against the figures in the petition and the court-developed register of claims and creditors matrix points to debt underreporting, account unreporting, and unaccountability of assets in the petition. These grave defects call into question the good faith

of the DeLanos' petition. They also support the reasonable inference that the DeLanos have been and are reluctant to submit more documents, let alone the complete set of requested documents, due to their awareness that more documents would only further deny such good faith and warrant an investigation into whether their petition was motivated by a fraudulent intent as part of a bankruptcy fraud scheme.

8. Actually, it was Trustee Reiber's attorney, James Weidman, Esq., the first who ever used the term fraud in connection with the DeLanos' petition. This he did when he repeatedly asked of Dr. Cordero at the meeting of creditors on March 8, 2004, whether he knew that the DeLanos' had committed fraud and, if so, what evidence of their fraud he had. Dr. Cordero specifically stated that by objecting to the confirmation of the DeLanos' plan of debt repayment he was not accusing them of any fraud, and simply wanted to examine them in the meeting of creditors called precisely to do so. Nevertheless, Att. Weidman reacted in a clearly unlawful and undeniably suspicious way: He put an end to the meeting after Dr. Cordero, the only creditor present, had asked merely two questions!

9. If Att. Weidman was so interested in finding out whether the DeLanos' had committed fraud, why would he not allow Dr. Cordero to ask questions of them? Or was he interested just in finding out how much Dr. Cordero knew? Aside from the fact that it was unlawful for Trustee Reiber not to preside over the meeting of creditors, but given that his attorney was so keen to find out any evidence of fraud in connection with the DeLanos' petition, should Trustee Reiber not have been equally keen? Of course he should have been!

III. Trustee Reiber failed and refused to take appropriate action relating to his request for documents and his receipt of them

10. The Trustee has not been keen enough on the documents submitted to him on June 14, to have looked at them for even two or three minutes. Indeed, in a phone conversation between him and Dr. Cordero on July 6, he as much as admitted to not having as yet reviewed them. Hence, he was not, or pretended not to be, aware of their incompleteness and evidence of wrongdoing.

11. Naturally, if Trustee Reiber were aware of the documents' grave defects, he would be expected to fulfill his obligation to report reasonable suspicion of wrongdoing to law enforcement agencies. Far from it, the Trustee stated that he would not do any such reporting at this time, would maintain his motion to dismiss, and would not subpoena the DeLanos for any documents. What is more, he stated that he does not know whether he has subpoena power and that he has never before used subpoenas!

12. However, Rule 9016 F.R.Bkr.P. makes Rule 45 F.R.Civ.P. applicable in cases under the Code, which provides thus:

> Rule 45 Subpoena
>
> (a)(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as office of the court may also issue and sign a subpoena on behalf of
>
> ...
>
> (B) a court for a district in which a deposition or

production is compelled by the subpoena,…

13. Since Trustee Reiber is a party as well as an attorney, and in any event he has Att. Weidman at his side, the Trustee can issue subpoenas to compel the DeLanos to produce the requested documents. In addition, "any party in interest" can invoke Rule 9016 to compel production of documents under Rule 2004(a) and (c).

14. Therefore, what prevents Trustee Reiber from using subpoenas to compel the DeLanos to produce the requested documents? Nothing except a lack of willingness or incapacity to fulfill his obligation under B.C. §704(4) to "investigate the financial affairs of the debtor" and under B.C. §704(4) to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest".

15. Trustee Reiber's argument that he does not want to use subpoenas because a petition under Chapter 13 is voluntary and the debtor has a right to withdraw his petition at any time is totally without merit: The Trustee himself is the one intent on accomplishing the same result through his motion to dismiss. There would have been no appreciable extra work in issuing by subpoena his request to the DeLanos for documents contained in his letter of April 20. On the contrary, he would have spared himself the need to send his letter of May 18.

16. The fact is that no progress has been made, for even when some documents were submitted to him on June 14, Trustee Reiber was not willing or able to realize the inescapable minimum of missing pages and sections and mind-boggling dates. Therefore, how would he ever know what he still needs to request if he is not aware of what he already received? What would he do with hundreds of pages of documents covering the last three years, let alone the past 15 years, if he does not know what to do with 19 pages? He who cannot do the least cannot do the most.

IV. If Trustee Reiber had analyzed the petition on its own as well as against the documents received on June 14, he would have realized its questionable good faith, the evidence of wrongdoing, and the need to report it

17. Judge for yourself from the following salient figures and circumstances whether Trustee Reiber, just as Att. Weidman, has had reason to suspect the petition's good faith:

    a) Mr. DeLano has been *a bank officer for 15 years!*, or rather more precisely, a **loan** bank officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay the loan over its life. He is still in good standing with, and employed in that capacity by, a major bank, namely, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines.

    b) The DeLanos incurred scores of thousands of dollars in credit card debt;

    c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for over 10 years;

    d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F;

f) owe also a mortgage of $77,084;

g) have near the end of their work life equity in their house of only $21,415;

h) declared these earnings in just the last three years:

2001	2002	2003	total
$91,229	91,655	108,586	$291,470

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) their cash in hand or on account declared in their petition was only $535.50;

k) the rest of their tangible personal property is just two cars worth $6,500;

l) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

m) make a $10,000 loan to their son and declare it uncollectible;

n) but offer to repay only 22 cents on the dollar without interest for just 3 years;

o) refused for months to submit any credit card statement covering any length of time 'because the DeLanos do not maintain credit card statements dating back more than 10 years in their records and doubt that those statements are available from even the credit card companies';

p) however, the DeLanos:

(1) must still receive the monthly statement from each of the 18 credit card issuers in Schedule F, given that on April 16, Att. Werner, their lawyer, stated to the court: "Debtors have maintained the minimum payments on those obligations";

(2) must have consulted in January 2004, such statements to provide in Schedule F the numbers of their accounts with those issuers and their addresses; and

(3) must know –Loan Officer DeLano must no doubt be presumed to know- that they have an obligation to keep financial documents for a certain number of years;

q) despite Dr. Cordero's requests for financial documents of March 4 and 30, April 23, and May 23, and the Trustee's of April 20 and May 18, the DeLanos provided only some financial documents on June 14, so late that the Trustee moved on June 15 for dismissal for "unreasonable delay", and what they did provide is incomplete and incriminatory:

(1) only one statement of each of only 8 credit card accounts out of 18 in Schedule F,

(2) those statements are missing the section showing from which seller of goods and services a purchase was made, for what amount and on what date, which is indispensable information to establish the timeline of debt accumulation and its nature;

(3) the statements are not even the latest ones of May and June 2004, but rather are of between July and October 2003! Why would the DeLanos ever do such thing?!;

(4) the credit bureau report submitted for Mr. DeLano and the one for Mrs. DeLano are from only one bureau, namely, Equifax, even though the DeLanos must know that none of the reports of even the other two major bureaus, that is, Trans Union and Experian, is exhaustive by including all accounts or up to date as to each account, but

rather the reports of the three bureaus are complementary;

(5) worse yet, the Equifax reports submitted are missing pages, even pages that must contain information on accounts, such as outstanding balance and payment history;

(6) the figures in the three IRS 1040 forms for 2001, 2002, and 2003 do not coincide with the information on earnings in the DeLanos' bankruptcy petition of January 26, 2004.

18. A comparison between those credit card statements, the Equifax reports, the bankruptcy petition, and the court-developed claims register and creditors matrix calls into question the petition's good faith by revealing debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money.

19. Indeed, in Schedule F the DeLanos claimed that their financial difficulties began with "1990 and prior credit card purchases". Thereby they opened the door for questions covering the period between then and now. Until they provide tax returns that go that far, let's assume that in 1989 the combined income of him and his wife, a Xerox specialist, was $50,000. Last year, 15 years later, it was over $108,000. So let's assume further that their average annual income was $75,000. In 15 years they earned $1,125,000…but they allege to end up with tangible property worth only $9,945 and home equity of merely $21,415! This does not take into account what they owned before 1989, let alone their credit card borrowing and two loans totaling $118,000. Where did the money go? Where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement have they been planning for and where?

20. Did Mr. DeLano put his knowledge and experience as a bank loan officer to good use in living it up with his family and closing down all collection activity of 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his many years in banking during which he must have examined many loan applicants' financial documents, have thought that it would be deemed in good faith to submit such objectively incomplete documents? Did he have any reason to expect Trustee Reiber not to analyze them?

21. Have Trustee Reiber and Att. Weidman asked themselves that question? Did they ever scan the figures in the January 26 petition to get a hint on whether they made sense? How did they ascertain the timeline of debt accumulation and its nature when they readied the petition for confirmation by the court on March 8, if they had not yet even requested the documents that eventually were submitted to the Trustee on June 14? Or was it that to ask any questions and request any supporting documents they were simply too busy with their other *3,909 open* cases, according to Pacer, as well as with the rolling in of new ones? Were they also too busy to defend the interests of the creditors left holding bags of worthless IOUs, including federal tax authorities, when they approved the DeLanos' plan to repay them only 22¢ on the dollar?

V. The U.S. Trustees and the court must take notice of Trustee Reiber's ineffective and halfhearted effort to "investigate" the DeLanos and replace him

22. There is now circumstantial and documentary evidence supporting reasonable suspicion of wrongdoing in the DeLano's petition. Is Trustee Reiber's unwillingness and incapacity to perform his role part of the problem?

23. One can only hope that Assistant U.S. Trustee Kathleen Schmitt and U.S. Trustee for Region 2

Deirdre Martini recognize that a trustee intent on properly performing his role as representative of the estate for the benefit of the creditors would use all the means at his disposal, such as subpoenas, so clearly available to him. Similarly, a trustee determined to safeguard the integrity of the bankruptcy system would fulfill his obligation to report reasonable suspicion of wrongdoing, including bankruptcy fraud, to law enforcement agencies. Such trustee would not open the easy way out of dismissal for petitioners who may have refused to comply with a request for documents because of their incriminating content. To do so would send the wrong message to the public, namely, that they can always try to escape their debts by filing totally meritless and even fraudulent petitions because if they are about to be caught, the trustee will let them "off the hook" by applying on their behalf for the dismissal of their cases.

24. Yet, Trustees Schmitt and Martini have allowed Trustee Reiber to hold on to this case despite Dr. Cordero's reasoned request of March 30 for his replacement. Now, the U.S. Trustees must take notice of the Trustee's ineffective and substandard effort to "investigate" the DeLanos.

25. They must not disregard any longer his obvious conflict of interest between, on the one hand, the fact that he and his attorney approved and readied the DeLanos' petition for confirmation on March 8, 2004, and vouched in open court on that date for its good faith despite never having requested or obtained any supporting financial documents, and on the other hand, the fact that the Trustee is being required to comply with his legal obligation to investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied is in fact a vehicle of fraud to avoid payment of claims.

26. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney's working methods, good judgment, and motives. That could have devastating consequences. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's myriad other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

27. But more is riding on this. The fact is that an independent investigation that discovered more DeLano-like cases would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from U.S. Trustees Schmitt and Martini. The next logical question would be what kind of oversight the bankruptcy and district courts have been exercising over petitions submitted to them, in particular, and the bankruptcy process, in general.

28. What were they all thinking!? Whatever it was, from their perspective now their best self-protection is not to set in motion an investigative process that can spin out of control and end up crushing them. However, their failure to treat the DeLano petition as a test case to be investigated openly and independently will further undermine the integrity of the judicial system and the public trust in it. It will also confirm the worst fears about them and would only buy them time to dig themselves further into a hole. The time is now for them to cut their losses.

VI. Relief Requested

29. Therefore, Dr. Cordero respectfully requests that:

30. The motion to dismiss the DeLanos' bankruptcy petition be denied;

31. The DeLanos be ordered to submit to the court the following financial documents:

a) financial documents relating to transactions with institutions

(1) types of documents:

(a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements' parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

(b) monthly bank statements, with all their parts and without redaction;

(c) credit bureau reports, with all their pages; from Equifax, Trans Union, and Experian;

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(2) period of coverage: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) status of account: whether open or closed;

(4) holder of account or interest: whether in both or either of their names, or entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them;

(5) deadline for submission:

(a) for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

i) 4:30 p.m. on Tuesday, July 20, 2004, which is the day following the return day of the dismissal motion;

(b) for documents **not in their possession**:

i) by 5:00 p.m. on Friday, July 23, 2004, for the DeLanos:

(A) to have issued, through their attorney, subpoenas, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶31.a)(1) above and that could not be produced pursuant to ¶31.a)(5)(a) above, and

(B) to have mailed each with a signature confirmation slip;

ii) by 4:30 p.m. on Monday, July 26, 2004, to have submitted to the court an affidavit attesting to their compliance with the order in ¶31.a)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number, and the postmark.

b) All financial documents relating to the **loan to their son** referred to in Schedule B:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or the terms of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶31.b)(5)(b)-(h) above;

(7) dateline for submission

(a) 4:30 p.m. on Tuesday, July 20, 2004, for all such documents in the DeLanos' possession;

(b) 4:30 p.m. on Monday, July 26, 2004, for their affidavit; and

(c) as provided for in ¶31.a)(5)(b) above, for documents not in their possession;

32. the court acknowledge and take action with respect to Trustee Reiber as follows:

    a) Trustee Reiber's inherent conflict of interest between having vouched for the petition's good faith and having to investigate whether it was submitted with a fraudulent intent;

    b) Trustee Reiber's failure up to now, and his inability due to his conflict of interests, to represent the creditors and defend their interests;

    c) Trustee Reiber's substandard efforts and inefficiency in requesting and obtaining financial documents from the DeLanos, including his failure to realize the insufficiency of those requested and his reluctance to request them through subpoenas;

    d) Trustee Reiber's unwillingness or incapacity to analyze financial documents generally or those of the DeLanos specifically, including his failure to detect the obvious incompleteness and defects of those received on June 14, 2004;and

    e) the court, in light of such unwillingness and incapacity,

        (1) recommend to the U.S. Trustees that Trustee Reiber be replaced in the DeLano case by an independent trustee, unrelated to Trustee Reiber and the DeLanos, and capable of conducting a competent, objective, and zealous investigation of this case;

        (2) require that Trustee Reiber and/or the DeLanos at their expense:

            (a) make the documents submitted to the court pursuant to its order also publicly available through Pacer and, if that is not possible,

            (b) make a photocopy of those documents and send it to Dr. Cordero;

33. the court make a simultaneous referral of this case to the FBI for a concurrent investigation aimed at determining whether there has been fraud in connection with the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

34. the court allow Dr. Cordero to present his arguments by phone and that the court not cut off the phone connection to him until after the court declares the hearing concluded and that thereafter no other oral communication between the court and a party be allowed on this case until the next scheduled event;

35. the court reply to Dr. Cordero's motion of March 31, 2004, for a declaration of the mode of computing the timeliness of an objection to a claim of exemptions and for a written statement on and of local practice.

July 9, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

David G. DeLano
Mary Ann DeLano

Debtor(s)

Chapter 13
Case No. 04-20280

OBJECTION TO CLAIM
NOTICE OF HEARING AND ORDER

NOTICE

NOTICE is hereby given of the objection by Debtors, by their attorney, Christopher K. Werner, Esq.
[Trustee, Debtor or other party]
to your claim in the Western District of New York. A hearing on the objection will be held at the United States Bankruptcy Court,
US Courthouse, 100 State Street, Rochester, NY 14614, _____,
New York, on August 25, 20 04 at 11:30 A.M. only if a written request for a hearing is filed by the claimant as outlined below.

"PURSUANT TO FRBP 9014 AND THE STANDING ORDERS IMPLEMENTING DEFAULT PROCEDURES IN ROCHESTER AND WATKINS GLEN; IF YOU INTEND TO OPPOSE THE MOTION, AT A MINIMUM, YOU MUST SERVE: (1) THE MOVANT AND MOVANT'S COUNSEL, AND (2) IF NOT THE MOVING PARTY (A) THE DEBTOR AND DEBTOR'S COUNSEL; (B) IN A CHAPTER 11 CASE, THE CREDITORS' COMMITTEE AND ITS ATTORNEY, OR IF THERE IS NO COMMITTEE, THE 20 LARGEST CREDITORS; AND (C) ANY TRUSTEE. IN ADDITION, YOU MUST FILE WITH THE CLERK OF THE BANKRUPTCY COURT WRITTEN OPPOSITION TO THE MOTION NO LATER THAN THREE (3) BUSINESS DAYS PRIOR TO THE RETURN DATE OF THE MOTION PURSUANT TO FRBP 9006(a). IN THE EVENT NO WRITTEN OPPOSITION IS SERVED AND FILED, NO HEARING ON THE MOTION WILL BE HELD ON THE RETURN DATE AND THE COURT WILL CONSIDER THE MOTION AS UNOPPOSED."

IF YOU OPPOSE THE OBJECTION TO YOUR CLAIM, YOU MAY WANT TO ATTEMPT TO RESOLVE AND SETTLE THE CLAIM OBJECTION PRIOR TO FILING WRITTEN OPPOSITION AND AVOID THE NEED FOR AN ATTORNEY AND/OR A COURT APPEARANCE.

OBJECTION TO CLAIM

The objecting party objects to the following claim in this case:

Claimant's Name: Richard Cordero

Claim #: 19

Amount $ 14,000 + "increments"

DETAILED BASIS OF OBJECTION INCLUDING GROUNDS FOR OVERCOMING ANY PRESUMPTION UNDER RULE 3001(f) Claimant sets forth no legal basis or facts substantiating any obligation of Debtors. Claimant apparently asserts a claim relating to a pending Adversary Proceeding in Premier Van Lines (01-20692) relating to M & T Bank, for whom David DeLano acted only as employee and has no individual liability. Further, no liabilty exists as against M & T Bank. No basis for claim against Debtor, Mary Ann Delano, is set forth, whatsoever.

Dated: July 19, 2004

Christopher K. Werner, Esq. Attorney for Debtors
Objecting Party
Address 2400 Chase Square
City/State/Zip Rochester, NY 14604

(PLEASE SEE REVERSE)

This Notice and Objection are being sent to the Debtor, Debtor's Attorney, Chapter 7, 11, 12 or 13 Trustee, United States Trustee, Claimant, Claimant's Attorney (if known) or person designated as Power of Attorney, and any Creditors' Committee or Attorney for the Creditors' Committee.

(SAMPLE ORDER)

CASE NO. 04-20280

There having been no opposition to the herein objection to the claim of Richard Cordero in the amount of $ 14,000 and the Court having considered the objection and determined the sufficiency of the claim, it is hereby

ORDERED the claim is:

XXX DISALLOWED

_____ ALLOWED AS A TIMELY FILED CLAIM IN THE AMOUNT Of $_____

_____ ALLOWED AS A TARDILY FILED CLAIM IN THE AMOUNT OF $_____

_____ OTHER (Complete if applicable)

DATED: _____

_____
John C. Ninfo, II
Chief United States Bankruptcy Judge

(THIS SAMPLE ORDER WAS INTENTIONALLY DRAFTED TO PROVIDE THE MOST BASIC STRUCTURE FOR *ORDERS RESULTING FROM NOTICES OF OBJECTION TO CLAIMS(S). THE COURT RECOGNIZES THAT THERE* WILL BE A BROAD SPECTRUM OF ORDERS ADDRESSING CLAIMS WHICH WILL REFLECT VARYING COMPLEXITY.)

(Rev.01/10/02)

Dr. Richard Cordero

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

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

July 19, 2004

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

faxed to (585)613-3299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Please find herewith a proposal for an order to issue upon your decisions at the hearing today of Trustee George Reiber's motion to dismiss the DeLano case. The order is in substance and even its wording practically the same as the relief that I requested in my statement of July 9 in opposition to the motion, except that in compliance with your decisions, I have:

1. eliminated the requests that Trustee Reiber be replaced and that a concurrent referral be made of this case to the FBI,
2. changed the dates for document production to those that you chose; and
3. taken account of Att. Werner's statement that he has already issued some subpoenas.

The removal from the order of the requests in 1. above, is done to abide by your decision and does not mean that I have renounced to those requests. On the contrary, as I stated at the hearing, Trustee Reiber has an insurmountable conflict of interests, does not and cannot represent the creditors' interests, and has shown to be unwilling and unable to conduct an investigation of the DeLanos, let alone an effective one. If he cannot exercise the minimum degree of proper care and due diligence to make copies of documents without missing pages, how can he be reasonably expected to be able to analyze them internally, much less by comparing them with all other documents available, and detect inconsistencies, draw logical inferences, and reach sound conclusions therefrom? Hence, not to replace him will doom whatever currently passes for his investigation to an exercise in futility. Only an independent party, such as the FBI, can conduct an investigation with a reasonable expectation of getting to the bottom of what is going on in this case and its broader context.

Nor is there any need to wait for the production of the requested documents to find out the whereabouts of the DeLanos' earnings of over $291,000 in the last three years, not to mention in the past 15. Wherever that money went, it did not make it into a disclosure in the petition. The absence of that money there, except for the ridiculous trace of two cars worth $6,500, household goods worth $2,910, and cash in accounts or in hand of $535.50, has given rise to the reasonable suspicion of concealment of assets. Not even the appearance of those earnings by a sleight of hand will dispel the suspicion. It is too late for that: The wrong was committed.

Therefore, I will reiterate those requests at an appropriate procedural event in the future. At present, I respectfully submit that the order should issue as is, for the parties had ten days since I faxed my Statement to them on July 10, to study it there and then to raise any objections at the hearing today to its presentation in the form of an order. Consequently, having had but missed that opportunity to object to it, they must be deemed to have consented to all its terms just as they are deemed to be able to prove their statements in court.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13
Case no: 04-20280

ORDER
FOR PRODUCTION OF DOCUMENTS

Having heard on Monday, July 19, 2004, the motion raised by Chapter 13 Trustee George Reiber on June 15, 2004, to dismiss the above-captioned case, the Court orders the production of documents by the Debtors –the DeLanos–, their Attorney –Christopher Werner, Esq. – and the Trustee, and their submission to the Court, the Trustee, and Creditor Dr. Richard Cordero, by 4:30 p.m. on Wednesday, August 11, 2004, unless otherwise stated hereinafter, as follows:

a) All the pages of the **Equifax' credit reports** of April 26, 2004, for Mr. DeLano and of May 8, 2004, for Ms. DeLano, submitted incomplete on June 14, 2004, by Att. Werner to Trustee Reiber and by the latter to Dr. Cordero;

(1) deadline for submission: by 4:30 p.m. on Wednesday, July 21, 2004.

b) **Financial documents** relating to transactions between the DeLanos and institutions:

(1) **types of documents**:

(a) monthly statements of credit or debit cards, whether the issuers are financial institutions or sellers of goods or services, with all the statements' parts and without redaction, including the names of the entities from whom purchase of goods or services was made and the amount and date of the purchase;

(b) monthly bank statements of all their bank accounts, with all their parts and without redaction;

(c) [see ¶a) above]

(d) copies of their tax filings with the IRS, including 1040 forms;

(e) copies of all instruments attesting to an interest in ownership or the right to the enjoyment of real estate, mobile homes, or caravans, whether in the State of New York or elsewhere;

(f) all materials, including the cover letter(s), sent by MBNA together with the two sets that it produced of copies of statements for the last three years of accounts 5329-0315-0992-1928 and 4313-0228-5801-9530, which sets of copies Att. Werner referred to in his letter to Trustee Reiber of July 12, and in paragraph 5 of his Statement to the Court of July 13, 2004, and which materials Dr. Cordero requested at the hearing without objection from Att. Werner;

(2) **period of coverage**: from the present, that is, the day of fulfillment of the order, to January 1, 1989;

(3) **status of account**: whether open or closed;

(4) **holder of account or interest**: whether in both or either of the DeLanos' names, or entities whom they control, such as their children, relatives, friends, tenants, their

attorney or representative, or holders of trusts for them;

(5) **deadline for submission**:

(a) the deadline applies to the documents themselves for documents **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control;

(b) for documents **not in their possession**:

i) the deadline applies to **copies of**:

(A) subpoenas already issued, as stated by Att. Werner at the hearing, as well as those to be issued, returnable within 30 days of issuance, to each entity –which includes a person or an institution- that can reasonably be assumed to have possession of the documents described in ¶b)(1) above and that could not be produced pursuant to ¶b)(5)(a) above, and

(B) each signature confirmation slip[1] affixed to the envelope in which each subpoena is to be mailed or any equivalent mailing confirmation concerning the subpoenas already mailed;

ii) the deadline applies to an affidavit by the DeLanos and Att. Werner attesting to their compliance with the order in ¶b)(5)(b)i) above, and containing:

(A) a complete list of names of all entities and their addresses to whom the subpoenas were issued, whether they were mailed or hand delivered; a description of the documents requested; the account or transaction numbers to which they relate; and the entities' phone numbers; and

(B) a photocopy of all the signature confirmation receipts concerning the subpoenas mailed, clearly indicating their signature confirmation number, which is their tracking number; the signature of the recipient, and the postmark.

c) All financial documents relating to the **loan to their son** referred to in Schedule B of the DeLanos' bankruptcy petition of January 26, 2004, including but not limited to:

(1) The DeLanos' withdrawal order, addressed to the entity from which the DeLanos obtained the funds to be lent to their son, such as a cancelled check or the back-and-front photocopy thereof made by the paying entity;

(2) The instrument used to transfer the funds to the son, such as a cancelled personal or cashier's check, or the instrument's back-and-front photocopy made by the paying entity;

(3) The statement from the paying entity showing the amount withdrawn by the DeLanos for the loan to their son and the date of payment to the DeLanos after the entity processed their withdrawal request;

(4) The contract or promissory note between either or both the DeLanos and their son, or an acknowledgment of receipt of the funds by the son;

(5) An affidavit by the DeLanos attesting to the following:

(a) disbursement of the loan to their son,

(b) amount of the loan,

(c) description of the lending instrument used and its date or, if such instrument was not used, the terms and date of the verbal agreement concerning the loan,

(d) date of payment,

(e) intended purpose of the loan and the actual use of the funds lent,

(f) date and amount of any repayment installment,

(g) outstanding balance, and

(h) current arrangement for repayment;

(6) affidavit by their son attesting to:

(a) his receipt of a loan from the DeLanos; and

(b) the information as in ¶c)(5)(b)-(h) above;

(7) dateline for submission:

(a) the documents themselves for all such documents in the DeLanos' possession;

(b) the DeLanos' affidavit; and

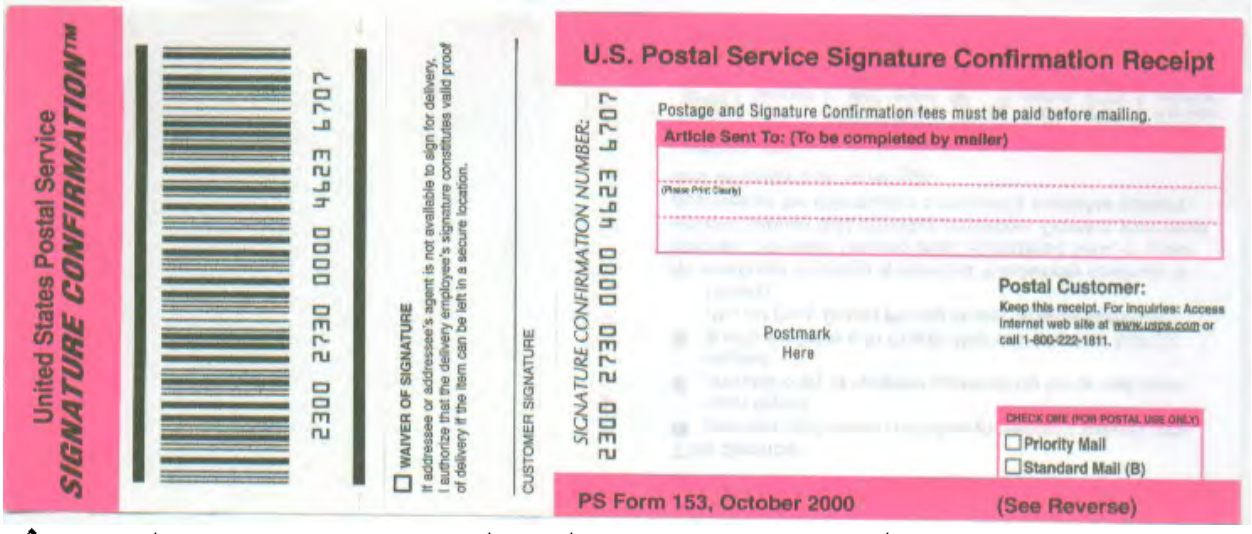
(c) as provided for in ¶b)(5)(b) above, for documents not in their possession;

d) All documents proving Att. Werner's statement that the DeLanos' financial problems began 10 years ago when Mr. DeLano lost his job at First National Bank and had to accept a lower-paying job elsewhere while incurring debts for the their children's education and evidence of such educational debts.

SO ORDERED
THIS DAY OF_____

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

[1] Sample U.S.P.S. signature confirmation slip, with receipt on the right (the dark areas on the fax are pink in the original) ↓U.S. Postal Service Signature Confirmation Receipt↓



↑ ↑bar code and tracking number↑ ↑PS Form 153, October 2000↑
↑United States Postal Service *Signature Confirmation™*

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP
ATTORNEYS AT LAW

July 20, 2004

VIA MESSENGER

Hon. John C. Ninfo, II
United States Bankruptcy Court
100 State Street
Rochester, New York 14614

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Judge Ninfo:

We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court. Enclosed please find a copy of the proposed Order with our notations. Based both upon our recollection of your direction in Court and the summary trial, the following is to be performed:

1. By July 21, 2004 close of business, we are to supply copies of all pages of the credit reports in our possession to Mr. Cordero;

2. By August 11, 2004 close of business:

a. Mr. and Mrs. DeLano are to submit copies of any and all account statements and/or records relating to their credit card accounts currently in their possession; and

b. Mr. and Mrs. DeLano are to request credit reports from Equifax, Experion and TransUnion and, upon receipt, provide copies of the complete reports with all cover letters, recitations of federal rights and all other contents supplied to Mr. Cordero and the Trustee.

We have already forwarded copies of all of the Equifax report pages in our possession. We have also forwarded copies of the subpoenas we have issued to Bank One (three accounts), Discover, HSBC and Chase, though this was not required by the Court.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
7 South Broadway, Suite 300 • White Plains, New York 10601 • 914-682-4006 • FAX: 914-682-8273
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
http://www.boylanbrown.com

Dr. Richard Cordero

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

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

July 21, 2004

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

faxed to (585)613-4299

re: David and Mary Ann DeLano, Chapter 13 case, no. 04-20280

Dear Judge Ninfo,

Yesterday I faxed to you the proposed order for document production. It was discussed at the hearing the day before and implements your decision on that occasion. Indeed, after I requested that you grant my request for such order as described in my July 9 Statement Opposing the Motion to Dismiss, you stated that the Court does not prepare orders, but rather issues them on proposal from a party, whereupon I proposed to reformat the text of my requested order into a proposed order. Having already had the opportunity to read that text, you decided that I could do so and gave me your fax number to enable you to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents today.

While neither the order has issued nor my proposal has been docketed, a letter by Att. Werner, delivered via messenger to the Court and protesting the breath of my proposal, has already been docketed. As I indicated in the letter accompanying the proposed order, Att. Werner had ten days since I faxed my Statement to him on July 10 to learn the breath of my requested order, yet he failed to object to your decision that I convert it into a proposed order and fax it to you. If, as he stated on Monday, he has been in this business for 28 years, the must know his obligation to raise timely objections. Now it is too late for him to do so.

Nor can he pretend that your recapitulation of what we had to do constituted the total expression of his and the DeLanos' obligation. Your recapitulation was that I would submit the proposed order, that he and Trustee Reiber would submit the missing pages of the credit reports by today, and that the DeLanos would produce other documents by August 11. Its only reasonable purpose was precisely to act as such: as a summary of your decisions and our obligations. Att. Werner cannot distort your intention by casting out the part concerning the order, whose details he already knew, and retaining the part relating to his obligation expressed in the general terms of a recapitulation. If the latter two parts of the decision stated all that Att. Werner and the DeLanos had to do, I trust that you would not have allowed that I waste my time and effort once more in preparing and submitting a document that you were not going to act upon at all.

Nor can Att. Werner presume that you would content yourself with simply asking him to do what is expected of any lawyer, that is, submit complete documents, and of one acting in good faith, which here meant to comply with the Trustee's April and May requests by submitting all the credit card statements for the last three years, rather than pretend that by submitting a single and incomplete statement between 8 and 11 months old for each card he could truthfully "believe that we have complied in all respects to [sic] the Trustee's requests", as he stated to the Court in his July 13 Statement. The issue of the petition's good faith has been properly raised. Thus the proposed order aims to establish the nature of the expenditures and the whereabouts of the assets through pertinent documents, not just those that suit them. Hence, if the Court wants to be taken seriously by them and to justify my reliance on its word, it should issue the order as proposed.

Sincerely,

Dr. Richard Cordero

E-80

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

ORDER

On July 19, 2004 the Court conducted a hearing on the Chapter 13 Trustee's Motion to Dismiss the Debtors' case, as well as on the Statement in Opposition filed by Richard Cordero on July 12, 2004; and

WHEREAS, at the July 19, 2004 hearing, the Court required the Debtors and their attorney, Christopher K. Werner, Esq. ("Attorney Werner"), to do certain things, as more fully set forth in the Case Docket Report highlighted as follows:

> Hearing Continued (RE: related document(s) 42 Chapter 13 Trustee's Motion to Dismiss Case) Hearing to be held on 8/23/2004 at 03:30 PM Rochester Courtroom for 42, The debtors are to produce any documents in their possession, regarding their credit card accounts, and provide copies to the Trustee and Dr. Cordero by the close of business on 8/11/04. The debtors are to give Mr. Werner any pages of the Equifax report that they have and that he does not have. By the close of business on 7/21/04, Mr. Werner is to send complete copies of the Equifax report to the Trustee and Dr. Cordero. By 8/11/04, the Debtors are to have ordered their credit reports from Equifax, Trans Union and Experian. Within two days of their receipt, copies are to be provided to the Trustee and Dr. Cordero. The Court will adj. Dr. Cordero's request to remove Mr. Reiber as Trustee to 8/23/04. Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED. Appearances: George Reiber, Trustee. Appearing in opposition: Christopher Werner, Atty. for Debtors; Dr. Richard Cordero (By phone). (Parkhurst, L.) (Entered: 07/20/2004); and

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

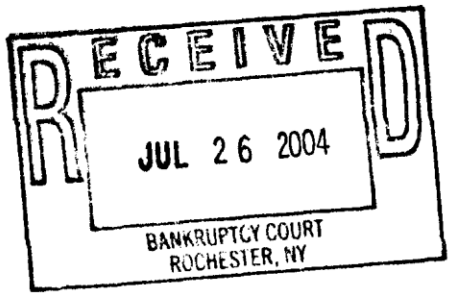
WHEREAS, the Court has reviewed this matter and believes that the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004.

It is therefore, **ORDERED,** that the Debtors and Attorney Werner comply with the highlighted Case Docket Report provisions, and Richard Cordero's request to remove the Chapter 13 Trustee, and other matters in the Chapter 13 case are adjourned to August 23, 2004.

SO ORDERED.

DATED: July 26, 2004

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



UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13
Case no: 04-20280

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

Madam or Sir,

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

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

TABLE OF CONTENTS

I. At a hearing on july 19, 2004, Judge Ninfo asked Dr. Cordero to fax to him a proposed order to sign and make it effective for the Debtors to produce documents immediately; Dr. Cordero did so, but Judge Ninfo neither signed it nor had it docketed, and Dr. Cordero's letter of protest of july 21, though acknowledged by a clerk as received and in chambers, weeks later had still not been docketed, and when Dr. Cordero protested, it was claimed never to have been received 84

II. A series of inexcusable instances of docket manipulation form a pattern of non-coincidental, intentional, and coordinated wrongful acts, which now include the non-docketing and non-issue of letters and the proposed order for document production by the delanos that Judge Ninfo requested Dr. Cordero to submit 86

III. Judge Ninfo's requests on other occasions of documents, whose contents he knew, to be submitted by Dr. Cordero only to do nothing upon their being submitted show that Judge Ninfo never intended to issue the proposed order for document production by the Delanos that he requested of Dr. Cordero on july 19, 2004 90

IV. Judge Ninfo's denial of Dr. Cordero's proposed order on the grounds, despite their untimeliness, of attorney for the Delanos' "expressed concerns" about it shows Judge Ninfo's bias toward the local parties and renders suspect his own order, which fails to require production by the Delanos of financial documents that in all likelihood will reveal bankruptcy fraud 92

V. Since Judge Ninfo has failed to order production by the Delanos of necessary documents and to replace Trustee Reiber, who has moved to dismiss the petition rather than investigate it, this case must be referred to or investigated by an independent agency willing and able to pursue the evidence of bankruptcy fraud 93

VI. Relief requested 96

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

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

2. At the hearing of Trustee Reiber's motion on Monday, July 19, I moved for this Court, in the person of the Hon. John C. Ninfo, II, to issue that requested order. Since I had filed it and served it on the other parties, you, Judge Ninfo, as well as they knew its contents. You told me that the Court does not prepare orders and that I should convert my requested order into a proposed order. Because some documents were to be produced in just two days, on July 21, you authorized me in open court to fax my proposed order to you and gave me the number of your fax machine in chambers. That way you would receive and sign it right away so that it could become effective timely.

3. On Tuesday, July 20, 2004, I faxed to you my requested order formatted as a proposed order and modified only to take into account the dates that you had decided upon for initial and subsequent production of documents. It was accompanied by a cover letter and both were dated July 19, 2004. It should be noted that the fax number that you gave me in open court and for the record, namely, (585)613-3299, was wrong. When my fax did not go through, I had to call the Court and Case Manager Paula Finucane checked and told me that the correct number is (585)613-4299. Hence, after faxing the, I called back to make sure that the fax had gone through and Clerk Finucane acknowledged that my letter and proposed order had been received in chambers. Each page was numbered at the bottom right corner with the number format "page # of 5". I faxed them also to Trustee Reiber, Att. Werner, and Assistant U.S. Trustee Kathleen Dunivin Schmitt. But you failed to sign the proposed order.

4. Hence, on July 21, 2004, I wrote to you to protest that you had not signed the proposed order as agreed, or for that matter issued any production order at all. Yet, by then PACER[1] already contained the description of the hearing on July 19, which included the statement in capital letters:

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

5. On Monday, July 26, I called the Court and asked Clerk Finucane specifically why my faxed letters and proposed order of July 19 and 21, had not been docketed yet. She said that they were in chambers and that she had not received any order to be docketed.

6. Only the following day, July 27, was my July 19 letter docketed, but only it. Indeed, the entry in the docket reads thus:

07/20/2004	53	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)

When one clicks on the hyperlink 53, only the letter –page 1 of 5- downloads as an Adobe PDF (Portable Document Format) document, but not the order! Why?!

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

07/22/2004	51	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero,

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

		Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)

8. When one clicks on the hyperlinks 51>2 his proposed order disallowing my claim downloads! This is blatant discriminatory treatment.
9. What is more, on July 27 my letter of July 21 to you, Judge Ninfo, protesting your failure to issue the proposed order that you had asked me to fax to you was not docketed.
10. Still by Friday, August 6, neither the proposed order nor the July 21 letter had been docketed. On that day I inquired about it of Deputy Clerk of Court Todd Stickle. He told me that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
11. On Monday, August 9, Mr. Stickle informed me that upon asking you and your Assistant, Ms. Andrea Siderakis, he had been told that my July 21 fax never arrived.
12. That explanation for its not being docketed is definitely unacceptable: My fax went through on July 22 and the copy attached hereto of my telephone bill shows that I did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of my July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: your chambers.

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

13. This is by no means the first time that I send a paper to the court, but it is not docketed. I have pointed this out to Messrs. Warren and Stickle because it defeats the docket's important purpose and service. The docket is supposed to give notice to the whole world of the events in a case. Through PACER, the docket serves as a document distribution center. Other parties, such as creditors, as well as non-party entities anywhere can have access to not only the official dates and description of those events, but also to the documents themselves that have been filed and can now be downloaded. But if events are not docketed and documents are not uploaded, they are not available through PACER; and if wrongly entered, they give the wrong idea of what has occurred in the case.
14. In my experience as a non-local party dragged before you, Judge Ninfo, by local parties that appear before you frequently, docket manipulation is a common occurrence and always works to my detriment. Whether the same biased treatment is given to other non-local parties or only to those who, like me, have dare challenge your rulings has yet to be determined, for example, in a multi-non-local party case like this. But the following occurrences already show how docket manipulation has had significant adverse consequences on me:
    a. The most egregious instance of failure to docket concerns case 02-2230, Pfuntner v. Gordon et al, where Debtor David DeLano is a defendant and the bank *loan* officer who

made a loan to the original Debtor, David Palmer, another defendant and the one who, after filing for voluntary bankruptcy, as the DeLanos did, just "disappeared" to 1829 Middle Road, Rush, New York 14543, from where you would not bring him back into court. I mailed my application for default judgment against Debtor Palmer on December 26, 2002, but it was not docketed for over 40 days! I had to inquire about it; found out from Case Manager Karen Tacy that it was in chambers; and had to write to you concerning it on January 30, 2003.

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

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

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

from the docket could have derailed my appeal, for it would have been assumed that I had failed to comply with F.R.A.P requirements. I had to scramble to send a copy of my Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, 2003, her Deputy, Mr. Robert Rodriguez, confirmed to me that the Court of Appeals had received no Redesignation and Statement or docket entry for it from either of the lower courts. The Bankruptcy and the District Court had gone as far as physically withholding my paper from the Court of Appeals!

e. Documents filed by me are not docketed although they are clearly intended to be entered and documents produced by others are not entered despite the fact that their existence and importance result from implication: My letter to Deputy Clerk of Court Todd Stickle of January 4, 2004, was not entered in docket 02-2230 although I served it with a Certificate of Service, thereby making clear my intention to file it. Likewise, Mr. Stickle's response to me of January 28, 2004, was not filed. There was no reason for keeping these letters out of that docket. This is especially so since in my letter I had requested information about documents that I described with particularity because they have no entry numbers of their own since they were not entered. However, their existence is confirmed by references to them in other entries as well as by their own nature, i.e., an order authorizing payment to a party and stating the amount thereof must exist. Nevertheless, Mr. Stickle's letter ignored that fact and required that I provide entry numbers before he could process my request for information.

f. Even papers that have been entered on the docket and that appear to be accessible through a hyperlink, have been described perfunctorily and uploaded with missing pages: At the beginning of last April I filed three separate papers in this case for docket no. 04-20280, namely:

    1) Memorandum of March 30, 2004, on the facts, implications, and requests concerning the DeLano Chapter 13 bankruptcy petition, docket no. 04-20280 WDNY

    2) Objection of March 29, 2004, to a Claim of Exemptions

    3) Notice of March 31, 2004, of Motion for a Declaration of the Mode of Computing the Timeliness of an Objection to a Claim of Exemptions and for a Written Statement on and of Local Practice

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

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

		(Finucane, P.) (Entered: 04/09/2004)

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

4) the Memorandum was neither an attachment nor an appendix to the Objection to a Claim of Exemptions. It should have been entered in the docket as a separate document with its full title, which appeared in the reference clearly marked as Re:…; otherwise, the title used in 1) above, could be used.

5) Moreover, clicking the hyperlink in # 1 Appendix opened a Memorandum that was truncated of its first five pages; the missing pages there appeared in the document opened by the hyperlink for entry 19, which in turn was truncated of the following 18 pages.

6) For its part, entry 20 contains jarring mistakes:

   a) it is not "timeless", but rather "timeliness";

   b) it is not "exempltions", but rather "exemptions";

   c) it is not "a written statements", but rather "a written statement".

I wrote to Mr. Warren: "I trust you and your colleagues care about how so many mistakes reflect on you and them. I certainly care about how they reflect on me and how much more difficult they render the understanding and consultation of the documents that I filed." Mr. Warren had the mistakes corrected. But the fact remains that there is no possible justification for truncating my documents and garbling their description, except that they were quite critical of:

7) how you, Judge Ninfo, had defended Trustee Reiber and his attorney, Mr. Weidman, from my complaint in open court on March 8 for their failure to review the DeLano's petition even cursorily;

8) how Trustee Reiber and Att. Weidman had nevertheless readied that petition for submission to you for confirmation of its repayment plan;

9) how Att. Weidman, with the endorsement of Trustee Reiber, had prevented me from examining the DeLanos at the meeting of creditors;

10) how they had brushed aside the need for investigating the DeLanos as I had requested in light of the specific suspiciously incongruous declarations in the petition and my citations to the Bankruptcy Code and Rules contained in my written objections to confirmation; and how they had prejudged any investigation that they might conduct by reaffirming in open court that the DeLanos had filed their petition in good faith; and of course,

11) how you had blatantly disregarded my right under 11 U.S.C. §341, that is, under federal law, to examine the DeLanos, and instead told me in open court that I should have asked around in advance to find out how meetings of creditors are conducted under "local practice" and how I should have had the courtesy to submit to Trustee Reiber and Att. Weidman my questions for the DeLanos in advance…*mindboggling statements indeed!*

12) and so critical are those truncated and misdescribed documents that more than four months later you still have not decided my Objection to the Claim of Exemptions by the DeLanos or declared the mode of computing the timeliness of such objection, let alone stated:

a) how "local practice" can invalidate federal law,

b) how a non-local finds out reliably what "local practice" is, and

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

15. There is a pattern here. No reasonable person can believe that all these different types of docket manipulation have occurred by pure coincidence or generalized and consistent clerk incompetence. The pattern is one of wrongful acts, and they are intentional and coordinated.

16. Inscribed in that pattern is your failure, Judge Ninfo, to forward for docketing my letter and proposed order faxed and acknowledged as received on July 20. Not until after I called on July 26 was the letter docketed on July 27. But not even then was my proposed order docketed and till this day it has not been docketed as faxed by me. This is a clear violation of FRBkrP Rule 5005(a)(1), which in pertinent part provides thus:

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

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

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

18. However, if you, Judge Ninfo, ever intended for my fax to go through, although the fax number that you gave me was wrong, you never intended to issue the proposed order that at the July 19 hearing you asked me to fax to you. Yet, you knew the contents of that order since I had requested it from you in my July 9 statement in opposition to Trustee George Reiber's motion to dismiss the DeLanos' petition; whether your knowledge was actual or constructive is

indifferent. There can be no doubt that it was to issue because, as already pointed out above, the docket itself states in capital letters: "Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED." But doing dishonor to your word and undermining once more the trust that a litigant should be able to put in a federal judge, and a chief judge at that, you did not issue it, actually you would not even transmit it to the clerks for docketing!

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

    a. At the pre-trial conference on January 10, 2003, in case 02-2230, you directed me to submit to you and the other parties three dates on which I could travel from New York City, where I live, to Avon, outside the suburbs of Rochester, to conduct an inspection. You stated that within two days of receiving those dates you would determine the most convenient date for all the parties and inform me thereof. By letter of January 29, 2003, I informed you and all the parties, including Mr. DeLano's attorney in that case, of not just three, but rather six proposed dates. Yet you never acted on them, not even after I brought the issue to your attention at the hearing on February 12, 2003. So at your instigation, I cleared those dates in my schedule and kept them open to travel but through your failure to keep you word it all redounded to my detriment.

    b. At a hearing on May 21, 2003, in case 02-2230, I reported on the damage to and loss of my property caused at the outset by Mr. David Palmer and ascertained through physical inspection, which was attended by a representative of Mr. DeLano's attorney in that case. Thereupon you took the initiative to request that I resubmit my application for default judgment against Mr. Palmer. I resubmitted the same application that I had submitted on December 26, 2002. Nevertheless, at the hearing on June 25, 2003, to argue it, you denied it on the pretext that I had not proved how I had arrived at the sum claimed. Yet, that was the exact sum certain that I had claimed back in December! Why ask me to resubmit and get my hopes high if you were going to deny the application on the basis of an element that you had known for six months? Mr. Palmer too had known it for that long, for I had served him with the application. He could have opposed the application if he had only wanted and had complied with his obligation to appear in court as a defendant after he had invoked his right to protection in court as a voluntary bankruptcy petitioner. But you took up voluntarily his defense, preferring to protect a local party already defaulted by Clerk of Court Warren on February 4, 2003, rather than uphold the rights of a non-local party, me, who had complied with every requirement of FRBkrP Rule 7055 and FRCivP Rule 55 and had relied on your word to his detriment.

    c. Likewise, at a hearing on May 21, 2003 in case 02-2230, you asked that I submit a separate motion for sanctions on, and compensation from, the plaintiff and his attorney for their disobedience of two orders of yours, including their failure to attend the very inspection of property that they had applied to you for. I submitted the motion on June 6, 2003, meticulously discussing the facts and the applicable law and supported by more than 125 pages documenting my bill for compensation. Yet, that plaintiff and his attorney were so certain that you would not ask them to pay anything at all that they did not even bother to submit a brief in opposition. What is more, that attorney did not even object to my motion at its hearing on June 25. You did it for him and his client by faulting me for not having included a copy of the air ticket, which represented a miniscule portion of the requested compensation. Not only that, but you did not impose

even non-monetary sanctions on them, who had shown contempt for your two orders, thereby undermining the integrity of the court that you are sworn to uphold.

20. By your conduct on those occasions you revealed your true intentions, for as you know, the law deems a man to intend the reasonable consequences of his actions: You, Judge Ninfo, intended to wear me down by causing me more waste of effort, time, and money as well as an enormous amount of aggravation to protect the local parties that appear before you so often and teach a lesson to a non-local, me, who thinks that just because he is dragged as a defendant into court before you he can rely on federal law and ignore "local practice" (see para. 14.f.11) and 12)) and challenge your rulings on appeal.

21. Wearing me down was also your intention in requesting that I submit the proposed order. Indeed, if as you stated in your order entered on July 27, "the Case Docket Report properly reflects what the Court ordered at the hearing on July 19, 2004", why did you ask me to convert my requested order into a proposed order at all and fax it to you? You never intended to issue my proposed order!

22. The circumstances of issue and contents of that order of yours entered on July 27 are worth commenting. Since I kept inquiring about your failure to issue my proposed order, you issued your own, but not before a week had gone by, long after the first date had come and gone for the DeLanos and their attorney, Christopher Werner, Esq., to begin producing documents. An objective observer must wonder what would have happened if I had not pursued the matter and, as a result, you had not issued any order. Would you have upheld a claim that Att. Werner and his clients did not have to produce any documents because no order compelled them to do so?

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

23. Att. Werner too knew the contents of the proposed order even before I submitted it given that I had also served him with my July 9 statement, which contained it in the form of a requested order. Yet, at the July 19 hearing he failed to object to it. Only after I served it on him by fax, did he object to it, stating in a letter to you solely that "we believe [it] far exceeds the direction of the Court". That is why your own order states that "to [my proposed order] Attorney Werner expressed concerns in a July 20, 2004, letter". This is an unfortunate hybrid between 'objections to' and 'concerns about'. It is indicative of your awareness that due to untimeliness, he could not have raised valid objections for the first time after the hearing was over.

24. How could untimely "concerns" be anything but a pretext not to issue my proposed order? Evidently, untimeliness is a tool that you only use to dismiss my notice of appeal and my motion to extend the time to appeal (para. 14.c, supra).

25. By contrast, you did not dismiss as untimely Att. Werner's objection to my status as a creditor of Mr. David DeLano, his client, although:

a. Mr. DeLano has known for almost two years the nature of my claim since I served him with my complaint of November 21, 2002, in case 02-2230;

b. Att. Werner himself included me among the creditors in the petition for bankruptcy of January 26, 2004;

c. Att. Werner knew that I was the only creditor to show up at the meeting of creditors on March 8 and that I was determined to pursue my claim as stated in my March 4 Objection to Confirmation of the DeLanos' Plan of Repayment;

d. Att. Werner objected to my status as creditor in his statement to you, Judge Ninfo, of April 16, which I refuted in my timely reply of April 25, after which he dropped the issue and went on for months treating me as a creditor; and

e. Att. Werner continued to treat me as a creditor for more than two months after I filed my proof of claim on May 15.

26. It is only now, when my relentless insistence on the production of documents by the DeLanos can provide evidence of bankruptcy fraud, that Att. Werner tries to dismiss me by disallowing my claim. By now, however, Att. Werner's objection to my creditor status is untimely; he is barred by laches. Consequently, I will contest his motion, set for August 25, to disallow my claim…but is there any point in doing so?

27. Will you give my arguments a fair hearing or have you already made up your mind to get rid of me? The foundation for this question is not only the pattern of biased conduct against me, the only non-local party, and toward the locals in case 02-2230, described in the previous sections. There is also the decision made by somebody to denominate me in this case as an "Interested Party" rather than a creditor (see para. 14.f, supra).

28. Moreover, that order of yours is an inexcusably watered down version of mine. Despite the evidence of concealment of assets by the DeLanos presented in my July 9 statement, among other filings of mine, and discussed at the July 19 hearing, your order fails to require them to produce bank or *debit* account statements; documents concerning their undated "loan" to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the caravan admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents? Dismissing me from this case will be the crowning act in the pattern of bias and disregard of legality that we so hope you undertake![2]

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

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

29. Trustee George Reiber has tried to dismiss the DeLanos petition. In so doing, he is motivated by self-preservation, for if he were to investigate it effectively, he would uncover evidence of fraud that would also incriminate him for his approval of a patently suspicious petition. In addition, the longer he keeps this case in his hands, the more he risks exposure for violating his duties as trustee. This statement is based on factual evidence:

    a. Trustee Reiber violated his legal obligation to conduct personally the meeting of creditors held last March 8 in Rochester; cf. 28 CFR §58.6.

    b. He supported his attorney, James Weidman, Esq., who conducted that meeting and who violated 11 U.S.C. §341 by preventing me from examining the DeLano Debtors, putting an end to the meeting after I had asked only two questions of the DeLanos and would not reveal what I knew when he asked me –as if I were under examination!- what evidence I had that the DeLanos had committed fraud.

    c. He pretended to be investigating the DeLanos, as I had requested that he do in my Objection to Confirmation of March 4, 2004. But when by letter of April 15 I requested that he state in concrete what investigative steps he had taken, he then for the first time asked the DeLanos to provide some financial documents in his letter to Att. Werner of April 20.

    d. His request for documents relating to only 8 out of 18 declared credit cards, only if the debt exceeded $5,000, and for only the last three years out of the 15 put in play by the Debtors themselves, who claimed in Schedule F that their financial problems related to "1990 and prior credit card purchases", reveals either his unwillingness to uncover evidence of bankruptcy fraud or his appalling lack of understanding of how credit card fraud works.

    e. He waited for months without asking for or receiving any financial documents from the Debtors while at the same time refusing to issue subpoenas to them or their attorney. Then he moved on June 15 to dismiss the petition for their' "unreasonable delay" in producing documents precisely after they had produced some documents on June 14, which he so indisputably failed to even glance at that he did not notice how obviously incomplete and old they were. His conduct demonstrates utter unwillingness to investigate the Debtors and analyze any of their documents.

    f. He admitted in our phone conversation on July 6 that he does not even know whether he has the power to issue subpoenas –if so, what does he know?!- and that he has never issued them…yet he has $3,909 *open* cases, according to PACER. Was there never a case in such a huge number that required him to subpoena documents to determine whether the debtor had filed a petition in good faith? Or given such tremendous workload, did he routinely just dismiss any case likely to consume too much of his time?

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

        1) Mr. DeLano has been a bank loan officer for 15 years and still is such at Manufactures & Traders Trust Bank. Thus, he is an expert in detecting and maintaining creditworthiness and ability to repay loans. He is also an insider of

the lending industry and must know which credit card issuers assert their bankruptcy claims more or less aggressively and above what threshold of loss.

2) While a bank officer would be expected to carry the bank's credit card, perhaps even at a preferential rate, the DeLanos did not declare possessing any M&T Bank card, not to mention 'sticking' their employer with a bankruptcy debt.

3) Mr. DeLano and his working wife declared earnings of $291,470 in only the three years from 2001-2003.

4) Nevertheless, they declared having only $535.50 in cash or in bank accounts… with M&T and in credit, of course;

5) two cars worth together merely $6,500;

6) equity in their house of only $21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe $78,084;

7) household goods worth only $2,910…that's all they have accumulated throughout their work lives!, although they have earned over a hundred times that amount in only the last three years…unbelievable!

8) Yet, they have accumulated $98,092 in credit card debt, conveniently spread over 18 issuers so that none has a stake high enough to find it cost-effective to get involved in this case only to receive 22¢ on the dollar; etc., etc.,…

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

30. Trustee Reiber did not ask that question and when I asked it, he did not want to subpoena, or even just ask for, documents apt to answer it, such as bank accounts that can reveal a trail of money into other assets. He appears not to understand that so long as there is no explanation for the whereabouts of the DeLanos' earnings for at least the 15 years that they have put in play, there is reasonable suspicion of concealment of assets.

31. But if Trustee Reiber did review the DeLanos' documents and did understand the reasonable grounds for believing that a violation of laws of the United States relating to insolvent debtors had been committed, he had a legal duty under 18 U.S.C. §3057(a) to report it to the U.S. Attorney. Yet he failed to do so. Instead, he reported to the Court and the parties his wish to wash his hands of this case through its dismissal before somebody else, like me, uncovers enough to indict his competency or working methods for having approved such a patently suspicious petition.

32. Indisputably, Trustee Reiber has a conflict of interests that disqualifies him as an impartial and potentially effective investigator. Do you, Judge Ninfo, have a conflict of interests that explains why you too would not ask for those documents by signing my proposed order?

33. It follows that Trustee Reiber must be removed and this case referred to the appropriate law enforcement and investigative authorities.

VI. Relief requested

34. Therefore, I respectfully request that the Court, in the person of Judge Ninfo:

a. enter with the date of July 20, 2004, in entry 53 of docket 04-2230 and upload into that entry of the docket's electronic version the proposed order of July 19, 2004, that with knowledge of its contents you asked me to fax to you and I did fax;

b. issue that order, modified by the remark that insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date on which it becomes effective;

c. enter with the date of July 22, 2004, my letter of July 21, 2004, faxed to you on July 22 and reproduced below;

d. remove Trustee George Reiber from this case under 11 U.S.C. §324; terminate any and all relation of Att. James Weidman to this case, whether as a professional person employed under §327 or otherwise; and prohibit any payment to them or disbursement by them of funds until otherwise ordered by a competent authority;

e. report such removal to the following officers for appointment, after the review, investigation, and reconstruction of this case is completed, of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the DeLanos:

1) Mr. Lawrence A. Friedman, Director

2) Donald F. Walton, Acting General Counsel

3) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

f. report this case to the U.S. Attorney under 18 U.S.C. §3057(a) and the FBI for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.;

g. order the following persons to produce and make themselves available for examination by me, whether as creditor or party in interest, and for the official record, in a designated room at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September 20, and, if necessary for further examination, on September 21, 2004, and in any event, on contiguous dates in September when the examination of each examinee will not be constrained by any other time limitations:

1) the Debtors under 11 U.S.C. §341; and

2) Trustee Reiber and Att. Weidman under FRBkrP Rule 2004(a);

h. enter my opposition to Att. Werner's motion to disallow my claim, against which I will argue on August 25;

i. allow me to present my arguments by phone at the two upcoming hearings; not cut off

the phone connection to me until after you declare the hearing concluded; and not allow thereafter any other oral communication between you and any parties to this case until the next scheduled public event;

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

August 14, 2004

Dr. Richard Cordero

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

CERTIFICATE OF SERVICE

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
tel. (585)232-5300
fax (585)232-3528

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road
Rochester, NY 14623
tel. (585) 427-7225
fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee
New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee
33 Whitehall Street, 21st Floor
New York, NY 10004
tel. (212) 510-0500
fax (212) 668-2255

eCast Settlement Corporation
agent for Fleet Bank (RI) N.A. and
Associates National Bank
Becket and Lee LLP, Attorneys/Agent
P.O. Box 35480
Newark, NJ 07193-5480

Mr. George Schwergel
Gullace & Weld LLP
Attorney for Genesee Regional Bank
500 First Federal Plaza
Rochester, NY 14614
tel. (585)546-1980

Mr. Erich M. Ramsey
The Ramsey Law Firm, P.C.
Att.: Capital One Auto Finance Department
Account: 5687652
P.O. Box 201347
Arlington, TX 76008
tel. (817) 277-2011

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano — Chapter 13
Case no: 04-20280

ORDER
FOR DOCKETING AND ISSUE, REMOVAL, REFERRAL, AND EXAMINATION

Having reviewed the history of the above-captioned case and the papers submitted by the several parties, and in light of the provisions of the United States Code and Rules applicable to it, the Court orders as follows:

a. the proposed order of July 19, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 20, 2004, in entry 53 of docket 04-20280 and uploaded into the docket's electronic version to make it publicly available through it, forthwith by the clerk;

b. said order is incorporated herein and effective immediately; and insofar compliance therewith is still owing, the dates of July 21 and August 11, 2004, therein contained are to be understood as two and 10 days, respectively, from the date of this order;

c. the letter of July 21, 2004, submitted by Dr. Richard Cordero to the Court, is to be entered with the date of July 22, 2004, in docket 04-20280 and uploaded into its electronic version to make it publicly available through it, forthwith by the clerk

d. Trustee George Reiber is removed under 11 U.S.C. §324 forthwith from this case; James Weidman, Esq., is to terminate forthwith any and all relation to this case, whether as a professional person employed under §327 or otherwise; and any payment to them or disbursement by them of funds in connection with this case is forthwith prohibited until otherwise ordered by a competent authority;

e. the clerk will forthwith send a copy of both this order and the above-described order of July 19, 2004, with a pertinent report by this Court to follow shortly, to the following officers:

1) for review, investigation, and reconstruction of this case as appropriate, and the subsequent appointment of a successor trustee that is unrelated to the parties, unfamiliar with the case, beholden to nobody, and willing and able to conduct a competent, thorough, and zealous investigation of the Debtors:

a) Mr. Lawrence A. Friedman, Director

b) Donald F. Walton, Acting General Counsel

c) Ms. Debera F. Conlon, Acting Assistant Director for Review & Oversight

Executive Office of the United States Trustees
20 Massachusetts Ave., N.W., Room 8000F
Washington, D.C. 20530

2) under 18 U.S.C. §3057(a) for investigation under 28 U.S.C. §526(a)(1) and into suspected concealment of assets and other indicia of bankruptcy fraud under 18 U.S.C. §152 et seq.:

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

b) Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

c) Rochester Resident Agent
Federal Bureau of Investigations
300 Federal Building
100 State Street
Rochester NY 14614

f. the following persons are to produce and make themselves available for examination under FRBkrP Rule 2004 by Dr. Richard Cordero, whether as creditor or party in interest, and for the official record, in room _____at the United States Courthouse on 100 State Street, Rochester, New York, 14614, beginning at 9:30 a.m. until 5:00 p.m., with a one hour lunch break, on September _____, 2004, and, if necessary for further examination, the following day:

1) the Debtors, Mr. David DeLano and Mrs. Mary Ann DeLano; and

2) Trustee George Reiber and James Weidman, Esq.

SO ORDERED
THIS DAY OF_____ _____
HONORABLE JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

https://www22.verizon.com/foryourhome/mysmarttouch/statementview/GenerateStatement.aspx

Today is Sun, 1 Aug 2004

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Online Activity Statement for all your SmartTouch℠ calls and purchases

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

Important Numbers

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

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International calls that terminate to wireless phones may incur additional charges

Summary of SmartTouch Account Activity

Starting Balance	14.80cr
Purchases Activity	20.00cr
Direct Dialed Calls	20.48
Ending Balance	**$14.32cr**

Purchases Activity

no.	*date*	*Description*	*amount*
1.	07/19/2004	SmartTouch Purchases	20.00cr
Total Purchase Activity			**$20.00cr**

Direct Dialed Calls

In-State Calls: 718-827-9521

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

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, on January 27, 2004, David G. DeLano ("DeLano") and Mary Ann DeLano (collectively, the "Debtors") filed a petition initiating a Chapter 13 case (the "DeLano Case"); and

WHEREAS, on May 19, 2004, Richard Cordero ("Cordero") filed a proof of claim in the DeLano Case (the "Cordero Claim"), a copy of which is attached. The Claim asserted that Cordero was a creditor of DeLano by reason of a crossclaim that Cordero had asserted against DeLano, in his capacity as an officer of M&T Bank, in an Adversary Proceeding (the "Premier AP") filed and pending in this Court in the Premier Van Lines, Inc. ("Premier") Chapter 7 case #01-20692(the "Premier Case"); and

WHEREAS, prior to Premier filing a Chapter 11 case, which was later converted to a Chapter 7 case, Cordero had stored various items of personal property with Premier (the "Cordero Property"); and

WHEREAS, M&T Bank held a perfected security interest in various assets of Premier, and it appears that DeLano was the M&T Bank officer in charge of the Bank's loans to Premier when the loans went into default and Premier filed for bankruptcy; and

WHEREAS, Cordero has asserted in the Premier AP that some of the Cordero Property had been lost or damaged, and he filed counterclaims and crossclaims which alleged that various defendants, including DeLano, were legally responsible and liable for all or a portion of the loss or damage; and

WHEREAS, the Court is not aware of any evidence whatsoever, produced either in the Premier AP or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage, and DeLano, through his attorney, has adamantly denied: (1) any knowledge as to whether there has been any loss or damage to the Cordero Property; and (2) any legal responsibility or liability if there has been any loss or damage; and

WHEREAS, on October 23, 2003, the Court entered an Order (the "Scheduling Order") in the Premier AP, a copy of which is attached. The Scheduling Order provides a timetable for completing discovery in the AP once all of Cordero's pending appeals of orders in the AP are finalized. However, the Order: (1) never did and does not now prevent Cordero from otherwise conducting discovery in the AP to determine: (a) whether there has been any loss or damage to the Cordero Property; (b) if there has been any loss or damage, when it occurred and under what circumstances; and (c) if there has been any loss or damage, were any of the defendants named in the AP, including DeLano, legally responsible or liable; (2) was entered before the Debtors filed their bankruptcy petition and without any indication in the AP that such a petition might be filed; and (3) never did and does not now prevent Cordero from taking any and all reasonable and necessary steps to take possession of and secure the Cordero

Property and insure that there is no further loss or damage to the Property that Cordero might be deemed to be at least in part responsible for; and

WHEREAS, Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a claim against DeLano, and he has asserted, among numerous other allegations, that the Debtors have committed bankruptcy fraud. In addition, Cordero has requested that the Court remove the Chapter 13 Trustee, George M. Reiber (the "Trustee"), for various reasons, including an alleged conflict of interest; and

WHEREAS, at this time the Court believes that there is insufficient evidence to demonstrate that there has been any bankruptcy fraud committed by the Debtors, but notes that the Trustee is continuing to investigate all aspects of the Debtors' relevant actions and inactions, both pre- and post-petition; and

WHEREAS, at this time the Court believes that there are no valid grounds for it to order the removal of the Trustee, and notes that the Office of the United States Trustee, which Cordero has been in frequent contact with and has served with copies of all of his pleadings, has not taken any steps to remove the Trustee; and

WHEREAS, at a July 19, 2004 hearing, in connection with: (1) the Trustee's Motion to Dismiss the DeLano Case (the "Trustee Motion to Dismiss"); and (2) Cordero's Statement in Opposition to the Motion (the "Statement in Opposition"), in which Cordero included requests for various items of relief, including the

removal of the Trustee, the Court continued the hearing on the Trustee Motion to Dismiss, the requests for relief in the Statement in Opposition and all related matters in the DeLano Case to August 23, 2004; and

WHEREAS, on July 26, 2004, the Court entered an Order, a copy of which is attached, that required the Debtors and their attorney to comply with the various directives that the Court issued from the bench at the July 19, 2004 hearing, including the production of various documents; and

WHEREAS, on July 22, 2004, the Debtors filed an Objection to the Cordero Claim (the "Claim Objection"), a copy of which is attached, that was made returnable on August 25, 2004; and

WHEREAS, on August 16, 2004, Cordero filed a Motion (the "Cordero Motion") for Removal of the Trustee and other relief that was made returnable on August 23, 2004; and

WHEREAS, at the August 23, 2004 hearing on the Cordero Motion, the Court: (1) denied the Cordero Motion without prejudice to it being renewed in the event that the Court, in the contested matter proceeding commenced by the Claim Objection (the "Claim Objection Proceeding"), determined that Cordero had an allowable claim in the DeLano Case; (2) suspended any and all Court involvement in the DeLano Case until the Claim Objection was finally determined, including ruling on the Trustee Motion to Dismiss and the relief requested in the Statement in Opposition, for the following reasons: (a) DeLano is entitled to have it expeditiously and finally determined whether Cordero has an allowable claim in the DeLano Case; (b) the Claim Objection on its face is compelling, because the Cordero Claim and its attachments

set forth no legal or factual basis that demonstrates that DeLano has any legal responsibility or liability to Cordero, and the Court is not otherwise aware of any factual basis for such a claim from the proceedings in the Premier AP or the DeLano Case; (c) Cordero's pro se litigation in this Bankruptcy Court, both in the Premier AP and the DeLano Case, appears to have now become totally focused on collateral and tangential issues, rather than the central issues and the taking of actions that could finally resolve both the Premier AP and the question of whether Cordero has an allowable claim in the DeLano case, those being, Cordero taking the reasonable and necessary steps to: (i) take possession of and secure the Cordero Property, which no party in the Premier Case is preventing him from doing; (ii) determine whether any of the Cordero Property has been lost or damaged, and if it has, under what circumstances and the full nature, extent and monetary value of any loss and damage; and (iii) determine whether any of the defendants in the Premier AP are legally responsible or liable to Cordero for any loss or damage to the Cordero Property; (3) prosecuting and having the Court finally determine the Claim Objection will allow the Court and Cordero to focus on these critical and central issues and actions, which should be the most important issues to Cordero, who the Court believes should welcome the opportunity to take the necessary steps to take possession of and secure the Cordero Property before there is any loss or damage to it, or, if in fact there has been loss or damage, any further unnecessary loss or damage, determine whether there has been any loss or damage to the Property, and determine whether any of the defendants in the Premier Case are legally responsible and liable for any such loss or damage, which Cordero has always had the ability to do, rather than to exclusively pursue his many collateral and tangential issues; and (4) the questions of whether the Debtors are honest but unfortunate debtors who are entitled to

a bankruptcy discharge, because they have filed a good faith Chapter 13 case, is to this Court much more important to finally determine than is the Premier AP, which is fundamentally only about personal property which Cordero himself has indicated has a maximum value of $15,000.00, especially when it is Cordero who is delaying and preventing the final resolution and determination of the issues in the Premier AP; and

WHEREAS, at the August 25, 2004 initial hearing on the Claim Objection and the Reply in Opposition filed by Cordero on August 19, 2004 (the "Reply") and a Response on behalf of the Debtors, the Court: (1) heard and rejected all of the oral arguments made by Cordero and those contained in his Reply; (2) denied the Debtors' request for an immediate determination that the Cordero Claim is disallowed; (3) determined that the parties should have until December 15, 2004 to complete any and all discovery that they deemed appropriate in connection with the Claim Objection Proceeding; (4) ordered that the Claim Objection Proceeding would be called on the Court's Evidentiary Hearing Calendar on December 15, 2004 so that an evidentiary hearing could be scheduled on that date with a day certain in January, February or March of 2005; and (5) indicated that this Order would supercede the provisions of the Scheduling Order with respect to any discovery that Cordero might feel that he needed to conduct in connection with the issue of whether DeLano had any legal responsibility or liability for any loss or damage to the Cordero Property; and

WHEREAS, in making its decisions on August 26, 2004, the Court determined that: (1) the Claim Objection was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection; (2) the purpose of filing the Claim Objection was not

to remove Cordero from the DeLano Case, but rather it was to have the Court determine that an individual, who the Debtors honestly believe is not a creditor, did or did not have an allowable claim in their Chapter 13 case; (3) the Trustee, as he indicated once again on August 26, 2004, would do a thorough investigation of the DeLano Case, including whether there was any bad faith or bankruptcy fraud; (4) the Court would ultimately only confirm a Chapter 13 plan in the DeLano Case, as it does in all Chapter 13 cases, if it could make and did make all of the required findings under Section 1325; (5) the Court had no animosity towards Cordero; and (6) proceeding in this fashion in the DeLano Case was within the sound discretion of the Court and in the interests of equity, justice and judicial economy in the Premier AP and the DeLano Case.

It is therefore **ORDERED,** that:

1. The Trustee Motion to Dismiss, the relief requested in the Statement in Opposition and the Cordero Motion are all denied without prejudice to being renewed in the event that the Court determines in the Claim Objection Proceeding that Cordero has an allowable claim in the DeLano Case;

2. The Court's involvement in the DeLano Case is in all respects suspended, except for determining the Claim Objection, until the Court has made its final determination in the Claim Objection Proceeding, and any and all appeals of its final determination are finalized;

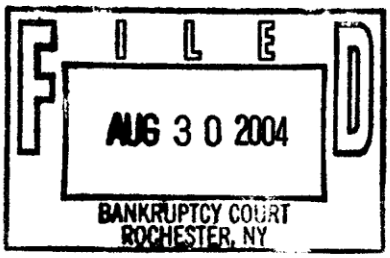
3. The Debtors and Cordero shall have until December 15, 2004 to complete any and all discovery that they may wish to conduct in connection with the Claim Objection Proceeding; and

4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004

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



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

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

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

Statement of relief sought:

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

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

OPPOSSING PARTY: See next

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

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:
Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004

ORDER

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

FOR THE COURT:
Roseann B. MacKechnie, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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

In re PREMIER VAN LINES, INC.,
Debtor

Case no. 03-5023

JAMES PFUNTER,
Plaintiff

Adversary Proceeding
Case no. 02-2230

-v-

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

RICHARD CORDERO
Third party plaintiff

-v-

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

Third party defendants

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

1. This motion has been rendered necessary by another blatant manifestation by WBNY Bankruptcy Judge John C. Ninfo, II, of his disregard for the law, rules, and facts, and his participation with others in the already complained-about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, which now involves another powerful element: money, lots of it.

2. Requested to be quashed is the Order that Judge Ninfo issued on August 30, 2004, directing Dr. Cordero to undertake discovery of Mr. David DeLano, a party to the Premier case pending before this Court, which stems from Pfuntner v. Gordon et al, dkt. no. 02-2230, an Adversary Proceeding that Judge Ninfo himself suspended 11 months ago until all appeals to and from this Court had been taken. Now Judge Ninfo, without invoking any provision of law or rule, reopens

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

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

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

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

by Dr. Cordero is effective, Judge Ninfo stated at the August 25 hearing that no paper submitted by him will be acted upon, thus denying him judicial assistance in conducting the ordered discovery of his claim against Mr. DeLano. Judge Ninfo is setting Dr. Cordero up to fail!

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

TABLE OF CONTENTS

I. Judge Ninfo's order to detach one party and one claim from multiple parties in different roles distorts the process of establishing their respective liabilities and makes a mockery of the appellate process **.....113**

II. Judge Ninfo has no legal basis for severing Dr. Cordero's claim against Mr. Delano from the case before this Court because after Dr. Cordero filed proof of claim, a presumption of validity attached to his claim **.....114**

- A. Mr. Delano knew since November 21, 2002 the nature of Dr. Cordero's claim against him and was barred by laches when he filed his untimely objection to it on July 19, 2004 115
- B. The opinion of Mr. DeLano's attorney that his client is not liable to Dr. Cordero cannot overcome the presumption of validity of his claim.....117
- C. Judge Ninfo had no legal basis to demand that Dr. Cordero's proof of claim provide more than notice of the claim's existence and amount.....118
- D. The only legal circumstance for estimating a contingent claim is unavailable because the DeLano case is nowhere its closing.....118

III. Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon, thus denying him access to judicial process and requiring this Court to step in **.....121**

IV. Judge Ninfo's August 30 order shows his prejudgment of issues and his bias toward the DeLanos and against Dr. Cordero**.....121**

V. A mechanism for many bankruptcy cases to generate money, lots of it **.....124**

V. Relief requested 125

****

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

6. The case on appeal in this Court originates in the Adversary Proceeding Pfuntner v. Gordon et al., all of whose parties were affected by the bankruptcy of Premier Van Lines. A moving and storage company, Premier was owned by David Palmer. His voluntary bankruptcy petition under Chapter 11 set in motion a series of events that affected, among others, his warehousers, James Pfuntner, David Dworkin, and Jefferson Henrietta Associates; the lender to his operation, Manufacturers & Traders Trust Bank (M&T Bank) and Bank Loan Officer David DeLano; his clients, including Dr. Cordero; and the Chapter 7 Trustee Kenneth Gordon, who took over Premier to liquidate it after Owner Palmer failed to comply with his bankruptcy obligations -with impunity from Judge Ninfo (E-117¶19b)- and the case was converted to one under Chapter 7.

7. In the presence of so many parties in different roles connected to the same nucleus of operative facts, it follows that they share in common questions of law and fact. They should be tried in a single proceeding for reasons of efficiency and judicial economy; and to arrive at just and consistent results. Hence, Judge Ninfo is not acting in the interest of justice when he orders the severance of Dr. Cordero's claim against Mr. DeLano from the case on appeal before this Court in order to try it in isolation. This is shown by even the grounds invoked by the DeLanos' attorney, Christopher Werner, Esq., for objecting to Dr. Cordero's claim (E-101):

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

8. It is quite obvious that M&T Bank cannot be presumed to take responsibility for whatever Mr. DeLano did or failed to do. Likewise, M&T Bank may claim that no liability attaches to it, but rather attaches to the other parties, including Mr. DeLano in his personal capacity. In turn, the other parties could try to unload some of their liability onto Mr. DeLano since he was the M&T Bank officer in charge of the loan to Premier. If after Judge Ninfo finds Mr. DeLano not liable to Dr. Cordero the trial before another judge or jury of the remaining parties upon remand by

this Court finds that considering the totality of circumstances Mr. DeLano was liable, Dr. Cordero could hardly use that finding to reassert his claim against Mr. DeLano, who would invoke collateral estoppel or try to deflect any liability onto the other parties. When would it all end!?

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

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

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

> §101. Definitions
>
> (10) "creditor" means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;…
>
> (15) "entity" includes person…

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

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

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

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

13. Dr. Cordero's proof of claim of May 15 was so formally correct that it was filed by the clerk

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

of court on May 19 (E-75) and entered in the register of claims. As a result, his claim enjoys the benefit provided under FRBkrP Rule 3001(f):

> (f) Evidentiary effect
> A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

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

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

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

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

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

17. Contrary to the implication of the quoted paragraph, Mr. DeLano does know –and his knowledge is imputed to his attorney- what the legal basis is for Dr. Cordero's claim against him, namely, the third party claim of Mr. DeLano's negligent and reckless dealings with Dr. Cordero in connection with Mr. DeLano's M&T loan to Mr. David Palmer; his handling of the security interest held in the storage containers bought with the loan proceeds; and the property of Mr. Palmer's clients held in such containers, such as Dr. Cordero's, which ended up lost or damaged. This claim was contained in the complaint that Dr. Cordero served on Mr. DeLano

through his attorney, Michael Beyma, Esq., on November 21, 2002. Consisting of 31 pages with exhibits, the complaint more than enough complied with the notice pleading requirements of FRCivP Rule 8(a) to give "a short and plain statement of the claim". So much so that Att. Beyma deemed it sufficient to answer with just a two-page general denial.

18. When Mr. DeLano and his bankruptcy lawyer, Att. Werner, prepared the bankruptcy petition, they knew the nature of Dr. Cordero's claim, describing it as "2002 Alleged liability re: stored merchandise as employee of M&T Bank –suit pending US BK Ct.". In addition, Att. Beyma accompanied Mr. DeLano and Att. Werner to the meeting of creditors on March 8, 2004. Yet, Mr. DeLano and Att. Werner continued for months thereafter to treat Dr. Cordero as a creditor.

19. It was only after Dr. Cordero's July 9 statement presented evidence of fraud, particularly concealment of assets (E-88§IV), that the DeLanos and Att. Werner conjured up the above-quoted language and wrote it down in the July 19 motion to disallow his claim (E-101). How-ever, other than the realization that they had to get rid of him, on July 19 they had the same knowledge about the nature of his claim as when they filed the petition on January 27. It was upon filing it that they should have filed that motion for the sake of judicial economy and to establish their good faith belief in the merits of their objection (E-127). They should also have filed it then out of fairness to Dr. Cordero so as not to treat him as a creditor for six months, thereby putting him to an enormous amount of expense of effort, time, and money filing, responding to, and requesting papers in their case only to end up with his claim disallowed (E-137).

20. Hence, their motion is barred by laches (E-133§VI). It was also untimely. Untimeliness is a grave fault under the Code, which provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. Att. Werner, who claims 'to have been in this business for 28 years', must be very aware of the gravity of untimeliness. Actually, Trustee Reiber found it so applicable to the DeLanos that he invoked it on June 15 to move to dismiss their case (E-84).

21. If their motion to disallow were nevertheless granted, then the DeLanos and Att. Werner should be required to compensate Dr. Cordero for all the unnecessary expense and aggravation to which they have put him due to their unreasonable delay in objecting to his claim (E-139§II).

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

22. The motion to disallow was also a desperate reaction of the DeLanos and Att. Werner to the detailed list of documents that Dr. Cordero requested Judge Ninfo on July 9 to order them to produce (E-91¶31). Those documents could have put Dr. Cordero and investigators on the trail of **1)** the $291,470 declared by DeLanos in their 1040 IRS forms for 2001-03 but unaccounted for; **2)** titles to ownership interests in real estate and vehicular property; and **3)** their undated loan to their son, which may be a voidable preferential transfer, cf. 11USC §547(b)(4)(B). But that order was not issued (E-109§I) and the DeLanos did not comply with even the watered down order that at Dr. Cordero's insistence the Judge issued on July 26 (E-107, 103).

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

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

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

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

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

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

27. Case law has interpreted this requirement thus:

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

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

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

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

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

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

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

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

> …shall determine the amount of such claim…and shall allow such claim in such amount…

32. The obligation that the Code thus puts on the judge is to allow the claim, rather than disallow it. This is in harmony with the presumption of validity under Rule 3001(f) of a filed claim,

whose proof "shall constitute prima facie evidence of the validity and amount of the claim". This makes sense because filing for bankruptcy is not a device for a debtor to cause the automatic impairment of the merits of the claims against him. On the contrary, filing for bankruptcy raises the reasonable inference that the debtor has a motive for casting doubt on those claims for a reason unrelated to their merits, namely, that he is in desperate financial difficulties, in other words, drowning in debt. It is his challenge that is suspect.

33. Accordingly, section 502(b)(1) enjoins the judge not to limit the amount of the claim "because such claim is contingent or unmatured". It is obvious that a contingent claim is uncertain as to whether it will become due and payable, and if so, in what amount. Since the section provides that a claim's contingency is no grounds for limiting its amount, it follows that it is no grounds for disallowing it altogether. A claim in a lawsuit is by definition contingent, for it depends on who wins the lawsuit. The fact that there are arguments against the claim does not authorize a judge to disallow every contingent claim or even question its validity.

34. If the judge cannot determine the claim's amount due to its contingency, he must allow time for such contingency to resolve itself. The debtor must go on carrying the claim on his books as he did before filing for bankruptcy. This construction of §502(b)(1) results from §502(c)(1):

> (c)(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case…shall be estimated.

35. Such estimation of a contingent claim comes into play only when the fixing of its dollar value "would unduly delay the administration of the case". The Revision Notes and Legislative Reports on the 1978 Acts put it starkly by stating that subsection (c) applies to estimate a contingent claim's value when liquidating the claim "would unduly delay the closing of the estate".

36. But the DeLano case is nowhere near its closing; so Judge Ninfo lacks authority to estimate any contingent claim value. Indeed, **1)** the case has not even settled the threshold question whether the debtors filed their petition in good faith, as required under §1325(a)(3); **2)** the adjourned meeting of creditors has not been held yet; **3)** its debt repayment plan has not been confirmed and may never be because **4)** even Trustee Reiber moved on June 15 to dismiss "for unreasonable delay" by the DeLanos in complying with his requests (E-73, 82) for documents, which they have still failed to produce; and **5)** closing the case or even avoiding undue delay in its administration cannot be but a pretense for estimating Dr. Cordero's claim because Judge

Ninfo suspended all proceedings in the DeLano case until the final disposition of the motion to disallow (E-155¶2) rather than use that time to move the case forward concurrently! *What!?*

37. There is no justification for Judge Ninfo so to disregard his obligation under 11 U.S.C. §105(d)(2) "to ensure that the case is handled expeditiously and economically" and under §1325(a)(3), to ascertain whether the DeLanos' 'plan of debt repayment was not proposed in good faith or was proposed by any means forbidden by law'. These are non-discretionary obligations that **1)** take precedence over an optional motion to disallow; **2)** work in the public's interest in bankruptcies free of fraud, which trumps a debtor's private interest in avoiding a claim; and **3)** can and must be complied with concurrently with the motion to disallow, which is defeated the moment the plan turns out to be fraudulent, and thereby filed in bad faith.

38. Judge Ninfo must know that he cannot transfer his obligation to ascertain the petition's good faith filing to the trustee. This is particularly so here, where Trustee Reiber **1)** approved the DeLanos' petition for confirmation; **2)** vouched for its good faith in court on March 8; **3)** was unwilling (E-69,80,83a) and unable (E-90§V) to obtain documents from them; **4)** even denied Dr. Cordero's request that the Trustee subpoena them (E-87§III); and **5)** moved to dismiss. Hence, the Trustee has a conflict of interests (E-52§III): If he investigates, as duty-bound and requested (E-44§IV), and finds fraud by the DeLanos, he indicts his competency (E-88§IV) and lays himself open to an investigation of how many of his 3,909[2] *open* cases he approved that were meritless or fraudulent. Moreover, if Trustee Reiber were removed from the DeLano case, he would be removed from all other cases pursuant to 11 U.S.C. §324(b). What could motivate Judge Ninfo to dismiss this as "an alleged conflict of interest" (E-151¶1) and pretend that the Trustee can conduct "a thorough investigation of the DeLano Case" (E-155)? (Cf. E-47§IV)

39. Intent can be inferred from a person's conduct. From that of Judge Ninfo in court on March 8, July 19, and August 23 and 25, and his orders of July 26 and August 30 (E-107, 149) it can be inferred that he is protecting the DeLanos by not investigating their suspected fraud while they get rid of Dr. Cordero through the subterfuge of the motion to disallow, which will be granted; meantime, the DeLanos will take care of their assets. Judge Ninfo's severance of Dr. Cordero's claim from the case before this Court to try it in his is a sham!

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on 4/2/04.

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

40. At the same time that Judge Ninfo made that announcement, he imposed on Dr. Cordero the obligation to take discovery of Mr. DeLano to determine at a hearing to be held on December 15, 2004, whether to dismiss Dr. Cordero's claim or set a date in 2005 for an evidential hearing on the motion to disallow (cf. E-156). This means that the Judge has refused in advance any assistance to Dr. Cordero if Mr. DeLano or any other party in the Pfuntner v. Gordon et al. case on appeal before this Court fails to comply with any discovery request made by Dr. Cordero.

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

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

42. Contrary to Judge Ninfo's statements, the issues that Dr. Cordero pursues in the DeLano case are not "collateral and tangential" (E-153): **1)** If the DeLanos have their debt repayment plan confirmed so that they may pay just 22¢ on the dollar (E-35¶4d(2)), any damages that Dr. Cordero may be awarded on his claim will be substantially reduced in value; **2)** if the DeLanos are proved to have concealed at least the $291,470 earned between 2001-03 but unaccounted for, their petition would be denied and if such assets are recovered, more funds would be available to satisfy an award; **3)** if Mr. DeLano has committed fraud, he becomes more vulnerable to the questions **(a)** whether he behaved negligently and recklessly toward Dr. Cordero to protect his client, David Palmer, who also went bankrupt while storing Dr. Cordero's property; **(b)** whether he traded on inside information as a bank loan officer and who else is involved in the bank-

ruptcy scheme; and **(c)** why the attorney for Trustee Reiber, James Weidman, Esq., insisted at the §341 meeting of creditors on March 8 that Dr. Cordero disclose how much he knew about the DeLanos having committed fraud and when Dr. Cordero would not do so, unlawfully terminated the meeting after Dr. Cordero, the only creditor present out of 21, had asked only two questions, thus depriving him of his right to examine the DeLanos under oath (E-49§§I-II;¶80e).

43. If Judge Ninfo 'is not aware of any evidence demonstrating that Mr. DeLano is liable for any loss or damage to the Cordero Property' (E-150) it is because **1)** the Pfuntner v. Gordon et al. case before this Court, though filed in September *2002*, is barely past the notice pleading stage given that the Judge disregarded his duty under FRCP Rules 16 and 26 to schedule discovery, to the point that he held a hearing on October 16, as he put it on page 6 of his July 15, 2003 order:

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

44. Over a year after its filing, Judge Ninfo had not moved the case beyond its complaint!

45. By contrast, Judge Ninfo does have evidence to make him aware of "loss or damage to the Cordero Property" because the Pfuntner complaint of September 27, 2002, stated on page 3 that:

> In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the purpose of selling the trailer at an auction…

46. Since Mr. Pfuntner's warehouse had been closed down and remained out of business for about a year and nobody was there paying to control temperature, humidity, pests, or thieves, Dr. Cordero' property could also have been stolen or damaged.

47. What is more, pursuant to Judge Ninfo's order of April 23, Dr. Cordero inspected his property at that warehouse on May 19 and reported to him at a hearing on May 21, 2003, that it had to be concluded that some property was damaged and other had been lost. This finding was not contradicted by Mr. Pfuntner's attorney at the hearing, David MacKnight, Esq.

48. While Judge Ninfo blames Dr. Cordero for 'not taking possession and securing his property' (E-153), he conveniently forgets that at the hearing on October 16, 2003, Att. MacKnight, in the presence of Mr. Pfuntner, agreed to keep Dr. Cordero's property in the warehouse upon Dr. Cordero's remark that removing the property from there would break the chain of custody before it had been ascertained the respective liabilities of the parties, thus complicating and

protracting the resolution of the case enormously.

49. Judge Ninfo's bias against Dr. Cordero and towards the DeLanos is palpable in his order:

> Cordero has elected to be an active participant in the DeLano Case, even though he has never taken the necessary and reasonable steps to have the Court determine, either in the Premier AP or the DeLano Case, that he has a Claim against DeLano…(E-151)

50. Neither the Bankruptcy Code nor the Rules require a creditor to have the court determine the validity of his claim before he can take an active part in the case in question. More to the point, it was the DeLanos who listed Dr. Cordero as a creditor in their January petition and treated him as such for six months until they conjured up the idea to eliminate him with their July 19 motion to disallow, which was returnable on August 25. Before then the DeLanos did not even give Dr. Cordero either notice that he had to prove the validity of his claim or opportunity to do so.

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

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

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

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

creditor, to have the confirmation of the plan revoked if procured by fraud. What motive does Judge Ninfo have to disregard bankruptcy law in order to protect the DeLanos?

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

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

55. How does Judge Ninfo know that the Debtors believe anything "honestly" since they have never taken the stand? What he knows is that **1)** they disobeyed his July 26 order of document production; **2)** Trustee Reiber moved to dismiss the case "for unreasonable delay" in producing documents; **3)** they had something so incriminating that Att. Weidman would not allow them to speak under oath at the meeting of creditors; and **4)** the Judge suspended all proceedings so that they do not have to take the stand at a confirmation hearing. Since Judge Ninfo knows in some extra-judicial way that the DeLanos are honest, why not skip the charade of the December hearing or the Evidentiary Hearing in 2005 and just disallow Dr. Cordero's claim now?

56. Indeed, how open-minded would you expect the Judge to be when examining the evidence introduced by Dr. Cordero after discovery? If he reversed himself to find that the DeLanos were not honest but instead committed fraud, it would follow that, contrary to his biased statement, they had a motive to remove Dr. Cordero through the subterfuge of the motion to disallow.

57. Do Judge Ninfo's statements comport with even the appearance of impartiality? If you, Reader, were in Dr. Cordero's position, would you after reading his August 30 Order (E-149) like your odds of getting a fair hearing? If you do not, it would be a travesty of justice to allow the DeLano case to proceed before Judge Ninfo, not to mention to let him disrupt the appellate process by severing the claim against Mr. DeLano from the case before this Court.

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

58. The incentive to approve a case is provided by money: A standing trustee appointed under 28 U.S.C. §586(e) for cases under Chapter 13 is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, the confirmation of a plan generates a stream of payments from which the trustee takes his fee. Any investigation conducted by the trustee into the veracity of

the statements made in the petition would only be compensated -if at all, for there is no specific provision therefor- to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). If the plan is not confirmed, the trustee must return all payments, less certain deductions, to the debtor that has made them, which he must commence to make within 30 days after filing his plan and the trustee must retain those payments while plan confirmation is being decided, 11 U.S.C. §1326(b). This provides the trustee with an incentive to get the plan confirmed because no confirmation means no stream of payments. To insure such stream, he might as well rubberstamp every petition and do what it takes to get it confirmed. Cf. 11 U.S.C. §326(b)

59. Any investigation of a debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets him three times as much as if he had to sweat over petitions and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get other officers to go along with his plan, he still comes ahead $400. To avoid a criminal investigation for bankruptcy fraud, a fraudulent debtor may well pay more than $1,000. After all, it is not as if he were bankrupt and had no money.

60. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows: Trustee George Reiber, Esq., 1) had 3,909 *open* cases on April 2, 2004 according to PACER; **2)** approved the DeLanos' petition without ever requesting a single supporting document; **3)** chose to dismiss the case rather than subpoena the documents; and **4)** has refused to trace the earnings of the DeLanos'.

61. There is something fundamentally suspicious when a bankruptcy judge **1)** protects bankruptcy petitioners from having to account for $291,470; **2)** allows them to disobey his document production order with impunity; **3)** prejudges in their favor that they are not trying to eliminate the only creditor that threatens to expose bankruptcy fraud; 4) yet shields them from further process.

VI. Relief requested

62. Therefore, Dr. Cordero respectfully requests that this Court:

a) Quash Judge Ninfo's Order of August 30 (E-149); meantime stay it; if upheld, extend it;

b) Refer the Premier, the Pfuntner v. Gordon et al., and the DeLano cases under 18 U.S.C. §3057(a) to U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate (cf. E-157), such as:

(1) Judge Ninfo for his participation in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including the new evidence of protecting from discovery debtors under suspicion of having committed bankruptcy fraud; and

(2) Trustee Reiber and Att. Weidman for their suspicious approval of a meritless bankruptcy petition, unlawful conduct, and failure to investigate the case;

(3) David and Mary Ann DeLano, and others under suspected participation in a bankruptcy fraud scheme;

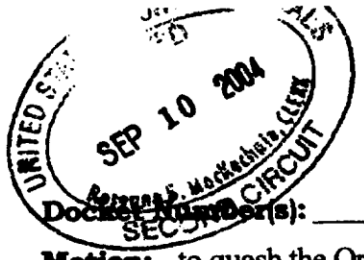
c) Disqualify Judge Ninfo from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and equidistant from all parties, such as the U.S. District Court in Albany.

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

Respectfully submitted on,
September 9, 2004 .

Dr. Richard Cordero

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



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

ORIGINAL

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

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

Statement of relief sought:

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

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

OPPOSSING PARTY: See next

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

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

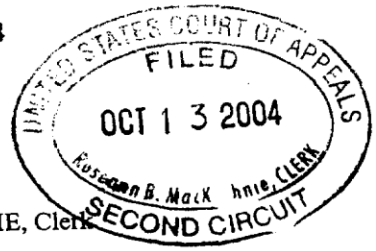
Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004



ORDER

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

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

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by
Arthur M. Heller, Motions Staff Attorney

OCT 1 3 2004

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

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re: Premier Van Lines **Case no.: 03-5023**

MOTION to stay the mandate
following denial of the motion for panel rehearing
and pending the filing of a petition for a writ of
certiorari in the Supreme Court

Dr. Richard Cordero affirms under penalty of perjury as follows:

1. The Court in its order of October 26, 2004, denied Dr. Cordero's motion of March 10, 2004, for panel rehearing and hearing en banc of the dismissal of his appeal by the Court's order of January 26, 2004. Dr. Cordero intends to file a petition for a writ of certiorari in the Supreme Court.

I. Substantial questions that the certiorari petition would present

2. Where evidence has accumulated for more than two years that judges and other court staffers and attorneys in a U.S. bankruptcy and a U.S. district court have participated in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the detriment of one party, the sole non-local one, who resides in New York City and is also the sole pro se party, and to the benefit of the local parties, who are resident in Rochester, NY, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias[1] against that one party, here the Appellant[2], who duly raised the issue on appeal and in subsequent motions, where he provided further evidence of intervening events linking such wrongdoing to a bankruptcy fraud scheme[3]:

   a) Does it violate the Appellant's right to due process of law under the Fifth Amendment of the Constitution[4] and the right to equal protection of the laws[5] included in the due process

[1] Liteky v. United States, 510 U.S. 540, 551, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) (defining bias as a favorable or unfavorable predisposition so extreme as to display clear inability to render fair judgment).

[2] See pages 9 et seq. infra.

[3] See pages 27 et seq. and 47 et seq., infra.

[4] Johnson v. Mississippi, 403 U.S. 212, at 216; 91 S. Ct. 1778, at 1780; 29 L. Ed. 2d 423; at 427, 1971 U.S. LEXIS 35 (1971) (trial before "an unbiased judge" is essential to due process). In re Murchison, 349 U.S. 133, 136 (1955) (the right to trial by an impartial judge is constitutionally mandated under the Due Process Clause).

clause[6] for the Court of Appeals not to have even addressed the issue in either its dismissal of the appeal –contained in a non-publishable summary order with no precedential value- or the denial of the motion for panel rehearing and hearing en banc –with a mere "DENIED" in an order without opinion- whereby the Court not only denies the appearance of justice[7], but thereby also knowingly subjects the Appellant on remand to further proceedings at the hands of those judges and others, who will with all reasonable certainty continue[8] to inflict upon Appellant further unjust and unfair treatment[9] in a mockery of process and cause him even more substantial harm to his wellbeing and enormous loss of money, effort, and time, all of which will be irreparable and unjustified?

b) Has the Court by not even taking cognizance of the mounting evidence of wrongdoing that would have led a reasonable and prudent person[10] to question the impartiality of the complained-about judges[11]; by not conducting an investigation of the judges and others participating in such wrongdoing; and even failing to fulfill its duty under 18 U.S.C.

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[5] Griffin v. Illinois, 351 U.S. 12 at 19 (1956) (individuals have a fundamental right to a fair judicial process and to demand "equal justice").

[6] In Hirabayashi v. United States, 320 U.S. 81 (1943), Chief Justice Stone first cited Fourteenth Amendment equal protection decisions in a Fifth Amendment case. The discussion of the limitations on the states imposed by the equal protection clause of the Fourteenth Amendment led the Court in Bolling v. Sharpe, 347 U.S. 497, 500 (1954), to deduct that "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." In Washington v. Davis, 426 U.S. 229, 239 (1976), it recognized that the Fifth Amendment has an equal protection component. Then the Court stated in City of Cleburne, Texas v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985), that the equal protection doctrine requires "is essentially a direction that all persons similarly situated should be treated alike," a statement that is also applicable to Fifth Amendment analysis; see the cases cited therein showing that the discussion of the equal protection clause of the Fourteenth Amendment has gradually led to a germane Fifth Amendment equal protection doctrine.

[7] Ex parte McCarthy, [1924] 1 K. B. 256, 259 (1923) ("Justice should not only be done, but should manifestly and undoubtedly be seen to be done"). In re Parr, 13 B.R. 1010, 1019 (E.D.N.Y. 1981) ("The Fifth Amendment's Due Process Clause will bar a trial where the appearance of justice is not satisfied.")

[8] Liteky v. United States, 510 U.S. 540, 548, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994) ("what matters is not the reality of bias or prejudice but its appearance").

[9] United States v. Schmeltzer, 20 F.3d 610, 612 (5th Cir.) (a litigant "has a right to appeal free from fear of judicial retaliation for exercise of that right"), cert. denied, 513 U.S. 1041 (1994).

[10] State v. Garner (M0 App) 760 SW2d 893, appeal after remand (Mo App) 799 SW2d 950 (Where a judge's freedom from bias or his prejudgment of an issue is called into question, the inquiry is no longer whether he actually is prejudiced; the inquiry is whether an onlooker might on the basis of objective facts reasonably question whether he is so.) Cf. H.R. REP. NO. 1453, 93d Cong., 2d Sess. 1, 5, reprinted in 1975 U.S.C.C.A.N. 6351, 6351, 6355, reporting on the general judicial disqualification provision at 28 U.S.C. § 455 (1988) that the fundamental purpose behind the section's amendment in 1974 (Act of Dec. 5, 1974, Pub. L. No. 93-512, § 1, 88 Stat. 1609) was to "broaden and clarify the grounds for judicial disqualification" in order "to promote public confidence in the impartiality of the judicial process."

[11] Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986) ("to perform its high function in the best way, 'justice must satisfy the appearance of justice.'").

§3057(a) to report the case to the United States attorney, so that it has taken no action[12] to insure the integrity of the judicial and bankruptcy systems and officers in question, engaged in denial of justice to Appellant and thereby failed in its fundamental function under Article III within the framework of the Constitution of dispensing justice according to law?

II. Reasons why the Supreme Court may issue the writ of certiorari

3. Given recent statements of concern about judicial misconduct going unchecked and the concrete action taken to find its extent and effect, it is reasonable to contemplate that the Supreme Court may issue the writ of certiorari to take this case as a test case. Indeed, none other than Supreme Court Chief Justice William Rehnquist has appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act [28 U.S.C. §351 et seq.] Study Committee. Congress too has taken notice. The Chairman of the House of Representatives Committee on the Judiciary, F. James Sensenbrenner, Jr., welcomed the appointment of Justice Breyer and recognized the need for the study saying that "Since [the 1980s], however, this process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation."

4. Such perfunctory dismissals have compromised, as Justice Breyer's Committee put it in its news release after its first meeting last June 10, "The public's confidence in the integrity of the judicial branch [which] depends not only upon the Constitution's assurance of judicial independence [but] also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability". If the Justice and his colleagues put an effective complaint procedure at a par with the judiciary's constitutionally ensured independence, why then have chief judges and judicial councils treated complaints with so much contempt? Are they dispensing protection to each other in their peer system at the expense of those for whose benefit they took an oath to dispense justice?

III. Good cause for a stay of the mandate

5. If the mandate were to issue, it would expose Dr. Cordero to the resumption by Bankruptcy Judge John C. Ninfo, II, of the case and to suffering the concomitant wrongdoing and bias. No

[12] 28 U.S.C. Appendix (2004) Code of Conduct for United States Judges, Canon 3A(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.…(5) A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

subsequent appeal would compensate Dr. Cordero for the further injustice, material loss, and tremendous aggravation that would thereby be inflicted upon him, who as a pro se litigant has already had his life disrupted by having to struggle for more than two years in this baffling Kafkian process conducted through disregard for legality and arbitrariness prompted by bias.

6. If after final judgment in the bankruptcy court and an appeal to the district court on the floor above in the same federal building in Rochester where the same group of officers participating in the same wrongdoing will determine a final judgment, Dr. Cordero still has the strength and the means to appeal to this Court and it reverses the lower court and removes the case to an impartial court to begin proceedings all over again, who will compensate Dr. Cordero for having to endure such travesty of justice? Nobody! The harm inflicted upon him by those with a vested interest in not allowing him to pierce the cover of the bankruptcy fraud scheme that provides the motive for wrongdoing and bias would be irreparable.

7. And how could he possibly find the emotional and material resources and the time to begin all over again in the removal court? By wearing him down justice will have been denied to him.

IV. Delay in notifying the denial of rehearing limited the time to respond

8. FRAP Rule 36(b) provides thus:

> On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion –or the judgment is no opinion was written, and a notice of the date when the judgment was entered.

9. Although the Court's order denying Dr. Cordero's motion for panel rehearing was entered on October 26, it was not mailed for days and consequently, it was not received until even later. As a result, Dr. Cordero had to scramble on Monday, November 1, and Tuesday, November 2, to prepare this motion to stay the mandate.

10. When Dr. Cordero called the Court on Monday, November 1, to bring this fact to its attention, Motion Attorney Arthur Heller and Supervisor Lucile Carr told him that the Court receives many cases, that it is very busy, and that while it strives to proceed as required, it not always has the personnel to do so. If the Court fails to abide by its own rules, can it in all fairness hold litigants to the deadlines imposed on them? Can Dr. Cordero or for that matter any other litigant simply claim that he had too many other cases and was too busy to meet the deadlines and

thereby get the Court to excuse his noncompliance and grant a time extension? Respect for rules can be demanded by a court of justice when it complies itself with those rules imposing obligations on it.

11. But this is by no means the first the time that this has happened. Indeed, in the same conversations with Mr. Heller and Ms. Carr on Monday, November 1, Dr. Cordero brought to their attention that the letter that upon authorization by Mr. Heller Dr. Cordero faxed to him on September 27, 2004, and of which he acknowledged receipt had not yet been docketed; just as the paper dated October 12, 2004, that Dr. Cordero personally filed in the In-Take Room 1803 on October 19, had not been filed yet. What is more, on Wednesday, October 27, Dr. Cordero brought to Mr. Heller's attention the matter of the non-docketing of the October 12 paper. Mr. Heller transferred Dr. Cordero to Mr. Andino, to whom he further explained this matter. Mr. Andino put Dr. Cordero on hold and after a few minutes Mr. Andino told him that his October 12 paper had been located and would be filed. But it was not. As of today, November 2, despite the conversation yesterday with Ms. Carr, neither of those two papers has been filed.

12. What is more, these instances of late notice and non-filing are by no means the first ones. On August 10, 2004, Dr. Cordero called Mr. Heller and recorded on his voice mail a message stating that he had signed on Monday, August 2, the Court's decisions on two motions, namely, for Chief Judge Walker to explain his denial of the motion to recuse himself or to recuse himself, and for declaratory judgment that the legal grounds for updating opening and reply appeal briefs and expanding upon their issues also apply to similar papers under 28 U.S.C. Chapter 16. However, those decisions were mailed to Dr. Cordero only, on August 9, a whole week after being issued. Dr. Cordero stated that this was not the first time that such late notification had happened.

13. Indeed, it had happened with the notification of the dismissal of the notice of appeal of January 26, 2004, which caused Dr. Cordero to request and extension to file the motion for panel rehearing. The motion was granted but it too was notified late! so that Dr. Cordero derived very little benefit from it.

14. In fact, since the beginning of the proceedings in this Court, Dr. Cordero has had to endure these procedural failures on the part of the Court. For proof, read:

a. Dr. Cordero's letter of May 24, *2003*, to Clerk of Court Roseann MacKechnie concerning the all important Redesignation of Items in the Record and Statement of Issues on Appeal of May 5, 2003; the Court's failure to file which could have led to the dismissal of Dr. Cordero's appeal;
b. Dr. Cordero's letter of July 17, *2003*, to Deputy Clerk Robert Rodriguez; on other occasions, Dr. Cordero has discussed on the phone similar docketing and noticing problems with Mr. Rodriguez;
c. Dr. Cordero's motion of April 11, 2004, for declaratory judgment that officers of this Court intentionally violated law and rules as part of a pattern of wrongdoing to complainant's detriment and for this Court to launch an investigation;
d. Dr. Cordero's letter of June 19 2004, to the Hon. John M. Walker, Jr., Chief Judge, by failure to make publicly available the judicial misconduct orders in violation of Rule 17(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers;
e. Dr. Cordero's letter of June 30, 2004, to Chief Walker upon learning from Deputy Clerk of Court Fernando Galindo that the judicial misconduct orders and related materials, all but those of the last three years, had been shipped to the National Archives in Missouri!;
f. Dr. Cordero's letter of July 1, 2004, to Mr. Galindo to complain about Mrs. Harris, precisely the Head of the In-Take Room 1803, who when Dr. Cordero nodded as he tried to concentrate in the noisy reading room while reading the available misconduct orders warned him that 'if he fell asleep again, she would call the marshals on him'! Would you feel as an affront and a humiliation if the marshals came for you in public for threatening everybody in the reading and filing rooms with nodding!?

15. Given these acts of disregard for procedural rules by the Court and contempt for basic rules of civility and common sense, is it reasonable for Dr. Cordero to be very concerned that this motion may not be filed timely even after he scrambles to take it to the In-Take Room? Are these acts a reflection of the climate created by a Court that has not even taken cognizance of evidence of a pattern of wrongdoing by judges and others?

V. Relief sought

16. Therefore, Dr. Cordero respectfully requests that this Court:

a. stay the mandate under FRAP Rule 41(d)(2)(A) pending the petition for a writ of certiorari;

b. take a position on the matter discussed in section IV above.

Respectfully submitted on

November 2, 2004

Dr. Richard Cordero

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

Dr. Richard Cordero
Movant Pro Se

VI. Exhibits

1. Dr. Cordero's motion of August 14, 2004, for docketing and issue, removal, referral, examination, and other relief, noticed for August 23 and 25, 2004 ..... [E-83]
2. Judge Ninfo's Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor DeLano arising from the Pfuntner v. Gordon et al. case on appeal in the Court of Appeals for the Second Circuit ..... [E-101]
3. Dr. Richard Cordero's Motion of September 9, 2004, to Quash the Order of Judge John C. Ninfo, II, of August 30, 2004 ..... [E-109]

Proof of Service

I, Dr. Richard Cordero, hereby certify that I served by United States Postal Service on the following parties copies of my motion to stay the mandate following denial of the motion for panel rehearing and pending the filing of a writ of certiorari in the Supreme Court:

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

Kathleen Dunivin Schmitt, Esq.
New Federal Office Building
Assistant U.S. Trustee
100 State Street, Room 6090
Rochester, New York 14614
tel. (585) 263-5812
fax (585) 263-5862

Michael J. Beyma, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604
tel. (585) 258-2890
fax (585) 258-2821

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

Mr. David Palmer
1829 Middle Road
Rush, New York 14543

U.S. Department of Justice

United States Attorney
Western District of New York

620 Federal Building
100 State Street
Rochester, New York 14614

(585) 263-6760
FAX(585) 263-6226

August 24, 2004

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 12208-1515

Dear Dr. Cordero:

We have reviewed the materials sent to us from the Southern District of New York regarding your allegations of bankruptcy fraud and judicial misconduct. Please be advised that we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so. Accordingly, we are returning your original documents to you with this letter.

Sincerely,

MICHAEL A. BATTLE
United States Attorney

By: RICHARD A. RESNICK
Assistant U.S. Attorney

RAR/kmp
Enclosure

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

August 31, 2004

Bradley E. Tyler, Esq.
Attorney in Charge
620 Federal Building
100 State Street
Rochester, NY 14614

re: evidence of a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Tyler,

Thank you for taking my call today. I appreciate your agreement to examine the documents concerning the above captioned matter that were forwarded to you weeks ago by the Office of Mr. David N. Kelley, U.S. Attorney for the Southern District of New York.

You gave them to your assistant, Richard Resnik, Esq., to review. I called him last Tuesday, August 24. He told me then that he had not taken a look at them and could not do so at that time because he was busy preparing to go to Washington, D.C. the next day; that he would review them upon his return and thereafter we would discuss them on the phone. However, that same day he wrote me a letter dated August 24 where he stated that "we do not believe that the allegations warrant the opening of an investigation, and we will not be doing so". Together with that letter he returned all the files, including the August 14 update that I had sent to you.

It is remarkable how Mr. Resnik made a sudden change of time management to review the 250 pages in the files submitted to you, including more than 30 pages of the bankruptcy petition with 10 schedules and a Statement of Financial Affairs, which upon analysis reveal their declarations and figures to be so incongruous as to render them suspicious; disposed of the matter right away; and even wrote me. I hope that when you examine them, you will allow yourself more time to consider that petition, other Debtors' documents, my analyses of them, and the account of their suspicious handling by bankruptcy and judicial officers that did not want to scrutinize them. Your investment of time in a deliberate examination of these documents is warranted by the stakes, namely, the integrity of the bankruptcy and the judicial systems.

In our conversation today you mentioned that Ms. Kathleen Dunivin Schmitt, the Assistant U.S. Trustee that has her office in your building, did not consider that there were grounds for an investigation of my complaint. I informed her of it since it stems from the DeLano bankruptcy petition, no. 04-20280 WBNY. It is to be hoped that in your conversation with her, an interested party, her views were not deemed deserving of implicit credibility and a substitute for an examination of the evidence, much less the justification for not going where the evidence would lead an objective observer who did not know her. Even if Ms. Schmitt were found not involved in the complained-about bankruptcy fraud scheme, her opinion that there is no need to investigate it or her trustee George Reiber, who has 3,909 *open* cases and failed to vet the DeLanos' petition, or his attorney James Weidman, Esq., who prevented me from examining the DeLanos at the meeting of creditors, might put her at fault. If your personal relation to her and trust in her word render my evidence just "speculations", as you put it, and cause your reluctance to examine it, not to mention investigate her, your objectivity might be compromised. If so, I respectfully request that you recuse yourself and support my referral to the Fraud Section of the U.S. Department of Justice, Criminal Division. I look forward to your statement one way or the other.

Sincerely, Dr. Richard Cordero

E-136

EVIDENTIARY FILES

containing the bankruptcy petition of January 26, 2004
filed by David and Mary Ann DeLano
in the Bankruptcy Court for the Western District of New York
and other financial documents produced by them
with the analyses of Dr. Richard Cordero
that reveal evidence of a judicial misconduct and bankruptcy fraud scheme

FORWARDED TO BRADLEY E. TYLER, ESQ.
U.S. ATTORNEY IN CHARGE
OF THE U.S. ATTORNEY'S OFFICE IN ROCHESTER
BY DAVID N. KELLEY,
U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK,
RETURNED TO DR. CORDERO FROM THE ROCHESTER OFFICE
BY RICHARD RESNIK, ESQ., ON AUGUST 24, 2004
AND SENT BACK FOR REVIEW BY ATT. TYLER
ON AUGUST 31, 2004

1. Copy of letter of May 6, 2004, and file sent to David N. Kelley, U.S. Attorney for the Southern District of New York ..... 76 pages
2. Letter of June 29, 2004, and file sent to U.S. Attorney Kelley with letter of same date to his Chief of the Bankruptcy Unit in Civil Matters, David Jones, Esq. ..... 128 pages
3. Letter of August 14, 2004, and file sent to Bradley E. Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester, ... 46 pages
   250 pages
4. Letter of August 31, 2004, in this file sent to U.S. Attorney Tyler with the following updates:
   a) Objection of July 19, 2004, by Christopher Werner, Esq., Attorney for the DeLanos, to Dr. Cordero's Claim, Notice of Hearing and Order 1
   b) Dr. Cordero's reply of August 17, 2004, to Debtors' objection to claim and motion to disallow it 3
   c) Dr. Cordero's application of August 20, 2004, for sanctions on and compensation from Att. Werner and his law firm for violation of FRBkrP Rule 9011(b) 13

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

September 18, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

tel. (716)843-5700; fax to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

Last May and June, I submitted to your colleague David N. Kelley, U.S. Attorney for SDNY, files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. Since it has manifested itself through cases that originated in the U.S. Bankruptcy and District Courts in Rochester, on jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. I am hereby appealing Att. Tyler's decision not to open an investigation and bringing to your attention the questionable circumstances under which that decision was made.

In my conversation with Mr. Tyler on September 15, I requested that he forward to you all the files, that is, those of May 6 and June 29 to Mr. Kelley as well as those to him of August 14 and 31. Each is bound with a plastic spiral comb, like this one, has a cover letter that functions as an executive summary containing page references to the accompanying documents, and lists all such documents in its own Table of Contents or Exhibits. Their combined page count is 275. For your convenience, the cover pages are reproduced below to provide you with an overview of those files.

Since this is an on-going matter, I am submitting to you two of the latest documents. They consist in the order of August 30, 2004, of the judge presiding over the cases in question, namely, U.S. Bankruptcy Judge John C. Ninfo, II, and my motion of September 9, in the Court of Appeals for the Second Circuit to quash that order. The order goes to the judicial misconduct aspect of my complaint and he motion discusses how it provides further evidence of the already-complained about pattern of non-coincidental, intentional, and coordinated acts of wrongdoing by judicial officers and others. The motion also discusses the element that links judicial misconduct and bankruptcy fraud, that is, money, lots of it.

I trust that you will recognize that this complaint concerns a threat to the integrity of the judicial and the bankruptcy systems and that you will treat it accordingly. Therefore, I look forward to hearing from you and respectfully request that before you reach a final decision, you afford me the opportunity to be heard.

Sincerely,

Dr. Richard Cordero

E-138

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

September 18, 2004

Appeal

to Michael Battle, Esq., U.S. Attorney for WDNY from the decision taken by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme and statement of the questionable circumstances under which that decision was made submitted by Dr. Richard Cordero

1. On May 6, followed by an update on June 29, 2004, Dr. Richard Cordero submitted to David N. Kelley, U.S. Attorney for the Southern District of New York, bound files containing evidentiary documents and analyses of a judicial misconduct and bankruptcy fraud scheme. The files pointed out how evidence of such scheme had manifested itself through two cases in the U.S. Bankruptcy Court in Rochester, NY, in which Dr. Cordero is a party, namely, the Adversary Proceeding Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al., docket no. 02-2230, on appeal since April 2003 in the Court of Appeals for the Second Circuit, docket no. 03-5023; and the more recent Chapter 13 bankruptcy petition filed by David and Mary Ann DeLano last January 27, docket no. 04-20280-, of whom Dr. Cordero is a creditor. On jurisdictional grounds the files were forwarded to Bradley Tyler, Esq., U.S. Attorney in Charge of the U.S. Attorney's Office in Rochester. These files were updated by the files that Dr. Cordero sent to Att. Tyler on August 14 and 31.

2. Att. Tyler informed Dr. Cordero on August 24, by letter of his assistant, Richard Resnik, Esq., and then in phone conversations on August 31 and September 15, 2004, that Dr. Cordero's "allegations" did not warrant an investigation. This is an appeal from that decision on grounds that to reach it neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself.

3. A telling **indication that neither Att. Tyler nor Att. Resnik** has reviewed Dr. Cordero's complaint **files is that neither has shown any awareness that aside from the DeLano case, the files also deal with the Pfuntner v. Gordon et al. case and the judicial misconduct complaint arising therefrom**. Trustee Schmitt's opinion on that complaint carries no special weight since it was filed, not under the Bankruptcy Code, but rather under 28 U.S.C. §351 and involves the disregard for the law, rules, and facts by Bankruptcy Judge John C. Ninfo, II, and other court officers and personnel so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party[1], as to give rise to a pattern of non-coincidental, intentional, and

[1] Bias against non-local parties by judges is such an undisputed and frequent cause of miscarriage of justice that Congress provided for access to federal courts on the basis of diversity of citizenship. The same bias is found, mutatis mutando, on the part of Judge Ninfo, who has developed a preferential relationship –whether for convenience or gain is to be determined by the investigators- with local parties that appear before him frequently and may have even thousands of cases before him (¶¶6 & 13, infra).

coordinated acts of wrongdoing and bias toward the local parties and against Dr. Cordero.

4. But even if only the DeLano case is considered, **there are enough elements to raise reasonable suspicion that bankruptcy fraud has been committed** and that it may be so widespread as to form a scheme, which only buttresses the need for an investigation. The June 29 and August 14 files discuss those elements and the latter's cover letter (page 9, infra) even refers to the "statement in opposition (23)" that lists them on 26§IV therein. In brief, the listed elements show this:

5. Mr. DeLano has been for 15 years and still is a bank loan officer and his wife, a Xerox machines specialist, yet they cannot account for $291,470 earned in just the last three years!…and declared in their petition only $535 in hand and on account; owe $98,092 on 18 credit cards, spent on what since they declared household goods worth merely $2,910 at the end of two lifetimes of work! However, they made a $10,000 loan to their son, undated and described as "uncollectible" while their home equity is just $21,415 and their outstanding mortgage is $77,084. Did the DeLanos conceal assets? If Att. Tyler had reviewed the files, he should have realized the need for an investigation to determine not only the whereabouts of the $291,470, but also the DeLanos' earnings before 2001.

6. That realization was facilitated by the June 29 file, which discussed how **Mr. DeLano, a lending industry insider, must have known** that under a given threshold of loss credit card issuers will not consider it cost-effective to object to a petition. He may also have counted with no review by **Chapter 13 Trustee George Reiber**, either because the Trustee **is accommodating or has a workload of 3,909**[2] ***open*** **cases**, which rules out his willingness or capacity to ascertain the veracity of each petition. The fact is that if Trustee Reiber uncovered fraud and objected to the debtor's debt repayment plan so that its confirmation by the court were blocked, there would be no stream of payments by the debtor under the plan and, consequently, no percentage fee for the Trustee. Hence, it was in the Trustee's interest to submit for confirmation by Judge Ninfo, before whom the Trustee had 3,907 cases, even a case as suspicious as the DeLanos'…or particularly one as suspicious as theirs. Obviously, debtors such as the DeLanos have so much greater incentive to pay what is needed to secure the confirmation of a plan that provides for their paying just 22¢ on the dollar, not to mention to avoid an investigation. If these elements are not sufficiently suspicious in Mr. Tyler's eyes to warrant an investigation, what is?

7. The above figures come straight from the declarations made by the DeLanos in their bankruptcy petition, a copy of which is contained in the May 6 file, page 38, and the June 29 file, page 95, and from reports contained in PACER Yet, Att. Tyler has shown in his conversations with Dr. Cordero to be unfamiliar with those suspicious elements, referring instead to Dr. Cordero's "allegations" without being able to state concretely what it is that he supposedly 'alleged'. That inability stems from his failure to review the files, as shown by these facts:

    d) Att. Tyler stated on August 11 that he had not yet reviewed the files but would assign them to his assistant, Richard Resnik, Esq.;

    e) Att. Resnik by his own admission had not reviewed them either by mid-afternoon of August 24 when he finally took Dr. Cordero's call and he could not have reviewed their 250 pages while preparing, as he said he was, his next day trip to Washington, D.C., by

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

the time that same day when he wrote (pg. 11, infra) to Dr. Cordero that his "allegations" did not warrant an investigation and returned to him all the files (page 12, infra); and

f) Att. Tyler had still not reviewed the files, which after speaking with him on August 31 he agreed that Dr. Cordero could return to him, by September 15 when he finally returned Dr. Cordero's call and repeated conclusorily that they did not warrant an investigation and that Assistant U.S. Trustee Schmitt had told him so and that she had already decided not to investigate the case, and that he relied on her assessment of the case and decision.

8. The fact is that even in that conversation on September 15, Att. Tyler gave the impression to be unaware of what a lawyer, expected to look for and question people's motives, should have realized: **Trustee Schmitt cannot possibly want to have her supervisee, Trustee Reiber**, **found to have rubberstamped the meritless bankruptcy petition of the DeLanos**, let alone to have done so for an unlawful fee. If so, the investigators would then ask how many of Trustee Reiber's 3,909 open cases he also rubberstamped. Were they to uncover other meritless cases, the investigators would not only search for the cause or the incentive for Trustee Reiber to approve them anyway, but also inquire why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes.

9. In this context, **another circumstance shows that Att. Tyler did not review the files**. Dr. Cordero told him that his complaint had touched such sensitive vested interests that on September 8 **Agent Paul Hawkins of the FBI** Rochester Office called Dr. Cordero and with a hostile attitude from the outset told him that his complaint would not be investigated and that Dr. Cordero should stop wasting his own and other people's time pursuing this matter. When Dr. Cordero protested his attitude, Agent Hawkins even told him that he should stop harassing people with this matter. Dr. Cordero asked Agent Hawkins to send him a letter confirming those statements and the Agent said that he would think about it. Dr. Cordero has received no letter from Agent Hawkins or any other FBI agent. Since Dr. Cordero has never contacted the Rochester FBI Office with this matter, where did Agent Hawkins come up with this!?

10. Att. Tyler suggested that Trustee Schmitt might have referred Dr. Cordero's complaint to the FBI. Thereby he implied that he had not referred it and also revealed that he had not reviewed the June 29 cover letter (7, infra) or page 4 of that file where Dr. Cordero stated that both Trustee Schmitt and her boss, U.S. Trustee for Region 2 Deirdre A. Martini, had denied his request to investigate Trustee Reiber and that "Trustee Martini has engaged in deception (77-84 [of the June 29 file]) to avoid sending me information that could allow me to investigate this case further". Nor had Att. Tyler read in that file Dr. Cordero's letter to Trustee Martini of May 23 where he would have found this paragraph (page 83 of the June 29 file):

> At the March 8 meeting of creditors, Trustee George Reiber's attorney, James Weidman, Esq., repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining the DeLanos. Next day, I asked Assistant Trustee Kathleen Schmitt to remove Trustee Reiber and appoint a trustee unrelated to the parties and unfamiliar with the case; she said she could appoint one from Buffalo. But after consulting with you, she wrote that Trustee Reiber would remain on the case. When I spoke with you on March 17, you were adamant that you had made your decision and that he would remain, that it was up to me to consult a lawyer

> and pursue other remedies, that you wanted me to stop calling your office, and when I noted that I had called you only once and recorded a single message for your Assistant, Ms. Crawford, and that you sounded antagonist toward me, you said that you just wanted "closure". How odd, for the case had just gotten started!

11. **How could Att. Tyler fail to find these officers' attitude and their refusal to investigate suspicious?** (Joining them is Judge Ninfo, who stayed the case until Dr. Cordero is eliminated (pgs. 14, 22, infra)). They even prevented, or condoned the prevention of, Dr. Cordero from examining the DeLanos under oath at the Meeting of Creditors held in Rochester on March 8, 2004, al-though such examination is the Meeting's sole purpose under 11 U.S.C. §§341 and 343 and he was the only creditor present so that there was more than ample time for him to ask questions.

12. If Att. Tyler had reviewed the files, he would have learned of Trustee Martini's strong determination to close this matter and of her shooting down Trustee Schmitt's agreement in principle to replace Trustee Reiber and appoint a trustee from Buffalo to conduct an internal investigation under her control. From these facts, he could have reasonably deducted that Trustee Martini would have been most unlikely to refer the matter to an outsider like the FBI, whose investigation would be out of her control from the beginning. By the same token, Trustee Schmitt would have been most unlikely to ignore her boss' decision and refer the matter to the FBI any-way. (Even if she had done so, the FBI would have reported back to Trustees Schmitt or Martini, rather than contacted Dr. Cordero by phone in such unprofessional way as Agent Hawkins'.)

13. In this vein, if Att. Tyler had bothered to read as far as page 4 of the June 29 file, he would have found evidence of Trustee Schmitt's reluctance to investigate another of her supervisees, Chapter 7 Trustee Kenneth Gordon. He also has the suspiciously heavy workload of 3,383[3] cases, 3,382 of them before Judge Ninfo. Although the Judge referred –pro forma?- to Trustee Schmitt Dr. Cordero's complaint about Trustee Gordon's reckless and negligent performance and Trustee Gordon had already been sued under the same set of circumstances in Pfuntner v. Gordon, Trustee Schmitt failed to investigate him. Thus, the fact that Trustee Schmitt refused to investigate Trustee Reiber or the DeLano case is hardly conclusive that she did so strictly upon the merits of those cases and can result from the same vested interest in not investigating one of her supervisees and thereby investigate and incriminate herself.

14. Hence, Att. Tyler's suggestion that FBI Agent Hawkins could have contacted Dr. Cordero upon the referral of his complaint by Trustee Schmitt betrayed his unfamiliarity with the files that he dismissed without reviewing. So did his question **whether Dr. Cordero's files to him** –of August 14 and 31- **duplicated** the documents contained in **the files forwarded by Att. Kelley**–of May 6 and June 29-. Had he reviewed the files (cf. pg. 13¶4, infra), he would know the answer, particularly since each has a cover letter with a theme and its own Table of Contents or Exhibits.

15. Compounding his failure to review the files, **Att. Tyler unquestioningly accepted Trustee Schmitt's statements or failed to reflect before making his own**. When Dr. Cordero told him that the DeLanos cannot account for $291,470 earned between 2001-03, Att. Tyler replied that if debtors declared their earnings in their tax returns, they do not have to account for them in bankruptcy. What an extraordinary comment! Even the man in the street knows that bankruptcy is predicated on the debtor's inability to pay his debts because his assets are not enough to meet

[3] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

his liabilities. It follows that he has to prove that state of financial affairs and cannot keep earnings enough to pay his debts while asking the court to confirm his plan to pay merely pennies on the dollar. To have the cake and not let the creditors eat it is fraudulent concealment of assets.

16. Moreover, if Att. Tyler had reviewed Dr. Cordero's Objections, contained in the June 29 file, page 59, to the DeLanos' Debt Repayment Plan, he would have noticed that the provisions of the Bankruptcy Code that he cited there -11 U.S.C. 704- provide that "The trustee shall…(4) investigate the financial affairs of the debtor", and "(7)…furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Under either provision the debtor, upon request, has to account for the whereabouts of his assets and earnings. If assets were exempt from investigation, how could a case for concealment of assets ever be made?

17. If circumstantial evidence can be relied upon to deprive a person of even his life, then it can be relied upon here to find that **neither Att. Tyler nor Att. Resnik reviewed Dr. Cordero's files** before dismissing his complaint. What is more, **they even got rid of the files by returning them** to Dr. Cordero, who instead was expecting Att. Resnik to read them after coming back from Washington, as he had said he would. Returning them revealed how embarrassing they found even their possession. This can hardly be standard practice. If so, how can Mr. Tyler, or any law enforcement officer for that matter, accumulate a sufficient number of complaints so that, if not the substance and evidentiary soundness of any of them, then the sheer weight of the related elements of all of them make it dawn upon him that there is something suspicious enough going on to warrant an investigation? In other words, how can a chart be drawn if the dots are not plotted?

18. This begs the question: Why did Att. Tyler too find the complaint in those files so embarrassing that he could not bear to review them although their captions indicate a stake as high as the integrity of the judicial and the bankruptcy systems? Since Att. Tyler has engaged in questionable conduct and has questions to answer, he is no longer a disinterested party capable of conducting an impartial, unprejudiced, and vigorous investigation. Far from it, as investigator he would have an interest in proving that, while it may have been a mistake not to review Dr. Cordero's files and instead rely only on Trustee Schmitt's assessment, upon his investigation of the complaint it turned out that all the parties were blameless, there was no such fraud, much less a scheme, so that after all he was right to trust Trustee Schmitt and dismiss Dr. Cordero's complaint.

19. Therefore, Dr. Cordero respectfully requests that:

    a) his files be reviewed and the two linked aspects of the complained-about scheme, namely, judicial misconduct and bankruptcy fraud, be investigated;

    b) the investigation be conducted by officers who belong to neither the U.S. Attorney's nor the FBI's Office in Rochester and who instead are unacquainted with those to be investigated, such as officers of the Office of the U.S. Trustees, the U.S. Bankruptcy and the District Courts for WDNY, and the DeLanos and their attorneys; and

    c) Dr. Cordero be informed of the decision on his request for an investigation and, if negative, that this matter be reported to the Attorney General under 18 U.S.C. §3057(b).

Respectfully submitted on

September 18, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

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

October 7, 2004

Ms. Jennie Bowman
Executive Assistant to the US Attorney
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3051; tel. (716)843-5700

Re: Resubmission to U.S. Att. Battle of appeal from Att. B. Tyler's decision

Dear Ms. Bowman,

Thank you for taking my call a few minutes ago. As agreed, I am faxing a copy of the letter that I sent to Michael Battle, Esq., U.S. Attorney for WDNY, last September 18. You indicated that you would pass it along to Duty Attorney Lynn Eilermann for review. I appreciate that and kindly request that you also bring to Att. Battle's attention the following:

1. My letter to Att. Battle was an appeal from a decision by Bradley Tyler, Esq., U.S. Attorney in Charge of the Rochester Office. It serves no purpose to send it back to Mr. Tyler for him to pass judgment on himself. See ¶18 of the Appeal.

2. My Appeal was accompanied by supporting and updating documents. They should be recovered from Att. Tyler and reviewed. If that cannot be done, let me know and I will send a copy.

3. In addition, there are four files in Att. Tyler's possession that contain supporting evidence of the complained-about judicial misconduct and bankruptcy fraud scheme. When I last spoke with Att. Tyler on September 15, I specifically requested that he forward those files to Att. Battle so that the latter may consider them in the context of my appeal. Indeed, I told Att. Tyler that I wanted to appeal his decision and asked who his supervisor was and he gave me Att. Battle's name and phone number. I also specifically asked Att. Tyler to write to me a letter stating why he had decided not to investigate the case. He said that he would send it to me with copy to Att. Battle. I have received no letter. Now I find out from you that he did not forward the files either. Att. Tyler's questionable conduct in not providing those files to Att. Battle and not sending me the promised letter only adds to his questionable conduct already pointed out in the appeal.

4. This case is not being investigated by Assistant U.S. Trustee Kathleen Dunivin Schmitt in Rochester. Nor can she do so because of her conflict of interests: She cannot want to find her supervisee, Trustee George Reiber, to have rubberstamped the meritless bankruptcy petition of David and Mary Ann DeLano, docket no. 04-20280. If so, she would be confronted with the question how many of Trustee Reiber's 3,909 *open* cases he also rubberstamped. If it were to be uncovered that Trustee Reiber approved other meritless cases, the next question would be not only why and on what incentive, but also why Trustee Schmitt allowed him to amass such a huge number of cases without suspecting that he could not adequately review each for its merits for relief under, and continued compliance with, the Bankruptcy Code. Soon Trustee Schmitt could go from a supervisor to an investigated party and her career could flash before her eyes. Nor can Att. Tyler investigate this case either because he has a vested interest in a certain outcome.

I trust that you realize the seriousness of this matter and will have Att. Battle decide it. Meantime, I look forward to hearing from him.

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

October 19, 2004

Mary Pat Floming, Esq. faxed to (716)551-3052
U.S. Attorney's Office for WDNY
138 Delaware Center
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for returning my call today in which I inquired about the status of my appeal to U.S. Attorney Michael Battle from the decision of the U.S. Attorney in Charge of the Office in Rochester, Bradley Tyler, Esq. not to investigate my above-referenced complaint. Based on the facts stated in the appeal, it can be concluded that Mr. Tyler did not even read the cover letters of the two files forwarded to him from the office of Mr. David N. Kelley, U.S. Attorney for SDNY, on or around August 5. Instead, he relied on his conversations with one of the parties who could not have an interest in this matter being investigated because she could end up being investigated herself, namely, Assistant U.S. Trustee Kathleen Schmitt. Mr. Tyler and Ms. Schmitt work in the same small federal building in Rochester, where people can easily become acquaintances or friends, their word can be substituted for evidence, and an investigation can constitute betrayal.

It was only because of my repeated calls to Mr. Tyler and submissions of two written updates to him that I found out in a phone conversation with him on September 15 that he would not investigate my complaint. On that occasion, I told him that I would appeal to Mr. Battle and asked that he send me his decision in writing and forward the four files to Mr. Battle. Mr. Tyler agreed to do so. Yet, he has failed to send me any letter. Nor has he forwarded any files to Mr Battle, as stated to me by Mr. Battle's Executive Assistant, Mrs. J. Bowman, and you.

I appealed in writing to Mr. Battle on September 18. Nothing happened. So I called Mr. Battle's office and eventually found out from Mrs. Bowman that my appeal file had been sent back to Mr. Tyler! One need not work at the U.S. Attorney's Office or know 28 U.S.C. §47 – Disqualification of trial judge to hear appeal: No judge shall hear or determine an appeal from the decision of a case or issue tried by him- to realize that an appeal cannot be determined by the person appealed from. I faxed a letter to that effect to Mrs. Bowman on October 7, together with a copy of my appeal so that, as agreed, Mrs. Bowman would bring it to Mr. Battle's attention. On October 12 I found out from her that she had forwarded that material to you. You have stated that is not the case. I have recorded messages for Mrs. Bowman, which have not been replied to.

Something is not right here. You can find out what it is by, as agreed, informing Mr. Battle directly of the complaint and the appeal. While at it, you can do better than that FBI Agent who learned from a flight school instructor that some foreigners wanted to learn just how to fly large airplanes but not how to take them off or land them. The agent just told his superior rather than pursue the matter all the way to the top on the good-sense intuition that something was not right and the stakes were too high to leave it to protocol. He missed his once-in-a-lifetime chance to prevent the 9/11 tragedy and become a hero of moral courage and civic responsibility. This is your chance, Ms. Floming, to become a heroine by finding out why the four complaint files have been kept from Mr. Battle and how widespread bankruptcy fraud has become…as the appeal and the files show, there is so much money to spread around! Rest assured I will pursue this matter.

Sincerely,

Dr. Richard Cordero

E-145

RB:317

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

October 25, 2004

Mary Pat Floming, Esq.
U.S. Attorney's Office for WDNY
138 Delaware Center — faxed to (716)551-3052; tel. (716)843-5700
Buffalo, NY 14202

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Ms. Floming,

Thank you for letting me know that you brought to U.S. Att. Michael Battle's attention my appeal from Att. Bradley Tyler's decision not to investigate the misconduct and bankruptcy fraud scheme evidenced in my four files and his failure to forward the latter to Mr. Battle.

This is an update showing Trustee George Reiber's factually and legally untenable allegations for refusing to examine under 11 U.S.C.§341 the DeLanos, who are the debtors in the case (dkt. no. 04-20280) that opens a window into the scheme. His motive for refusing is to prevent the DeLanos' fraud from being established. If it were, it would provide grounds for him to be investigated for having approved without any review a clearly questionable petition, for Mr. DeLano is a bank industry insider who has been for 15 years and still is a bank *loan* officer, and his numbers in the schedules are so incongruous as to red-flag his petition as highly suspicious. This would logically call for determining how many of his 3,909 *open* cases (as of April 2, 2004, according to PACER) Trustee Reiber approved that were also meritless or even fraudulent.

Such an investigation would entail a risk for Trustee Reiber's supervisor, Assistant U.S. Trustee Kathleen Schmitt. Indeed, she could also be investigated for having failed to provide adequate supervision and allowed one trustee to concentrate in his hands such an overwhelming and unmanageable workload. Could you read the petitions, check them against supporting documents, and monitor *monthly* plan repayments of thousands of cases? Bottlenecking thousands of cases through one person is outright questionable. It confers enormous power to control and generates a strong incentive to obey in a symbiotic relationship where supervisor and supervisee derive their respective benefits from prioritizing the approval of petitions and the concomitant unobstructed flow of percentage fees over compliance with Bankruptcy Code requirements.

Consequently, an investigation of the fraud scheme cannot limit itself to asking Trustee Schmitt to give her opinion about the evidence in the files, for she is unlikely to make any self-incriminating admission. The same applies to her supervisor, U.S. Trustee for Region 2 Deirdre A. Martini. In the first and only call that she has ever taken from me or returned, she was adamant that she would keep Trustee Reiber on the case and that she wanted me to stop calling her office because she wanted "closure". How odd, for the case had just started!: It was March 17 and only on March 8 had Trustee Reiber approved the suspicious termination by his attorney, James Weidman, Esq., of the §341 examination of the DeLanos after I, the only creditor present, had asked two questions but would not answer his insistent questions of how much I knew about their having committed fraud. Did Trustee Martini too not want me to examine the DeLanos?

I respectfully request that you share this update with Mr. Battle so that you both may **1)** realize that just as Mr. Tyler cannot investigate my appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme; instead, they should be investigated; and **2)** use the influence of your Office with the Executive Office of the U.S. Trustees to replace Trustee Reiber with an independent trustee to hold a §341 examination of the DeLanos. I look forward to hearing from you and receiving Mr. Battle's call.

Sincerely, Dr. Richard Cordero

E-146

U. S. Department of Justice

United States Attorney
Western District of New York

Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

716-843-5700
FAX 716-551-3052

PHONE: (716) 843-5814
Fax: (716) 551-3051
Michael.Battle@usdoj.gov

November 4, 2004

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

Dear Dr. Cordero:

Upon a careful review of the documentation which you have submitted to my office and in relation to our recent conversation, I find no basis for your claim of bankruptcy fraud. Thank you for bringing this matter to my attention. Best of luck to you.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney
Western District of New York

MAB/jlb

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

November 15, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052; tel. (716)843-5700

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I am in receipt of your letter of November 4 in which you state that you find no basis for my claim of bankruptcy fraud and have closed this case. However, this is not in keeping with what you told me in our conversation on Monday, November 1, that you would do.

In that conversation you indicated that you had not yet received the files that I sent to the U.S. Attorney in Charge of the Rochester Office, Bradley Tyler, Esq., but that you would ask for them; that that you have very skilled people that would look into whether there was bankruptcy fraud; that it would take them several weeks to complete their review; and that after you reached your conclusion you would let me know and we would discuss them. I believed what you told me, not because I am naïve, but rather because I believe that the word of an attorney of the United States is not given lightly and should be taken seriously. Yet, what you told me that you would do could not have been done between November 1 and 4.

Indeed, you asked me what evidence I had of bankruptcy fraud and I told you that it was documentary evidence contained in the files that I sent to Mr. Tyler. I appealed to you on September 18 precisely because of the evidence that neither he nor his assistant, Richard Resnik, Esq., reviewed them, but instead relied on a building co-worker's assertion that no investigation was needed, that is, Assistant U.S. Trustee Schmitt, who has a vested interest in not having this matter investigated. But even that appeal to you, bound with supporting documents, was sent to Mr. Tyler for him to review an appeal against himself!, a decision that defies common sense and legal practice. So the only material that you could have reviewed was that 5-page appeal without supporting documents that I resubmitted by fax to you and which dealt with the questionable circumstances of Mr. Tyler's decision rather than with the evidence of the judicial misconduct and bankruptcy fraud scheme. So, you did not have the documentation to support your statement that "[You] find no basis for [my] claim of bankruptcy fraud"? No wonder you asked me at the beginning of our conversation to tell you what this was all about and what I wanted you to do.

That you had no other documentation, let alone reviewed it, can be inferred from the facts. Thus, after I sent you my appeal of September 18, I did not hear from your office in Buffalo or Rochester. I had to call you several times but could only speak with your Executive Assistant, Ms. J. Bowman, who eventually found out that the appeal file had been sent to Mr. Tyler. After I faxed her only the appeal and made more calls, her statement that it had been assigned to Mary Pat Floming, Esq., proved inaccurate. I made more calls requesting to speak with you.

Then on Wednesday, October 27, Ms. Bowman called me and said that you wanted to talk to me the next day at 3:00 p.m. I agreed. But on Thursday, that time came and went and you did not call. I called to find out what happened and Ms. Bowman said that you had been called to court urgently. She asked whether the conference could be rescheduled for Friday, at 9:00 a.m. I agreed. But you did not call either. Instead, at 9:42 Ms. Bowman called to say that you were on a

video conference with Washington, and whether you could call me at anytime later that day. I agreed. But you did not call either.

On Monday, November 1, I called and Ms. Bowman said that you had a 9:30 a.m. meeting and asked whether you could call me between 10:30 and 10:45. I agreed. But at about 11:02 she called back to reschedule your call for 11:45 a.m. When you finally called and although our conversation lasted some 12 minutes, you grew impatient toward the end of it, particularly when you asked me what type of evidence I had and I told you that it was the documents in the files and asked whether you had retrieved them from Mr. Tyler. Then you stated what you were going to do and put and end to the conversation.

If somebody told a jury or a fair-minded public servant how you ignored for well over a month an appeal made to you and then how you made appointments to discuss it only to successively ignore or reschedule them, could they reasonably believe that such hands-off treatment and informality revealed, or was intended to send the message of, how unimportant you considered the matter? If the answer is yes, would it be naïve or wishful thinking to expect them to believe that after our conversation on that Monday you dropped everything that you were doing, asked for the files from a person in another city, precisely the one who for over three months failed to deal with the four original files and the appeal, but who nevertheless dropped everything he was doing to send you five files with over 315 pages, which you reviewed and by Thursday you had with due diligence reached the decision that there was no basis for the claim of bankruptcy fraud? You even totally missed the other part of the scheme: judicial misconduct!

You could allow yourself to become hostile toward me because of this statement of facts, but that would be the wrong reaction. For one thing, I am not the suspect of criminal wrong-doing, but rather a responsible citizen appealing for your help. I need it and deserved it because for over two years I have suffered tremendous loss and aggravation at the hands of a group of powerful officers and have meticulously collected and analyzed evidence pointing to their motive therefor, money! Moreover, you are the top law enforcement officer in that area and your decision affects the public at large, for at stake here is the integrity of top judicial and bankruptcy officers and of systems set up for the common good, not for their private gain. In addition, it is not fair for you to ask me for evidence -particularly since you have not looked at what I already presented- since the law, at 18 U.S.C. §3057(a), does not even ask judges for evidence before they can make a report to a U.S. attorney about bankruptcy fraud, but just asks that they have "reasonable grounds for believing…that an investigation should be had in connection therewith".

Therefore, I respectfully request that you:

1. retrieve the five files from Mr. Tyler;
2. entrust them and the investigation of a judicial misconduct and bankruptcy fraud scheme, not to him or his office, for the reasons in my appeal, but as you said, to the very skilled people that you have and were going to assign to it; or request that the Acting Attorney General appoint outside investigators, such as from Washington, D.C., or Chicago; and
3. let me talk to them because both I know a file that now has over 1,500 pages so that I can facilitate their work and this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme.

Sincerely,

Dr. Richard Cordero

U.S. Department of Justice

United States Attorney
Western District of New York

Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

716-843-5700
FAX 716-551-3052
Writer's Extension: 814
Writer's E-Mail Address: michael.battle@usdoj.gov

November 29, 2004

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

Dear Dr. Cordero:

Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who have had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather, it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

Nevertheless, as previously indicated, having more clearly examined your concerns, I do not find there is a legal basis for the challenges that you now raise. The employees of this office have adequately reviewed any and all documentation, including court records of prior proceedings. While you may be unhappy with the result, it is my opinion that the court's decision is unlikely to be disturbed. Litigants and parties who do not get the results they hope for in cases, commonly react the way that you have and that is understandable. You have asked for review and oversight by this office, which I have undertaken, and at this time, I would like to reiterate that I find there to be no impropriety.

Very truly yours,

MICHAEL A. BATTLE
United States Attorney

MAB/sas

E-150

RB:322

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

December 6, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
138 Delaware Center
Buffalo, NY 14202

faxed to (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

I received your letter of November 29. In your opening paragraph you stated as follows:

> Thank you very much for your letter of November 15, 2004. I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously. Immediately after our conversation, I contacted Assistant U.S. Attorney Brad Tyler and met with the other staff from who [sic] had had previous involvement with your case. These are all trusted professionals, tasked with the responsibility of representing the people of the United States of America.

First, your reference to "our most recent telephone conversation" is misleading because in all the months that I have been pursuing this matter, and wrote to you, and made numerous calls to you, and left messages with your Executive Assistant, Mrs. J. Bowman, we have had one single conversation, i.e., the one that you quickly ended on November 1, which from the perspective of your writing on November 29 –triggered only by my message that day- is hardly recent.

Then you stated that you took what I "said and requested very seriously", thereby revealing once more that when we spoke you did not know the facts of my case because you had not read **1)** my Appeal to you of September 18 (E*-139), which despite appealing from the decision under questionable circumstances of Att. Tyler not to open an investigation into the complaint about a judicial misconduct and bankruptcy fraud scheme, you sent back to him so that contrary to common sense and legal practice he could deal with a complaint about himself –which he has failed to do to date- nor had you read **2)** any of the copies of that Appeal that I faxed to you. Had you taken "very seriously" what I "said and requested" in my Appeal, you would have mentioned it at least once and realized how injudicious it was to rely on the word of those complained-about.

Evidence that you did not read the Appeal, let alone any of the four evidentiary files (E-137) that upon my request Att. Tyler agreed on September 15 to forward to you but failed to do so, is your statement that you "met with the other staff from who [sic] have had previous involvement with your case". But my Appeal discusses precisely the evidence that Att. Tyler failed to involve himself with the files because, following your example, he passed them on to an assistant, Att. Richard Resnick, whom the evidence shows not to have had the material possibility (E-136) of reviewing them before he wrote to me on August 24 (E-135) that no investigation would be opened and returned the four files. What they did is what you failed to read in ¶2 of the Appeal: "…neither Att. Tyler nor Att. Resnik reviewed the files but rather relied unquestioningly on the assessment of their building co-worker and presumably at least an acquaintance, Assistant U.S. Trustee Kathleen Dunivin Schmitt, who is a party with a vested interest in preventing the DeLano case from being investigated, lest she end up being investigated herself." Had you taken this matter seriously, you would have known that they did not involve themselves with my evidence and would have tried to determine with what they involved themselves and why.

It was not with the facts that they involved themselves, these "trusted professionals" whose word you accept uncritically. Indeed, you wrote next thus:

> During this time, I was provided with a detailed history. A review indicates that you were party to a bankruptcy action which was later appropriately resolved by a bankruptcy judge. From what I can gather it appears that you are not in agreement with the final legal resolution. I do not, however, find that there was any impropriety in the decision of the court, and quite frankly, it is not within my authority to do so.

What are you talking about?! No action to which I am a party has been "resolved by a bankruptcy judge": The Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY, has been on appeal in the Court of Appeals for the Second Circuit since April 200*3*, from where it will go to the Supreme Court; and In re D. & M. DeLano, dkt. no. 04-20280, WBNY, has been reduced to the determination of the DeLanos' July 19 motion to disallow my claim (E-73), including all appeals, as stated by Judge John C. Ninfo, II, in his August 30 Interlocutory Order (E-101). What "final legal resolution" did your "trusted professionals" or you are referring to? How can you possibly qualify as 'appropriate' a decision that does not yet exit?

Or does it already exist? The implication of so interpreting your gross mistake of fact is that your "trusted professionals" have had direct ex parte or indirect contact with Judge Ninfo and know the outcome of a case still in process. This would confirm what I have asserted (E-109): that the DeLanos' motion, allowed by Judge Ninfo despite being untimely and barred by laches, is a subterfuge that by disallowing my claim against Mr. DeLano will remove me from the DeLano case so that I have no standing to ask for discovery of the DeLanos' documents that will show how their January 27 bankruptcy petition (E-155) is fraudulent (E-57, E-63) but supported by judicial misconduct that forms part of a bankruptcy fraud scheme. No wonder Judge Ninfo has allowed Mr. DeLano, a bank *loan* officer for 15 years who must know too much to be exposed to discovery, to deny me all documents that I requested (E-222-234) and even to disobey his order for document production of July 26 (E-81). The whole process is a sham!…and you have the evidence!

While in order to keep you quiet your "trusted professionals" may have told you that an 'appropriate' "final legal resolution" had been reached, you have constructive knowledge that such could not be the case. You claim that "Immediately after our conversation" on November 1 you talked to Att. Tyler and the others involved with my case and wrote to me on November 4 that "I find no basis for your claim of bankruptcy fraud" (E-147). Yet, on November 15, I wrote to you "let me talk to [outside investigators] because…this is an ongoing case so that I can provide additional evidence of the abuse and bias that these officers keep heaping on me as they operate their scheme". That is the last clause of the last sentence of the letter, which you did not read either!

This much analysis of your letter should suffice to let any fair-minded prosecutor realize how perfunctorily you have treated this matter: The issue that I posed to you was not even whether I was "in agreement with" any decision, let alone a "final legal resolution", but, as stated in the caption, whether there is "a judicial misconduct and bankruptcy fraud scheme". This affects "the people of the United States", not just me. Therefore, if you take "very seriously" that you are "tasked with the responsibility of representing" all of them, I respectfully request that you:

1) refer the accompanying Request* and Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and **2)** copy me to the referral.

Sincerely, Dr. Richard Cordero

* Exhibits=E and Request sent by mail

153-162 reserved

Blank

Western District of New York

United States Bankruptcy Court

04-20280

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, AND DEADLINES

You may be a creditor of the debtor(s). **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Debtor(s) (name(s) and address):	Date Case Filed(or Converted):	Soc Sec/Tax Id Nos:
DAVID G DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580 AKA: Joint: MARY ANN DELANO 1262 SHOECRAFT ROAD WEBSTER, NY 14580	January 27, 2004	XXX-XX-3894 XXX-XX-0517

Individual debtors must provide picture identfication and proof of social security number to the trustee at this meeting of creditors. Failure to do so may result in your case being dismissed.

Attorney for Debtor(s) (name and addesss):	Bankruptcy Trustee (name and address):
CHRISTOPHER K WERNER, ESQ BOYLAN, BROWN, ET AL 2400 CHASE SQUARE ROCHESTER, NY 14604-0000 Telephone Number: (716) 232-5300	George M. Reiber 3136 South Winton Road Suite 206 Rochester, NY 14623 Telephone Number: (585) 427-7225

See Reverse Side For Important Explanations.

Meeting of Creditors:

DATE: March 08, 2004
TIME: 01:00 PM
Location: U.S. Trustees Office, 6080 U.S. Courthouse, 100 State Street, Rochester, NY 14614

RECEIVED
FEB - 6 2004
BANKRUPTCY COURT
ROCHESTER, NY

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): June 07, 2004
For governmental units: July 26, 2004

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:

DATE: March 08, 2004
TIME: 03:30 PM
Location: U. S. Bankruptcy Court, 1400 U.S. Courthouse, 100 State Street, Rochester, NY 14614

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

The plan proposes payments to the Trustee of $1,940.00 MO
With unsecured claims to be paid 22 cents on the dollar.

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR, AND A HEARING TO DETERMINE VALIDITY OF ANY LIEN OR SECURITY INTEREST CLAIMED AGAINST EXEMPT PROPERTY COVERED BY SEC. 522 F, 11 USC WILL BE HELD AT THE HEARING ON CONFIRMATION.

WRITTEN OBJECTIONS TO CONFIRMATION MAY BE FILED WITH THE COURT AT ANY TIME PRIOR TO CONFIRMATION.

Address of the Bankruptcy Clerk's Office:	Website: http://www.nywb.uscourts.gov
U.S. Bankruptcy Court 100 State St. Rochester, NY 14614	Clerk of the Bankruptcy Court: PAUL R. WARREN DATED: February 03, 2004

Case filing information and deadline dates can be obtained free of charge by calling our Voice Case Information System: (716) 551-5311 or (800) 776-9578. Hours Open 8:00am to 4:30pm

EXPLANATIONS

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (Title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specificied amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in the Bankruptcy Code §362 and §1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you may not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Do not file voluminous attachments to your proof of claim. Include only relevant excerpts which are clearly labeled as such. Full versions of excerpted documents must be made available upon request.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors; even if the debtor's case is converted to Chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side unless otherwise noted. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.
Return Mail	The address of the debtor's attorney will be used as the return address for the Notice of Meeting of Creditors. For returned or undeliverable mailings, debtor's must obtain the intended recipient's correct address, resend the notice and file an affidavit of service with the Clerk's office. The Clerk's office will then update its records for future mailings. Failure to serve all parties with a copy of this notice may adversely affect the debtor.

---Refer To Other Side For Important Deadlines and Notices---

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

Court		U.S. Bankruptcy Court	100 State St. Rochester, NY 14614
Trustee		George M. Reiber Suite 206	3136 South Winton Road Rochester, NY 14623
Debtor		DAVID C DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
Joint		MARY ANN DELANO	1262 SHOECRAFT ROAD WEBSTER, NY 14580
799	000001	CHRISTOPHER K WERNER, ESQ 2400 CHASE SQUARE	BOYLAN, BROWN, ET AL ROCHESTER, NY 14604-0000
001	000005	AT & T UNIVERSAL CARD	P O BOX 8217 S HACKENSACK, NJ 07606
014	000016	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
015	000018	CITICARDS	P O BOX 8116 S HACKENSACK, NJ 07606
018	000021	DR RICHARD CORDERO	59 CRESCENT STREET BROOKLYN, NY 11208-1515
011	000014	CHASE	P O BOX 1010 HICKSVILLE, NY 11802-0000
021	000023	HSBC BANK USA	SUITE 0627 BUFFALO, NY 14270-0627
020	000004	GENESEE REGIONAL BANK	3670 MT READ BLVD ROCHESTER, NY 14616
003	000007	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
004	000009	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
005	000010	BANK ONE	P O BOX 15153 WILMINGTON, DE 19886
022	000024	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
023	000025	MBNA AMERICA	P O BOX 15137 WILMINGTON, DE 19886
024	000026	MBNA AMERICA	P O BOX 15102 WILMINGTON, DE 19886-0000
016	000019	DISCOVER CARD	P O BOX 15251 WILMINGTON, DE 19886-5251
019	000022	FLEET CREDIT CARD SERVICES	P O BOX 15368 WILMINGTON, DE 19886-5368
006	000008	BANK ONE/FIRST USA BANK RECOVERY DEPT	PO BOX 517 FREDERICK, MD 21705-0517
007	000011	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
008	000013	CAPITAL ONE	P O BOX 85147 RICHMOND, VA 23285
010	000012	CAPITAL ONE BANK	P O BOX 85167 RICHMOND, VA 23285-0000
017	000020	DISCOVER FINANCIAL SERVICES	P.O. BOX 8003 HILLIARD, OH 43026

CERTIFICATE OF MAILING

CASE: 0420280 TRUSTEE: 63 COURT: 146
TASK: 02-02-2004.00111358.N13N02 DATED: 02/03/2004

025	000027	SEARS P O BOX 182149	PAYMENT CENTER COLUMBUS, OH 43218
026	000028	SEARS ATTN: BK DEPT	PO BOX 3671 DES MOINES, IA 50322- 000
002	000006	BANK OF AMERICA	P O BOX 531323 PHOENIX, AZ 85072-3132
012	000015	CHASE MANHATTAN BANK USA ATTN: PAYMENT PROCESSING	150 WEST UNIVERSITY DRIVE TEMPE, AZ 85281
013	000017	CITIBANK/CHOICE EXCEPTION PYMT PROCESSING	P O BOX 6305 THE LAKES, NV 88901-6305
027	000029	WELLS FARGO FINANCIAL	P O BOX 98784 LAS VEGAS, NV 89193
009	000003	CAPITAL ONE AUTO FINANCE	P O BOX 93016 LONG BEACH, CA 90809-3016

32 NOTICES

THE ABOVE REFERENCED NOTICE WAS MAILED TO EACH OF THE ABOVE ON 02/03/2004.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
EXECUTED ON 02/03/2004 BY T Martinez

*CM - Indicates notice served via Certified Mail

(Official Form 1) (12/03)

FORM B1 | **United States Bankruptcy Court**
Western District of New York | **Voluntary Petition**

Name of Debtor (if individual, enter Last, First, Middle): DeLano, David G.	Name of Joint Debtor (Spouse) (Last, First, Middle): DeLano, Mary Ann
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-3894	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): xxx-xx-0517
Street Address of Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): 1262 Shoecraft Road Webster, NY 14580
County of Residence or of the Principal Place of Business: Monroe	County of Residence or of the Principal Place of Business: Monroe
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

■ Individual(s) ☐ Railroad
☐ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other_____ ☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

☐ Chapter 7 ☐ Chapter 11 ■ Chapter 13
☐ Chapter 9 ☐ Chapter 12
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

■ Consumer/Non-Business ☐ Business

Chapter 11 Small Business (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

■ Full Filing Fee attached
☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

■ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
☐	■	☐	☐	☐	☐

Estimated Assets

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Estimated Debts

$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
☐	☐	■	☐	☐	☐	☐	☐

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s): **FORM B1**, Page 2
DeLano, David G.
DeLano, Mary Ann

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed:	Case Number:	Date Filed:
- None -		

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:	Case Number:	Date Filed:
- None -		
District:	**Relationship:**	**Judge:**

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David G. DeLano
Signature of Debtor David G. DeLano

X /s/ Mary Ann DeLano
Signature of Joint Debtor Mary Ann DeLano

Telephone Number (If not represented by attorney)

January 26, 2004
Date

Signature of Attorney

X /s/ Christopher K. Werner, Esq.
Signature of Attorney for Debtor(s)

Christopher K. Werner, Esq.
Printed Name of Attorney for Debtor(s)

Boylan, Brown, Code, Vigdor & Wilson, LLP
Firm Name

2400 Chase Square
Rochester, NY 14604
Address

585-232-5300
Telephone Number

January 26, 2004
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X /s/ Christopher K. Werner, Esq. January 26, 2004
Signature of Attorney for Debtor(s) Date
Christopher K. Werner, Esq.

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.
■ No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number (Required by 11 U.S.C.§ 110(c).)

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court
Western District of New York

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

Chapter 13

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	AMOUNTS SCHEDULED ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	98,500.00		
B - Personal Property	Yes	4	164,956.57		
C - Property Claimed as Exempt	Yes	1			
D - Creditors Holding Secured Claims	Yes	1		87,369.49	
E - Creditors Holding Unsecured Priority Claims	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	4		98,092.91	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			4,886.50
J - Current Expenditures of Individual Debtor(s)	Yes	1			2,946.50
Total Number of Sheets of ALL Schedules		16			
		Total Assets	263,456.57		
			Total Liabilities	185,462.40	

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. (See Schedule D.) If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	Fee Simple	J	98,500.00	77,084.49

Sub-Total >	98,500.00	(Total of this page)
Total >	98,500.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1.	Cash on hand		misc cash on hand	J	35.00
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		M & T Checking account	J	300.00
			M & T Savings	W	200.00
			M & T Bank Checking	W	0.50
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.		Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	J	2,000.00
			computer (2000); washer/dryer, riding mower (5 yrs), dehumidifier, gas grill,	J	350.00
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		misc books, misc wall decorations, family photos, family bible	J	100.00
6.	Wearing apparel.		misc wearing apparel	J	50.00
7.	Furs and jewelry.		wedding rings, wrist watches	J	100.00
			misc costume jewelry, string of pearls	W	200.00
				Sub-Total > (Total of this page)	3,335.50

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

	Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
8.	Firearms and sports, photographic, and other hobby equipment.		camera - 35mm snapshot cameras ((2) purchased for $19.95 each new	J	10.00
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			
11.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	W	59,000.00
			401-k (net of outstanding loan $9,642.56)	H	96,111.07
12.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13.	Interests in partnerships or joint ventures. Itemize.	X			
14.	Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
15.	Accounts receivable.		Debt due from son ($10,000) - uncertain collectibility - unpaid even when employed but now laid off from Heidelberg/Nexpress	J	Unknown
16.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17.	Other liquidated debts owing debtor including tax refunds. Give particulars.		2003 tax liability expected	J	0.00
18.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			

Sub-Total > (Total of this page) 155,121.07

Sheet 1 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1993 Chevrolet Cavalier 70,000 miles	W	1,000.00
		1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)	H	5,500.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.	X			
27. Machinery, fixtures, equipment, and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			

Sub-Total > (Total of this page) 6,500.00

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE B. PERSONAL PROPERTY
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Market Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed.	X			

Sub-Total > 0.00
(Total of this page)
Total > 164,956.57

Sheet 3 of 3 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE C. PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
[Check one box]

☐ 11 U.S.C. §522(b)(1): Exemptions provided in 11 U.S.C. §522(d). Note: These exemptions are available only in certain states.

■ 11 U.S.C. §522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemption
Real Property			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
Household Goods and Furnishings			
Furniture: sofa, loveseat, 2 chairs, 2 lamps, 2 tv's 2 radios, end tables, basement sofa, kitchen table and chairs, misc kitchen appliances, refrigerator, stove, microwave, place settings; Bedroom furniture - bed, dresser, nightstand, lamps, 2 foutons, 2 lamps, table 4 chairs on porch; desk, misc garden tools, misc hand tools.	NYCPLR § 5205(a)(5)	2,000.00	2,000.00
Books, Pictures and Other Art Objects; Collectibles			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
Wearing Apparel			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
Furs and Jewelry			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
Xerox 401-K $38,000; stock options $4,000; retirement account $17,000 - all in retirment account	Debtor & Creditor Law § 282(2)(e)	59,000.00	59,000.00
401-k (net of outstanding loan $9,642.56)	Debtor & Creditor Law § 282(2)(e)	96,111.07	96,111.07
Automobiles, Trucks, Trailers, and Other Vehicles			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

0 continuation sheets attached to Schedule of Property Claimed as Exempt

Form B6D
(12/03)

In re David G. DeLano,
Mary Ann DeLano
Debtors

Case No. _____

SCHEDULE D. CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
Account No. 5687652 Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	2001 auto lien 1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition) Value $ 5,500.00				10,285.00	4,785.00
Account No. Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	fist mortgage 1262 Shoecraft Road, Webster (value per appraisal 11/23/03) Value $ 98,500.00				77,084.49	0.00
Account No. Value $								
Account No. Value $								

0 continuation sheets attached

Subtotal (Total of this page) 87,369.49

Total (Report on Summary of Schedules) 87,369.49

Form B6E
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE E. CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

■ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,650* per person earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, which ever occurred first, to the extent provided in 11 U.S.C. § 507 (a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to $2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support**

Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

*Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

Form B6F
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5398-8090-0311-9990 AT&T Universal P.O. Box 8217 South Hackensack, NJ 07606-8217		H	1990 and prior Credit card purchases				1,912.63
Account No. 4024-0807-6136-1712 Bank Of America P.O. Box 53132 Phoenix, AZ 85072-3132		H	1990 and prior Credit card purchases				3,296.83
Account No. 4266-8699-5018-4134 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 prior Credit card purchases				9,846.80
Account No. 4712-0207-0151-3292 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				5,130.80
3 continuation sheets attached						Subtotal (Total of this page)	20,187.06

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4262 519 982 211 Bank One Cardmember Services P.O. Box 15153 Wilmington, DE 19886-5153		H	1990 and prior Credit card purchases				9,876.49
Account No. 4388-6413-4765-8994 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001- 8/03 Credit card purchases				449.35
Account No. 4862-3621-5719-3502 Capital One P.O. Box 85147 Richmond, VA 23276		H	2001 - 8/03 Credit card purchases				460.26
Account No. 4102-0082-4002-1537 Chase P.O. Box 1010 Hicksville, NY 11802		W	1990 and prior Credit card purchases				10,909.01
Account No. 5457-1500-2197-7384 Citi Cards P.O. Box 8116 South Hackensack, NJ 07606-8116		W	1990 and prior Credit card purchases				2,127.08
Sheet no. 1 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	23,822.19

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5466-5360-6017-7176 Citi Cards P.O. Box 8115 South Hackensack, NJ 07606-8115		H	1990 and prior Credit card purchases				4,043.94
Account No. 6011-0020-4000-6645 Discover Card P.O. Box 15251 Wilmington, DE 19886-5251		J	1990 and prior Credit card purchases				5,219.03
Account No. Dr. Richard Cordero 59 Crescent Street Brooklyn, NY 11208-1515		H	2002 Alleged liability re: stored merchandise as employee of M&T Bank - suit pending US BK Ct.		X	X	Unknown
Account No. 5487-8900-2018-8012 Fleet Credit Card Service P.O. Box 15368 Wilmington, DE 19886-5368		W	1990 and prior Credit card purchases				2,126.92
Account No. 5215-3125-0126-4385 HSBC MasterCard/Visa HSBC Bank USA Suite 0627 Buffalo, NY 14270-0627		H	1990 and prior Credit card purchases				9,065.01
Sheet no. 2 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal (Total of this page)	20,454.90

Form B6F - Cont.
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	Husband, Wife, Joint, or Community H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 4313-0228-5801-9530 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		W	1990 and prior Credit card purchases				6,422.47
Account No. 5329-0315-0992-1928 MBNA America P.O. Box 15137 Wilmington, DE 19886-5137		H	1990 and prior Credit card purchases				18,498.21
Account No. 749 90063 031 903 MBNA America P.O. Box 15102 Wilmington, DE 19886-5102		H	1990 and prior Credit card purchases				3,823.74
Account No. 34 80074 30593 0 Sears Card Payment Center P.O. Box 182149 Columbus, OH 43218-2149		H	1990 - 10/99 Credit card purchases				3,554.34
Account No. 17720544 Wells Fargo Financial P.O. Box 98784 Las Vegas, NV 89193-8784		H	8/03 Credit card purchases				1,330.00

Sheet no. 3 of 3 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal (Total of this page) 33,628.76

Total (Report on Summary of Schedules) 98,092.91

In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

SCHEDULE G. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

■ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re David G. DeLano, Mary Ann DeLano, Case No. _____

Debtors

SCHEDULE H. CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

■ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

0 continuation sheets attached to Schedule of Codebtors

Form B6I
(12/03)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP	AGE
Married	None.	

EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	Loan officer	
Name of Employer	M & T Bank	unemployed - Xerox
How long employed		
Address of Employer	PO Box 427 Buffalo, NY 14240	

INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	$ 5,760.00	$ 1,741.00
Estimated monthly overtime	$ 0.00	$ 0.00
SUBTOTAL	$ 5,760.00	$ 1,741.00
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ 1,440.00	$ 435.25
b. Insurance	$ 414.95	$ 0.00
c. Union dues	$ 0.00	$ 0.00
d. Other (Specify) Retirement Loan (to 10/05)	$ 324.30	$ 0.00
	$ 0.00	$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	$ 2,179.25	$ 435.25
TOTAL NET MONTHLY TAKE HOME PAY	$ 3,580.75	$ 1,305.75
Regular income from operation of business or profession or farm (attach detailed statement)	$ 0.00	$ 0.00
Income from real property	$ 0.00	$ 0.00
Interest and dividends	$ 0.00	$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	$ 0.00	$ 0.00
Social security or other government assistance (Specify)	$ 0.00	$ 0.00
	$ 0.00	$ 0.00
Pension or retirement income	$ 0.00	$ 0.00
Other monthly income (Specify)	$ 0.00	$ 0.00
	$ 0.00	$ 0.00
TOTAL MONTHLY INCOME	$ 3,580.75	$ 1,305.75
TOTAL COMBINED MONTHLY INCOME $ 4,886.50	(Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Wife currently on unemployment thru 6/04. Age 59 - re-employment not expected. Reduces net income by $1,129/month.

Retirement Loan was made to son, who was to re-pay @$200/mon. but has been unable to do so as employed at $10/hr. Potentially uncollectible - due to recent Kodak acquisition of Heidelberg - Nexpress.

Husband will retire in three years at end of plan (extended beyond age 65 to complete three year plan.)

In re David G. DeLano, Mary Ann DeLano, Debtors

Case No. _____

SCHEDULE J. CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ 1,167.00
Are real estate taxes included? Yes X No	
Is property insurance included? Yes No X	
Utilities: Electricity and heating fuel	$ 168.00
Water and sewer	$ 30.00
Telephone	$ 40.00
Other Cell Phone $62 (req. for work); cable $55; Internet $23.95	$ 140.95
Home maintenance (repairs and upkeep)	$ 50.00
Food	$ 430.00
Clothing	$ 60.00
Laundry and dry cleaning	$ 5.00
Medical and dental expenses	$ 120.00
Transportation (not including car payments)	$ 295.00
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 107.50
Charitable contributions	$ 50.00
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	$ 0.00
Life	$ 0.00
Health	$ 0.00
Auto	$ 110.00
Other	$ 0.00
Taxes (not deducted from wages or included in home mortgage payments)	
(Specify)	$ 0.00
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)	
Auto	$ 0.00
Other reserve for auto	$ 50.00
Other Parking	$ 58.05
Other	$ 0.00
Alimony, maintenance, and support paid to others	$ 0.00
Payments for support of additional dependents not living at your home	$ 0.00
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
Other family gifts - Christmas/Birthdays	$ 20.00
Other Haircuts and personal hygine	$ 45.00
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ 2,946.50

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$ 4,886.50
B. Total projected monthly expenses	$ 2,946.50
C. Excess income (A minus B)	$ 1,940.00
D. Total amount to be paid into plan each Monthly (interval)	$ 1,940.00

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No. _____
Chapter 13

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 17 sheets *[total shown on summary page plus 1]*, and that they are true and correct to the best of my knowledge, information, and belief.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

Form 7
(12/03)

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

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1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE (if more than one)
$91,655.00	2002 joint income
$108,586.00	2003 Income (H) $67,118; (W) $41,468

2. Income other than from employment or operation of business

None ■ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616	monthly mortgage $1,167/mon with taxes and insurance	$5,000.00	$77,082.49
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016	monthly auto payment $348/mon	$1,044.00	$10,000.00

None ■ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
In re Premier Van Lines, Inc; James Pfuntner / Ken Gordon Trustee v. Richard Cordero, M & T Bank et al v. Palmer, Dworkin, Hefferson Henrietta Assoc and Delano	(As against debtor) damages for inability of Cordero to recover property held in storage	US Bankruptcy Court, Western District of NY	pending

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

6. Assignments and receiverships

None ■ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ■ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ■ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

8. Losses

None ■ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Christopher K. Werner 2400 Chase Square Rochester, NY 14604	Nov - Dec 2003	$1,350 plus filing fee

10. Other transfers

None ■ List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

11. Closed financial accounts

None ■ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
M & T Bank Webster Branch	debtors	Personal papers	

13. Setoffs

None ■ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ■ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

15. Prior address of debtor

None ■ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

16. Spouses and Former Spouses

None ■ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None ■ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ■ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18 . Nature, location and name of business

None ■ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NO. (EIN)	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

None ■ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None ■ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED

None ■ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ■ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS

None ■ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED

20. Inventories

None ■ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ■ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None ■ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ■ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

22 . Former partners, officers, directors and shareholders

None ■ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ■ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None ■ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER

25. Pension Funds.

None ■ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$	1,350.00
Prior to the filing of this statement I have received	$	1,350.00
Balance Due	$	0.00

2. The source of the compensation paid to me was:

■ Debtor ☐ Other (specify):

3. The source of compensation to be paid to me is:

■ Debtor ☐ Other (specify):

4. ■ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
   a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
   c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d. [Other provisions as needed]
      Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
   Representation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: January 26, 2004

/s/ Christopher K. Werner, Esq.
Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square
Rochester, NY 14604
585-232-5300

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

VERIFICATION OF CREDITOR MATRIX

The above-named Debtors hereby verify that the attached list of creditors is true and correct to the best of their knowledge.

Date: January 26, 2004

/s/ David G. DeLano
David G. DeLano
Signature of Debtor

Date: January 26, 2004

/s/ Mary Ann DeLano
Mary Ann DeLano
Signature of Debtor

AT&T Universal
P.O. Box 8217
South Hackensack, NJ 07606-8217

Bank Of America
P.O. Box 53132
Phoenix, AZ 85072-3132

Bank One
Cardmember Services
P.O. Box 15153
Wilmington, DE 19886-5153

Capital One
P.O. Box 85147
Richmond, VA 23276

Capitol One Auto Finance
PO Box 93016
Long Beach, CA 90809-3016

Chase
P.O. Box 1010
Hicksville, NY 11802

Citi Cards
P.O. Box 8116
South Hackensack, NJ 07606-8116

Citi Cards
P.O. Box 8115
South Hackensack, NJ 07606-8115

Citibank USA
45 Congress Street
Salem, MA 01970

Discover Card
P.O. Box 15251
Wilmington, DE 19886-5251

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

Fleet Credit Card Service
P.O. Box 15368
Wilmington, DE 19886-5368

Genesee Regional Bank
3670 Mt Read Blvd
Rochester, NY 14616

HSBC MasterCard/Visa
HSBC Bank USA
Suite 0627
Buffalo, NY 14270-0627

MBNA America
P.O. Box 15137
Wilmington, DE 19886-5137

MBNA America
P.O. Box 15102
Wilmington, DE 19886-5102

Sears Card
Payment Center
P.O. Box 182149
Columbus, OH 43218-2149

Wells Fargo Financial
P.O. Box 98784
Las Vegas, NV 89193-8784

Blank

United States Bankruptcy Court
Western District of New York

In re David G. DeLano
Mary Ann DeLano
Debtor(s)

Case No.
Chapter 13

CHAPTER 13 PLAN

1. Payments to the Trustee: The future earnings or other future income of the Debtor is submitted to the supervision and control of the trustee. The Debtor (or the Debtor's employer) shall pay to the trustee the sum of $1,940.00 per month for 5 months, then $635.00 per month for 25 months, then $960.00 per month for 6 months.
   Total of plan payments: $31,335.00
2. Plan Length: This plan is estimated to be for 36 months.
3. Allowed claims against the Debtor shall be paid in accordance with the provisions of the Bankruptcy Code and this Plan.
   a. Secured creditors shall retain their mortgage, lien or security interest in collateral until the amount of their allowed secured claims have been fully paid or until the Debtor has been discharged. Upon payment of the amount allowed by the Court as a secured claim in the Plan, the secured creditors included in the Plan shall be deemed to have their full claims satisfied and shall terminate any mortgage, lien or security interest on the Debtor's property which was in existence at the time of the filing of the Plan, or the Court may order termination of such mortgage, lien or security interest.
   b. Creditors who have co-signers, co-makers, or guarantors ("Co-Obligors") from whom they are enjoined from collection under 11 U.S.C. § 1301, and which are separately classified and shall file their claims, including all of the contractual interest which is due or will become due during the consummation of the Plan, and payment of the amount specified in the proof of claim to the creditor shall constitute full payment of the debt as to the Debtor and any Co-Obligor.
   c. All priority creditors under 11 U.S.C. § 507 shall be paid in full in deferred cash payments.
4. From the payments received under the plan, the trustee shall make disbursements as follows:

   a. Administrative Expenses
      (1) Trustee's Fee: 10.00%
      (2) Attorney's Fee (unpaid portion): NONE
      (3) Filing Fee (unpaid portion): NONE

   b. Priority Claims under 11 U.S.C. § 507

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

   c. Secured Claims
      (1) Secured Debts Which Will Not Extend Beyond the Length of the Plan

Name	Proposed Amount of Allowed Secured Claim	Monthly Payment (If fixed)	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00	Prorata	6.00%

      (2) Secured Debts Which Will Extend Beyond the Length of the Plan

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
-NONE-			

   d. Unsecured Claims
      (1) Special Nonpriority Unsecured: Debts which are co-signed or are non-dischargeable shall be paid in full (100%).

Name	Amount of Claim	Interest Rate (If specified)
-NONE-		

      (2) General Nonpriority Unsecured: Other unsecured debts shall be paid 22 cents on the dollar and paid pro rata, with no interest if the creditor has no Co-obligors, provided that where the amount or balance of any unsecured claim is less than $10.00 it may be paid in full.

5. The Debtor proposes to cure defaults to the following creditors by means of monthly payments by the trustee:

Creditor	Amount of Default to be Cured	Interest Rate (If specified)
-NONE-		

6. The Debtor shall make regular payments directly to the following creditors:

Name	Amount of Claim	Monthly Payment	Interest Rate (If specified)
Genesee Regional Bank	77,084.49	0.00	0.00%

7. The employer on whom the Court will be requested to order payment withheld from earnings is:
NONE. Payments to be made directly by debtor without wage deduction.

8. The following executory contracts of the debtor are rejected:

Other Party	Description of Contract or Lease
-NONE-	

9. Property to Be Surrendered to Secured Creditor

Name	Amount of Claim	Description of Property
-NONE-		

10. The following liens shall be avoided pursuant to 11 U.S.C. § 522(f), or other applicable sections of the Bankruptcy Code:

Name	Amount of Claim	Description of Property
-NONE-		

11. Title to the Debtor's property shall revest in debtor on confirmation of a plan.

12. As used herein, the term "Debtor" shall include both debtors in a joint case.

13. Other Provisions:

Date January 26, 2004 Signature /s/ David G. DeLano
David G. DeLano
Debtor

Date January 26, 2004 Signature /s/ Mary Ann DeLano
Mary Ann DeLano
Joint Debtor

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

September 22, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

Re: Section 341 examination of the DeLanos, dkt. no. 04-20280

Dear Mr. Reiber,

Further to your request that I propose dates on which to examine the DeLanos, kindly note the following that I propose:

I. Preferred	II. Acceptable	III. If otherwise necessary
Tuesday, October 19, 2004	Tuesday, October 26, 2004	Wednesday, November 3, 2004
Wednesday, October 20, 2004	Wednesday, October 27, 2004	Thursday, November 4, 2004
Thursday, October 21, 2004	Thursday, October 28, 2004	

Please note that I must receive actual notice of the date agreed upon at least 15 days before the day of examination. To that end, you can call me to let me know and then mail the letter of confirmation unless there is ample time for such letter to arrive.

As discussed in my Memorandum of March 30, 2004, there is no basis in law or in fact to further protect the DeLanos from examination by limiting the time therefor. Indeed, your attorney, James Weidman, Esq., already protected them by unlawfully terminating the meeting of creditors on March 8, after I, the only creditor present, had asked only two questions. On the contrary, there are solid grounds for providing for an examination without any limit on its duration:

a) Section 341(c) of 11 U.S.C. provides for "any final meeting of creditors", thereby allowing for a series of any number of such meetings, which makes it inconsistent to limit any one of them arbitrarily to any fixed amount of time; this is particularly so given that…

b) The scope of examination, as provided under F.R.Bkr.P. Rule 2004(b), is very ample:

> Rule 2004(b) The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to
> [1] the acts,
> [2] conduct, or
> [3] property or to
> [4] the liabilities and
> [5] financial condition of the debtor, or to
> [6] **any matter which may affect** the administration of the debtor's estate, or to
> [7] the debtor's right to a discharge. In…an individual's debt adjustment case under chapter 13…the examination may also relate to
> [8] the operation of any business and the desirability of its continuance,
> [9] the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and
> [10] the consideration given or offered therefor, and
> **[**11] **any other matter relevant to** the case or to
> [12] the formulation of a plan. [format and emphasis added]

c) The bankruptcy of a 15 year bank loan officer is in itself highly suspicious and warrants strict scrutiny.

d) Such suspicion is heightened by the incongruous information that the DeLanos provided in their Schedules.

e) My written objections of March 4 laid out detailed reasons, supported by numerical computations, for examining the DeLanos in depth.

f) As a result of Mr. Weidman unlawfully preventing me from examining them at the March 8 meeting, the DeLanos have unduly had the opportunity to examine my written objections for months and prepare their answers accordingly.

g) Since the spontaneity of the DeLanos' answers to specific objections has been lost irretrievably, the loss must at least be partially compensated for by an examination that in addition to eliciting their answers, tests their candor and accuracy.

Therefore, I request that the meeting begin at 9:30 a.m. and run until 5:00 p.m., with a one hour lunch break, and that, if necessary for further examination, the meeting may be continued the following day.

In this context, it may be noted that the court's order of August 30 does not prevent you, as the trustee in this case, from further examining the DeLanos, in particular, or discharging any of your other duties as trustee, in general. On the one hand, the court does not have the power to do so and, on the other hand, §341(c) expressly provides that

> §341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors

It follows that if the court is forbidden to attend such meeting, it lacks authority to prevent it from being held at all.

I look forward to hearing from you at your earliest convenience. Hence, I would appreciate it if you would call me to let me know your initial reaction.

Sincerely,

Dr. Richard Cordero

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP
ATTORNEYS AT LAW

September 28, 2004

George M. Reiber, Esq.
3136 South Winton Road
Rochester, New York 14623

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Reiber:

We are in receipt of Mr. Cordero's letter of September 22, 2004, suggesting various examination dates for Mr. and Mrs. DeLano. This appears to relate only to examination in the context of a continued 341 Hearing. Our understanding of the Court's current Order is that all such proceedings whatsoever are suspended in this matter. Therefore, we are not submitting a response to the dates suggested by Mr. Cordero unless and until you direct us to do so.

Very truly yours,

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
cc: Richard Cordero

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
http://www.boylanbrown.com

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

September 29, 2004

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

faxed to (585) 232-3528

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

Dear Mr. Werner,

Without prejudice to my motion of September 9, in the Court of Appeals for the Second Circuit to quash the order of Judge John C. Ninfo, II, of August 30, requiring me to take discovery of Mr. David DeLano as part of the proceedings to determine your motion of July 19, 2004, to disallow my claim against the DeLanos; **without prejudice** to my motion of August 17, in opposition to your July 19 motion to disallow my claim; and **without prejudice** to my motion of August 20, for sanctions on, and compensation from, you and your law firm for violation of FRBkrP Rule 9011(b), but mindful of the requirements of Judge Ninfo's August 30 order, I am hereby requesting discovery as follows.

As to the sanctions and compensation motion, which I indicated that I would notice for October 6, 2004, please also note the following. Judge Ninfo stated in his August 30 order that all proceedings in the DeLano case are suspended until the final determination of your motion to disallow my claim, thereby confirming what he said at the August 25 hearing that until that motion has been determined he will not act upon any motion or other paper that I file. Therefore, I give notice hereby that I will submit that motion, not now, but rather when it can be acted upon, particularly if the time comes when it can be decided by another judge who is not biased against me and has due regard for the law, the rules, and the facts.

A. Scope of discovery and notice and opportunity for production

1. In determining the scope of discovery, I rely on FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), which provides that

> Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

2. This description of the broad scope of discovery is enhanced by the Advisory Committee Explanatory Statement on the mechanics of discovery that:

> A showing of good cause is no longer required for discovery of documents and things and entry upon land (Rule 34).

3. The documents requested below have already been requested but for the most part not produced in the following documents:
    1) Dr. Cordero's Objection of March 4, 2004, to Confirmation of the DeLanos' Plan
    2) Dr. Cordero's Memorandum of March 30, 2004, ¶80.b)
    3) Dr. Cordero's letter of April 15, 2004, to Trustee Reiber, ¶6, with copy to Att. Werner
    4) Trustee George Reiber's letter of April 20, 2004, to Att. Werner
    5) Dr. Cordero's letter of April 23, 2004, to Trustee Reiber with copy to Att. Werner
    6) Dr. Cordero's letter of May 16, 2004, to Trustee Reiber, ¶¶2&7, with copy to Att. Werner
    7) Trustee Reiber's letter of May 18, 2004, to Att. Werner
    8) Dr. Cordero's letter of May 23, 2004, to Att. Werner
    9) Dr. Cordero's letter of June 8, 2004, to Trustee Reiber with copy to Att. Werner
    10) Trustee Reiber's motion to dismiss of June 15, 2004, for the DeLanos' "unreasonable delay" in producing the requested documents
    11) Dr. Cordero's requested order for document production in his Statement of July 9, 2004
    12) Dr. Cordero's document production order proposed on July 19, at Judge Ninfo's request at the hearing on July 19, 2004
    13) Judge Ninfo's order of July 26, 2004
    14) Dr. Cordero's motion of August 14, 2004, for docketing, issue of production order, etc.
4. It follows that the DeLanos have had enough notice and opportunity to produce the requested documents. Likewise, these are documents "regarding any matter, not privileged, that is relevant to the claim or defense of any party", such as my claim against both the DeLanos, against Mr. DeLano in particular, and my defense against your motion to disallow my claim. Hence, they are within the scope of Rule 26.

B. General remarks

5. The DeLanos must be presumed, especially in light of Mr. DeLano's career as a bank loan officer for 15 years, to have systematically saved and archived financial documents rather than systematically destroyed or otherwise disposed of them. Indeed, given Mr. DeLano's long professional experience in doing due diligence to request from his borrowing clients documents and analyze those produced and statements made by them, it should be a matter of routine for him to provide the documents and information requested below. As for Mrs. DeLano, whose professional career has been as a specialist in Xerox machines, she can be expected to show a high degree of attention to technical details and accuracy in following a series of steps. Moreover, in providing what is here requested, they can count on Att. Werner's '28 years' experience in this business'. For my part, I will rely on the reasonable presumption of the DeLanos' competence to meet this request and on Att. Werner's duty to comply with the requirement under FRBkrP Rule 9011(b) that

> by signing, filing, submitting, or later advocating…[any] paper [he] is certifying that to the best of [his] knowledge, information, and belief,

> formed after an inquiry reasonable under the circumstances…the allegations and other factual contentions have evidentiary support.

6. Hence, it is requested that they:

   produce within the response period of 30 days and without waiting to receive any documents that they may have to request:

   all the documents that they have **in their possession**, whether in their principal or secondary residence, a storage facility, a safe box, or the place of an entity under their control, and

   all the information available to them;

   show due diligence in requesting by subpoena from any entities, whether natural persons or institutions, any documents that they may not have so that within the response period they can reasonably expect to receive and produce either the requested documents or reply letters from such entities;

   provide the information requested, for the sake of clarity of presentation, completeness, and ease of use, in the tabular form in which it is requested, or identify the information by using the column and row identifiers provided in the tables;

   mark on the appropriate cells in the tables or indicate using their identifiers whether the documents requested:

   have already been produced to either Trustee Reiber (TrR), Dr. Cordero (DrC), or both (R&C) so that their production need not have to be duplicated;

   are being produced in reply to this request; or

   if they are not being produced, explain why.

C. Documents and information requested

7. The monthly statements of the 18 unsecured institutional creditors listed in Schedule F and the two secured creditors listed in Scheduled D since the dates of account opening or credit extension to date.

8. The current balance of those 20 accounts.

9. It should be noted how few of those statements have been produced despite their having been requested so long ago and so many times since, as shown in ¶3 above. In addition, the period covered by those produced is significantly shorter than the period that the DeLanos themselves invoke in Schedule F, where they state 15 times that their debts trace back to "1990 and prior Credit card purchases". "Prior", of course, allows for the possibility that those purchases have been made since 1989 as well as since 1980 or since 1970 or earlier.[1]

[1] Consequently, the covered period referred to hereinafter is the period during which the DeLanos have accumulated their debts. Thus, it stretches from the opening of any account in question, whether in both or either of their names, to date.

Table I. The DeLanos' Creditors in Schedules F (1-19) and D (20-21) and the Statements so far Produced (on given dates) and Not Produced (with cells in blank)

iden.	I.a	I.b	I.c	I.d	I.e	I.f
	Creditors' names (in the order in which they appear in their respective Schedules)	**Account numbers**	**Bill or closing dates covered by statements**	**Date of cover letter from Att. Werner to Trustee Reiber**	**Date of receipt by Dr. Cordero**	**Current balance**
1.	AT&T Universal	5398-8090-0311-9990				
2.	Bank of America	4024-0807-6136-1712				
3.	Bank One Cardmember Services	4266-8699-5018-4134	09/13/03 12/12/03	August 5, 04	August 04	
4.	Bank One Cardmember Services	4712-0207-0151-3292	01/17/01 12/17/0**2**	August 13, 04	August 16, 04	
5.	Bank One Cardmember Services	4262-519-982-211	01/12/01 09/12/03 01//12/01 12/10/01	August 5, 04 August 13, 04	August 04 August 16, 04	
6.	Capital One	4388-6413-4765-8994				
7.	Capital One	4862-3621-5719-3502				
8.	Chase	4102-0082-4002-1537	5/10/01 3/11/04	September 9, 04	September 13, 04	
9.	Citi Cards	5457-1500-2197-7384				
10.	Citi Cards	5466-5360-6017-7176				
11.	Discover Card	6011-0020-4000-6645	04/16/01 04/30/04 01/16/01 12/16/03	July 28, 04 September 1, 04	August 04 September 3,04	
12.	Dr. Richard Cordero	n/a				
13.	Fleet Credit Card Service	5487-8900-2018-8012				
14.	HSBC Master Card/Visa	5215-3125-0126-4385				
15.	MBNA America	4313-0228-5801-9530	04/13/01 04/14/04	July 12, 04	July 16, 04	
16.	MBNA America	5329-0315-0992-1928	04/09/01 04/08/04	July 12, 04	July 16, 04	
17.	MBNA America	749-90063-031-903				
18.	Sears Card	34-80074-3-0593 0				

iden.	I.a	I.b	I.c	I.d	I.e	I.f
	Creditors' names (in the order in which they appear in their respective Schedules)	**Account numbers**	**Bill or closing dates covered by statements**	**Date of cover letter from Att. Werner to Trustee Reiber**	**Date of receipt by Dr. Cordero**	**Current balance**
19.	Wells Fargo Financial	1772-0544				
20.	Capital One Auto Finance	568 7652				
21.	Genesee Regional Bank					

10. All credit reports issued by Equifax, Experian, TransUnion, or any other similar reports that the DeLanos have received during the covered period aside from those already produced.

Table II. Credit Bureau Reports for the DeLanos so far Produced

iden.	II.a	II.b	II.c	II.d
	Credit bureau	**Date of issue**	**Date of cover letter from Att. Werner to Trustee Reiber**	**Date of receipt by Dr. Cordero**
1.	Equifax	April 26, 04 Mr.D[2] May 8, 04 Mrs.M incomplete reports	June 14, 04	June 04
		April 26, 04 Mr.D	July 20, 04	July 04
		May 8, 04 Mrs.M	July 20, 04	July 04
		May 8, 04 Mrs.M	August 5, 04	August 04
		July 23, 04 Mr.D	August 5, 04	August 04
		July 23, 04 Mrs.M	August 5, 04	August 04
2.	Experian	July 26, 04Mr.D	August 5, 04	August 04
		July 26, 04 Mrs.M	August 5, 04	August 04
3.	TransUnion	July 26, 04Mr.D	August 5, 04	August 04
		July 26, 04 Mrs.M	August 5, 04	August 04

11. The monthly statements of each other account or asset, including an interest in either of them, held by the DeLanos, whether opened at a financial institution or a retailer of goods or services, during the covered period, and whether held by both or either of the DeLanos or by entities whom they control, such as their children, relatives, friends, tenants, their attorney or representative, or holders of trusts for them.

[2] Mr.D= credit report for Mr. David DeLano; Mrs.M=credit report for Mrs. Mary Ann DeLano.

Table III. Accounts and Assets Held by the DeLanos
During the Covered Period but not Listed in their Bankruptcy Petition

iden.	III.a	III.b	III.c	III.d	III.e	III.f	III.g	III.h	III.i
	Types of accounts	Account numbers	Names of account-holder(s)	Names and addresses of the institutions issuing the accounts	Dates of account opening	Balances as of date of replying to this request	If closed, dates of account closing	**T**itles, **D**eeds, **O**ther instruments[3]	Account statements[4] since opening date and cancelled checks
1.a	**Credit** card accounts								
1.b									
2.a	**Debit** card accounts								
2.b									
3.a	**Checking** accounts								
3.b									
4.a	**Savings** accounts								
4.b									
5.a	**Brokerage** accounts								
5.b									

12. State the name, address, and phone number of the appraiser of the property at 1262 Shoecraft Road, Webster, NY, and produce a copy of the documents referred to in Schedule D concerning:
    a. the appraisal of such property;
    b. the mortgage of such property; and
    c. the auto lien(s).
13. The documents supporting the statement that Mr. DeLano made under oath to James Weidman, Esq., attorney for Trustee George Reiber, at the meeting of creditors held on March 8, 2004, to the effect that the DeLanos had incurred most of their credit card debts when Mr. DeLano lost his job and had to take a deep pay cut subsequently; and reiterated by Att. Werner in his Statement to the court of April 16, 2004, that:

> 6. As indicated in the Debtors' petition, the Debtors' financial difficulties stem from over ten (10) years ago, relating to a time when Mr. DeLano lost his job at First National Bank and had to take a subsequent position at

[3] The instruments to be **listed and produced** here are those attesting to an interest in ownership or the right to the enjoyment, whether full or part time, of real estate, mobile homes, caravans, other vehicles, etc., whether in the State of New York or elsewhere.

[4] The statements must have the sections, without redaction, that state the names of the entities from whom purchases of goods or services were made and the amounts and dates of the purchases.

less than half of his original salary. As a result, the Debtors were unable to keep pace on various credit card obligations which they had incurred in their children's educations [sic] and other living expenses. The Debtors have maintained the minimum payments on those obligations for more than ten (10) years. Less than $4,000 of Debtors' total obligations relate to any current period.

Table IV. Mr. DeLano's Employment History

iden.	IV.a	IV.b	IV.c	IV.d	IV.e	IV.f	IV.g	IV.h	IV.i
	Jobs (by order or place of work)	Periods of employ-ment	Titles of positions and salaries and bonuses	Addresses and phone numbers of the sites worked at and head-quarters	Names of Mr. DeLano's supervisors for each of the three levels above him	Names of Mr. DeLano's subordinates, including secretaries and assistants	Reasons for leaving or losing jobs	Produce job performance evaluations, including any **r**eprimands, **a**dmonitions, **c**ensures, **c**ommen-dations, and **p**romotions	**Pay** stubs; **Bank** statement s where pay checks were deposited; **And** **1040** IRS forms
1.	First job								
2.	Each other job								
3.	First National Bank								
4.	Each other job								
5.	M & T Bank								
6.	Current job								

Table V. The DeLanos' Expenses for their Children's Education

iden.	V.a	V.b	V.c	V.d	V.e	V.f	V.g	V.h	V.i	V.j
	Names of the DeLano's children and years of birth	Names and addresses of educational institutions	Academic years	Grades, faculties, or departments where enrolled	Course of study	Cost of tuition	Cost of books	Cost of room and board	Cost of transpor-tation	Produce bills or receipts, and credit card statements with description of charge, or cancelled checks
1.										
2.										

etc.										

Table VI. The DeLanos' Loans to their Children

iden.	VI.a	VI.b	VI.c	VI.d	VI.e	VI.f	VI.g	VI.h	VI.i
	Names of children	Dates of loans **And** amounts of loans	**I**nstruments of loans; or if such instruments *never* existed **T**erms of verbal agreements **And** **A**cknow-ledgment of receipt of money	Purposes of loans	Names of institutions from which lent money was withdrawn **And** Copy of both sides of **O**rder of withdrawal, **C**ancelled check, or **I**nstrument of transfer to child or his or her account	Names of institutions where lent money was deposited	**A**mounts of installments **And** **A**mounts and dates of installment payments actually made	**O**utstanding balances **And** **C**urrent arrangement for repayment	Documents confirming that money was used for stated purposes, e.g. **T**itle, **D**eed, **O**ther **i**nstruments[5] **Or** **S**tatement that it was used for what other purpose
1.									
2.									
etc.									

14. State the whereabouts or disposition of the following earnings and produce supporting documents:

Table VII. The DeLanos' Earnings for the 2001-03 Years

iden.	VII.a	VII.b	VII.c	VII.d
1.	2001	2002	2003	Total
2.	$91,229	91,655	108,585	$291,470
3.	In the 1040 IRS form	In the petition's Statement of Financial Affairs		

15. Copy of all files held by Mr. DeLano or an institution, such as Manufacturers & Traders Trust Bank (M&T Bank), on or relating to:

    a. Mr. David Palmer;

    b. any business in which Mr. Palmer or an associate, employer, or relative of his had or has an interest, such as Premier Van Lines, Inc.; and

    c. any personal bankruptcy of Mr. Palmer or of an associate, employer, or relative of his or of a business in which any of them had or has an interest.

[5] See footnote 3, supra.

Table VIII. Mr. DeLanos' Borrowing Clients since January 1, 1999

iden.	VIII.a	VIII.b	VIII.c	VIII.d	VIII.e	VIII.f	VIII.g
	Names, addresses, and phone numbers of clients	Names and addresses of lending institutions	Amounts of borrowing	If voluntary or involuntary bankruptcy filed by or against client: **f**iling date and **p**rovision of law invoked	Federal or state courts where filed and case numbers	Amounts owed at filing time	Disposition of cases
1.							
2.							
etc.							

16. State whether the DeLanos have any insurance, surety, or indemnifier that may be called upon to pay any judgment against both or either of them and, if so, provide supporting documents.
17. Copies of all subpoenas issued in connection with this request and of all replies from the entities to whom they were issued.
18. Any other document or information reasonably related to the subject matter of this request or the cases or motions concerning it; if in doubt, produce it or disclose its existence or subject matter.

Sincerely,

Dr. Richard Cordero

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718)827-9521

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

716-427-7225
FAX 716-427-7804

October 1, 2004

Dr. Richard Cordero
~~59 Crescent Street~~
Brooklyn, NY 11208

Dear Dr. Cordero,

Re: David & Mary Ann Delano BK 04-20280

This is in response to your fax dated September 22, 2004. Pursuant to Judge Ninfo's Bench Order, I do not believe I am authorized to conduct any further proceedings in this matter until the allowability of your claim is determined by the Court. Therefore I do not propose to schedule any examinations until the Court advised me to continue.

Very truly yours,

GEORGE M. REIBER

GMR/mb
XC: Kathleen Dunivin Schmitt, Esq.
Christopher Werner, Esq.

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

October 1, 2004

Arthur Heller, Esq.
Attn: Ms. Roseann B. MacKechnie
Clerk of Court
US Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Dear Ms. MacKechnie,

Re: David & Mary Ann Delano BK 04-20280, WDNY

I am in receipt of a fax copy of a letter sent to you dated September 27, 2004, by Dr. Richard Cordero regarding the above-entitled matter. I am not aware that any Notice of Appeal has been filed with the Second Circuit yet. Nevertheless, commenting on his letter to you, I would state that I do not believe that Judge Ninfo's Bench Order is appealable because it is not a final Order of the Court.

Very truly yours,

GEORGE M. REIBER

GMR/mb
XC: Honorable John C. Ninfo II, Bankruptcy Judge
Kathleen Dunivin Schmitt, Esq., Assistant US Trustee
Christopher Werner, Esq.
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

October 12, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

Docket no. 03-5023

Re: Section 341 examination of the DeLanos, dkt. no. 04-20280

Dear Mr. Reiber,

I am in receipt of your letters of October 1 to the Court of Appeals for the Second Circuit and to me.

I. On your October 1 letter to the Court of Appeals

In that letter, addressed to Clerk of Court Roseann B. MacKechnie, you state that:

> I am in receipt of a fax copy of a letter sent to you dated September 27, 2004, by Dr. Richard Cordero regarding the above-entitled matter. I am not aware that any Notice of Appeal has been filed with the Second Circuit yet. Nevertheless, commenting on his letter to you, I would state that I do not believe that Judge Ninfo's Bench Order is appealable because it is not a final Order of the Court.

You have not received a Notice of Appeal because there was no need to file any, so none has been filed. By contrast, you must be aware because you attended the hearings in the DeLano case on August 23 and 25 before Bankruptcy Judge John C. Ninfo, II, that I stated that Debtor David DeLano is a third party defendant in Pfuntner v. Gordon et al., docket no. 02-2230, and that I appealed that case in **April of last year** to the Court of Appeals, where that case is still pending sub nome In re Premier, docket no. 03-5023.

What I did recently, on September 9, was file a **motion** with the Court of Appeals to quash the Order of Judge Ninfo of August 30, 2004. That Order arbitrarily disrupts the appellate process by arrogating the power to sever Mr. DeLano from the Pfuntner case and to require me to take discovery of him so that he can remove me as a creditor from his case by disallowing my claim –included by the DeLanos themselves in their petition of January 26, 2004– through his motion to disallow of July 19, which is untimely and barred by laches, among other defects.

Moreover, you should have noticed that we are not dealing with a "Bench Order", as you referred to in both your October 1 letters, but rather with the written order of August 30, by Judge Ninfo, which was filed in the DeLano docket. One must assume that you were served with a copy of it and read it. By contrast, I am certain and even certified that I served you with a copy of my motion to quash. It clearly states in its front page, at the top, just its second line:

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

Once more you show inattention to detail. It must have confused anybody in the Court of Appeals and elsewhere who read your letter. In addition, it drags my name into your confusion and makes me appear as if I had failed to serve my motion on you. I resent that.

II. On your October 1 letter to me

You state in your other letter of October 1, that:

> This is in response to your fax dated September 22, 2004. Pursuant to Judge Ninfo's Bench Order, I do not believe I am authorized to conduct any further proceedings in this mater until the allowability of your claim is determined by the Court. Therefore I do not propose to schedule any examination until the Court advised [sic] me to continue.

That is a most extraordinary statement. To begin with, my letter was not pursuant to any "Bench Order". It clearly states:

> In this context, it may be noted that **the court's order of August 30** does not prevent you, as the trustee in this case, from further examining the DeLanos, in particular, or discharging any of your other duties as trustee, in general. (emphasis added)

Furthermore, your authority to perform your duties as a trustee does not emanate from the court, but rather from the Bankruptcy Code. Indeed, under 11 U.S.C. §§1302(b)(1) and 704(4), you, as the trustee, have the duty "to investigate the financial affairs of the debtor". Additionally, §§1302(b)(1) and 704(7) require you to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Those duties do not depend on any grant of authority from the court. They are imposed on the trustee by the law of Congress, which provided as follows:

> §704. Duties of trustee
>
> The trustee **shall**- (emphasis added)

You do not have the option to investigate at the will of the court; you have the duty to investigate and do so specifically at the request of a party in interest, which I certainly am. As I already noted in my letter of September 22, the court's Order of August 30 does not prevent you, as the trustee in this case, from discharging any of your duties as trustee. If anything, it requires me to engage in discovery.

Hence, the court's August 30 Order does not prevent you from examining the DeLanos. What is more, the court does not even have the authority to do so had it tried to. Once again, it is Congress that imposed the duty to provide for that examination by providing as follows:

> §341. Meetings of creditors and equity security holders
>
> (a) Within a reasonable time after the order for relief in a case under this title, **the United States trustee** *shall* convene and preside at a meeting of creditors. (emphasis added)

The duty to hold a §341 meeting is imposed by the Legislative Branch of government directly on the United States trustee, who is a member of the Executive Branch. The judge, as a member of the Judicial Branch, cannot roughride his way into those branches to invalidate a mandate from the legislator and prevent a member of the Executive from carrying out his duty. On the contrary, §341(c) expressly provides that

> §341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

It follows that if Congress forbade the court to attend such meeting, the court lacks authority to prevent it from being held at all. As a matter of fact supporting that reasoning, Congress did not give the court authority to prevent a §341 meeting of creditors.

On the contrary, Congress considered such meetings so important for the operation of its bankruptcy mechanism that it imposed the duty to hold them directly on the United States trustee, not just on the trustee. So, if you are allowed to preside over such meetings, it can only be by delegation. What the court does not have the authority to forbid the principal to do, it cannot prevent his agent from doing. You do not take your marching orders from the court. Instead, you follow the United States trustee as she goes about executing an order from Congress.

At least, that is what you are supposed to do. But you already violated your orders under C.F.R. §58.6(a)(10) by not conducting personally the §341 meeting held on March 8, 2004, to which the DeLanos were summoned to be examined by the creditors, including me. You offloaded your duty on your attorney, James Weidman, Esq. He repeatedly asked *me* how much I knew about the DeLanos having committed fraud and when I did not reveal anything, prevented me from examining the DeLanos. That was an unlawful act for Att. Weidman to do, yet you ratified it in open court and for the record that very same day and have ever since defended that act.

It is reasonable to assume that the same reason that motivated both of you not to allow me, the only creditor present at that meeting, to examine the DeLanos, motivates you now to grab the court's Order of October 30 as an excuse not to hold that meeting. The phrase 'grab the order as an excuse' is justified by the fact that you refuse to hold that meeting simply because you "believe" that you lack authority to hold it, whereby you do not quote what passage of the Order you are referring to, you disregard the legal citations and arguments that I presented to you in my September 22 letter, and you certainly present no argument to support your 'belief'.

As I pointed out before, you have a conflict of interest: If through a diligent and effective investigation of the DeLanos or at their §341 meeting evidence were to come out showing that the DeLanos' petition was meritless, let alone fraudulent, then you would be investigated in turn for having readied its plan of debt repayment for confirmation by Judge Ninfo.

Therefore, I respectfully request that:

1. you disqualify yourself from the DeLano case; otherwise,

2. take the necessary steps to hold a §341 meeting of the DeLanos on the following dates:

Tuesday, October 26, 2004	Wednesday, November 3, 2004
Wednesday, October 27, 2004	Thursday, November 4, 2004
Thursday, October 28, 2004	

or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, Assistant U.S. Trustee Kathleen Dunivin Schmitt, and to me your legal authority and arguments to refuse to hold such meeting and request that they take a position on the issue.

I look forward to hearing from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

October 13, 2004

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

RE: David & Mary Ann DeLano; BK#04-20280

This is in reply to your letter faxed to me dated October 12, 2004.

1. I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.
2. My notes of the August 23, 2004 Hearing, specifically state that "all Delano Chapter 13 Court Proceedings except for the Objection to the Proof of Claim are suspended." The Court further stated that the Objection to your claim changed the entire approach to the procedures "dramatically" and that the primary question now is whether you are a creditor and whether you have standing in the Delano case.
3. I did in fact receive a copy of your motion as part of the mailing you sent to me previously. I would note that the Motion that you made is in the "Premier Van Lines Case;" however, as an attorney, I am sure you are aware that the Judge's Order of August 30, 2004, has nothing to do with the appeal which you have pending in the Second Circuit. It is not a final Order, and it is not appealable until a final decision is made regarding your claim in Premier Van Line. If you have a dispute with my legal analysis, then that is best left to the Appellate Court at the appropriate time.

At this point in time, I am awaiting a final determination as to your status as a creditor with standing in the Delano matter.

Very truly yours,

GEORGE M. REIBER

GMR/mb

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

October 20, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206 faxed to (585)427-7804
Rochester, NY 14623

Re: §341 examination of the DeLanos, dkt. no. 04-20280 WBNY

Dear Mr. Reiber,

In your reply of October 13 to my fax of October 12, you stated in your first point that:

> I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.

However, I sent you a copy of my motion to quash of September 9, which clearly states in its front page, at the top, just in its second line:

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

That motion alerted you to the fact that Judge Ninfo had issued a written order following what you call his "Bench Order", which you must have heard at one of the two August hearings. With due diligence and the professional interest in knowing the contents of a written order that, as you put it, "changed the entire approach to the procedures [in the DeLano case] "dramatically"", you could have asked for a copy of it, had you not obtained one already. Indeed, it would have been extremely easy for you to do so since you go to the courthouse and appear before Judge Ninfo very often; this follows from the fact that as of last April 2, you had 3,909[1] *open* cases, and of them 3,907 were reported to be before Judge Ninfo.

What is more, there is evidence that you were served with Judge Ninfo's August 30 Order. The certificate from the Clerk of Court joined hereto and which I received together with a copy of that Order states as follows:

Case No.: 2-04-20280-JCN

PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on August 30, 2004. The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: August 30, 2004

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: P. Finucane
Deputy Clerk

029674 Form ntcentry Doc 62

[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

There is additional evidence to believe that official certificate's statement that you were served with the August 30 Order over your allegation that you were not. At stake are your credibility and motives.

Thus, for weeks you pretended to have served me with a letter that you had sent to the Debtors' attorney, Christopher Werner, Esq. In his letter to you of March 19 he stated:

> As discussed, of the dates you proposed, the following are available on my schedule for an adjourned 341 Hearing with respect to the above Debtors:…

Thereby he attested to a communication between you and him, which you did not extend to me so that you failed to propose any such dates to me. I protested against this lack of evenhandedness to you and to Assistant U.S. Trustee Kathleen Dunivin Schmitt. Rather than send me the letter as you said you would do, you tried to pass off for copies of that letter copies of letters that I had expressly stated to you in writing that I had already received. Only because I kept pointing this out to you and asking you for the letter(s) that you had not sent me did you send me as late as May 18 a copy of your letter to Mr. Werner of March 12, 2004.

That letter comes back, once more, to haunt you, for there you stated:

> I have decided to conduct an adjourned §341 hearing at my office. At the regularly scheduled §341 hearing, Mr. Cordero indicated a desire to ask more questions than the constraints of time would permit. I have reviewed [Mr. Cordero's] written objections which were filed with the Court on or about March 8, 2004. I believe there are some points within those objections which it is proper for him to question the debtors about.
>
> To that end, I would request that each of you provide me with dates when you will be available for the hearing.
>
> It would also be helpful if Mr. Cordero could transmit to Mr. Werner a list of any documents which he may desire prior to the hearing.

This letter impugns your credibility. The fact is that lack of time was not the reason why I could not ask my questions at the meeting of creditors last March 8. The reason was that your attorney, James Weidman, Esq., whom you unlawfully had preside over the meeting, repeatedly asked me how much I knew about the DeLanos having committed fraud and when I did not reveal anything, he prevented me from examining them although I had asked only two questions and was the only creditor at the meeting so that there was ample time for me to keep asking questions. You know this because I protested against his action in open court and for the record and you ratified your attorney's action, although it was also unlawful and highly suspicious.

In line with your ratification, you have held no §341 hearing of the DeLanos. Even though I proposed dates, you now pretend that the court prevents you from holding it. But the August 30 Order that you alleged not to have received does not prevent you from doing so at all. Moreover, for the legal reasons that I stated in my October 12 letter, the court cannot prevent you from holding it. Among those reasons is the obvious one implied in what the Bankruptcy Code (11 U.S.C.) provides under:

> §341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

The court cannot prevent a meeting from taking place which by law it is forbidden even to attend.

But even your own "notes", stated in your second point of your October 13 letter, attest to this:

> My notes of the August 23, 2004 Hearing specifically state that "all Delano Chapter 13 Court Proceedings except for the Objection to the Proof of Claim are suspended."

Without my implying the truth of your "notes", what it states is that "Court Proceedings" were suspended, but a §341 meeting is definitely not a court proceeding, as shown by the above-quoted text of §341(c). Rather, it is a meeting for the creditors to examine the debtors, one at which you must preside and do so in person, not by delegation to anybody else, including your attorney, cf. C.F.R. §58.6(a)(10). Consequently, by your own "notes" you know that you are not prohibited by any "Bench Order" from holding a §341 meeting for the DeLanos to be examined.

What is more, you may have known that from the August 30 Order itself, for in the third point of your letter of October 13 you wrote:

> I would note that the Motion [to quash] that you made is in the "Premier Van Lines Case;" however, as an attorney, I am sure you are aware that the Judge's Order of August 30, 2004, has nothing to do with the appeal which you have pending in the Second Circuit. It is not a final Order, and it is not appealable until a final decision is made regarding your claim in Premier Van Lines. If you have a dispute with my legal analysis, then it is best left to the Appellate Court at the appropriate time.

How can you make such a categorical statement when you stated in the first point in that same letter that

> I must advise you that to date I have not been served, either in writing or electronically, with the Court's Order dated August 30, 2004. It is for that reason that I replied to your letter and motion in the previous manner.

Either you had received the August 30 Order and had even engaged in its "legal analysis" to reach that categorical conclusion in your letters to me and the Court of Appeals of October 1, or you have not received it "to date" and then you lacked any basis to 'reply to my letter and motion in the previous manner'. You cannot have it both ways. You have impeached yourself in a single letter of one page!

One day this case will come to trial and I will call you to the witness stand. Do you get a feeling of what it will be like when I examine you as a hostile witness? If you cannot manage in merely one letter your versions of facts about your own actions, how can you possibly handle, let alone do so effectively, 3,909 cases?!

How many other statements have you made that are liable to impeachment? I have already pointed out how you pretended in the letter of yours that I received on April 15 –which was undated either out of carelessness or by design– to be investigating the DeLanos, as I had requested in my Objection to Confirmation of March 4, the Memorandum of March 30, and conversations on March 8 and 12. In my letter to you of April 15, I asked that you either state what it was that you were investigating and its scope or let me know that you were not investigating anything and stop making me wait in vain. It was only thereafter, in your letter of April 20, that you for the first time asked for the DeLanos to produce documents relating to their bankruptcy petition. You had been investigating nothing! So much so that you had received no documents before that letter and received none after it to the point that on June 15 you moved to dismiss the DeLano case "for unreasonable delay" in the production of documents.

You had misled me into thinking that you were investigating the DeLanos. No wonder you did not want to send me a copy of your letter of March 12 to Att. Werner, for you soon realized that what you did not want to ask the DeLanos to produce and they did not want to produce either, neither wanted me to be able to ask directly Att. Werner to produce.

Do you sense how it is possible, even likely, that you may have already provided other issues on which I will impeach you?…to your surprise, of course. What about the risk of what may come out through an examination of the DeLanos? Can you want me to examine Att. Weidman in his capacity as the presiding officer at the March 8 meeting and as a §327 professional person? Attorney-client privilege is not a bar to his disclosing what he learned and did while rendering services or unlawfully substituting for you at that meeting. In other cases too?

This brings us to your motives. As I have pointed out before, you have a conflict of interests: If through a diligent and effective investigation of the DeLanos or through my examination of them at a §341 meeting evidence were to come out showing that their bankruptcy petition was meritless, let alone fraudulent, then you would be investigated in turn for having readied their plan of debt repayment for confirmation by Judge Ninfo. That is why you now allege in your self-contradictory way that neither the "Bench Order" nor the August 30 Order of Judge Ninfo allows you to hold that meeting: You do not want me to examine the DeLanos anymore than your attorney, Mr. Weidman, wanted me to do so as early as after my second question on March 8. Actually, your risk from what I may ask and the DeLanos may answer is greater, for now you know that I have shown on the basis of the few documents belatedly produced by them that they have engaged in concealment of assets and that you could have determined that had you only reviewed their petition. Hence, my examination would now be much more focused and incisive.

It follows from these facts that you have so impaired your credibility and have revealed such improper motives that you are unfit to continue as trustee in this case. If instead of cutting your losses by recusing yourself from this case you persist in staying on, you will only keep digging yourself into a deeper hole from which you will not be able to extricate yourself. It would be wishful thinking to expect the other parties to come to your rescue, for the time is approaching when it will be every man for himself. Take this as a hint: After several of my motions in the Court of Appeals for the Second Circuit in the context of my appeal there, i.e., In re Premier Van Lines, docket no. 03-5023, requesting his recusal, the Chief Judge of that Court, the Hon. John M. Walker, Jr., has recused himself from further consideration of that case.

Therefore, I respectfully request that:

1. you disqualify yourself from the DeLano case; otherwise,

2. take the necessary steps to hold a §341 meeting of the DeLanos on the following dates:

Wednesday, November 3, 2004; Thursday, November 4, 2004

or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, to Assistant U.S. Trustee Schmitt, and to me your legal authority and arguments to refuse to hold such meeting and request that they take a position on the issue.

I look forward to hearing from you at your earliest convenience.

Sincerely,

Dr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:
David G. DeLano
Mary Ann DeLano
Debtor(s)

SSN/Tax ID: xxx-xx-3894
xxx-xx-0517

Case No.: 2-04-20280-JCN
Chapter: 13

NOTICE OF ENTRY

PLEASE TAKE NOTICE of the entry of an Order, duly entered in the within action in the Clerk's Office of the United States Bankruptcy Court, Western District of New York on August 30, 2004 . The undersigned deputy clerk of the United States Bankruptcy Court, Western District of New York, hereby certifies that a copy of the subject Order was sent to all parties in interest herein as required by the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure.

Dated: August 30, 2004

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: P. Finucane
Deputy Clerk

Form ntcentry
Doc 62

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

[same text to Trustee Kathleen Schmitt] October 21, 2004

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee faxed to (212) 668-2255
55 Whitehall Street, 21st Floor
New York, NY 10004

Re: §341 examination of the DeLanos, dkt. no. 04-20280 WBNY

Dear Ms. Martini,

Please find herewith the letters of 13 and 20 instant of Trustee George Reiber and mine, respectively, concerning his untenable refusal to hold a §341 examination of the DeLanos.

To begin with, it was Trustee Reiber's attorney, James Weidman, Esq., unlawfully presiding at the meeting of creditors last March 8, who prevented me from examining the DeLanos by terminating the meeting although I was the only creditor present, had asked only two questions, but would not answer Att. Weidman's improper questions of how much I knew about the DeLanos having committed fraud. Later that day the Trustee ratified his attorney's action. This in itself constituted sufficient grounds for both to be investigated.

Moreover, Trustee Reiber has avoided investigating the DeLanos. As you know, I had to ask of him repeatedly to investigate the nature and timeline of the DeLanos' debt accumulation. This was a pertinent request since Mr. David DeLano has been for 15 years and still is a bank *loan* officer, whose professional expertise is precisely in ascertaining the creditworthiness and ability to repay loans of his borrowing clients at his bank, M&T. Hence, Mr. DeLano's bankruptcy is as a matter of common sense immediately suspect. Yet, when Trustee Reiber finally requested documents from them, his request was unjustifiable limited in the type of documents requested and time period covered: He asked for **1)** statements of only 8 of the 18 credit card issuers listed as creditors, **2)** for only the last three years although the DeLanos themselves stated in their petition that their credit card debts had accumulated for more than 15 years, and **3)** asked for no bank account statements at all, although the DeLanos declared their cash on account and in hand to be only $535, but their earnings for the last three years alone was $291,470, which renders Trustee Reiber's refusal to ask for that money's whereabouts suspect.

What is more, at the root of Trustee Reiber's refusal to hold an examination of the DeLanos is their effort to remove me from the case as a creditor by moving before Judge John C. Ninfo, II, to disallow my claim. Yet, for six months they treated me as a creditor. Actually, the DeLanos included me as a creditor in their petition, for Mr. DeLano has known since November *2002* the nature of my claim against him in Pfuntner v. [Trustee K.] Gordon et al., dkt. no. 02-2230 WBNY. Instead of Trustee Reiber recognizing the motion as an abuse of process artifice to get rid of me after I presented evidence of their concealment of assets, he has latched on to it to avoid my examining them and thereby protect himself: It the DeLanos' fraud were established, he and his attorney would come under investigation together with his other 3,909 open cases!

Therefore, I respectfully request that you **1)** disqualify Trustee Reiber from this case and investigate him and Att. Weidman; **2)** appoint a trustee unrelated to the parties and the court as well as willing and able to investigate this case zealously and efficiently; **3)** otherwise, order him to hold a §341 examination of the DeLanos on November 3 and 4 as requested in my September 22 letter. I look forward to hearing from you as soon as possible.

Sincerely, Dr. Richard Cordero

E-224

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

October 27, 2004

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

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

Dear Mr. Werner,

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

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

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

a) the scope of discovery under FRCivP 26(b)(1) and its explanation by the Advisory Committee;

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

c) the relevance of the requested documents, for they go not only to establish my claim against Mr. DeLano, but also to support my defense against the motion to disallow my claim against him, so that the documents come within the scope of what is "relevant to the claim or defense of any party".

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

Sincerely,

Dr. Richard Cordero

E-225

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

585-427-7225
FAX 585-427-7804

October 27, 2004

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

Re: David & Mary Ann DeLano; BK #04-20280

In your fax to me dated October 20, 2004, you reference the fact that Chief Judge John M. Walker of the Second Circuit has recused himself in the Premier Van Lines case. Could you please send me a copy of the Order by which Judge Walker recused himself.

Thank you for your consideration.

Very truly yours,

GEORGE M. REIBER

GMR/mb

NATURE SAVER™ FAX MEMO 01616	Date 10/28/04	#of pages ▶ 1
To Dr. Richard Cordero	From Marion	
Co./Dept.	Co. George Reiber, Esq.	
Phone #	Phone # (585) 427-7225	
Fax # 718-827-9521	Fax # (585) 427-7804	

file

E-226

RB:390

U.S. Department of Justice

Office of the United States Trustee

Western District of New York

New Federal Office Building
100 State Street, Room 6090
Rochester, New York 14614

(585) 263-5812
FAX (585) 263-5862

To: Richard Cordero

From: Christine Kyle

Re: §341 Meeting Delano, 04-20280

Date: October 27, 2004

I just spoke with Ms. Schmitt. Instead of having you wait until Friday for her response, I'm sending you this memo.

Ms. Schmitt is aware of your request and is planning to contact George Reiber, Esq. so they can coordinate setting up an adjourned meeting of creditors in the above-referenced case.

Ms. Schmitt will be returning to the office on November 17 to handle court appearances. She will contact you on that date or prior to it to let you know the outcome of her and Mr. Reiber's discussion.

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

October 28, 2004

George M. Reiber, Esq.
Chapter 13 Trustee
South Winton Court
3136 S. Winton Road, Suite 206 faxed to (585)427-7804
Rochester, NY 14623

Re: §341 examination of the DeLanos, dkt. no. 04-20280 WBNY

Dear Mr. Reiber,

Thank you for the fax that you sent me a few minutes ago requesting confirmation that the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., recused himself from my appeal in the Premier Van Lines case, CA2 docket no. 03-5023. Please find herewith a copy of the official statement to that effect dated October 13, 2004.

Should you need further confirmation, you can contact Arthur Heller, Esq., Staff Attorney at the Court of Appeals, at (212) 857-8532. The phone number of the Court, from where you can access the In-Take Room, which keeps a record of all filings, is (212) 857-8500.

I would appreciate it if upon receipt of this confirmation you would state your position with respect to the requests in my letter to you of October 20, as modified below, namely, that:

1. you disqualify yourself from the DeLano case; otherwise,

2. take the necessary steps to hold a §341 meeting of the DeLanos on the following dates:

Tuesday, **November 9**, and Wednesday, **November 10**, 2004; or

Tuesday, **November 16**, and Wednesday, **November 17**, 2004

or 3. present to U.S. Trustee for Region 2 Deirdre A. Martini, to Assistant U.S. Trustee Schmitt, and to me your legal authority and arguments to refuse to hold such meeting and request that they take a position on the issue.

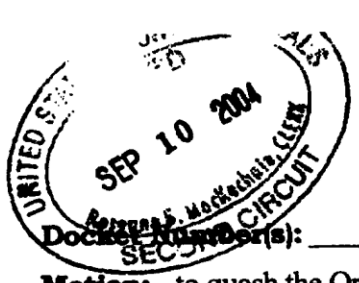
Please note that it is of the essence that you let me know as soon as possible whether the examination will be held and on what dates. To that end, I request that you call me.

Sincerely,

Dr. Richard Cordero

E-228

RB:392



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

ORIGINAL

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

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

Statement of relief sought:

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

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

OPPOSSING PARTY: See next

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

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

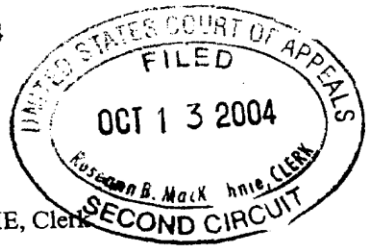
Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9. 2004



ORDER

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

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

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by Arthur M. Heller
Arthur M. Heller, Motions Staff Attorney

OCT 13 2004

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

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP
ATTORNEYS AT LAW

October 28, 2004

Mr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208

Re: David G. and Mary Ann DeLano, Case No. 04-20280

Dear Mr. Cordero:

As we discussed, we enclose Mr. and Mrs. DeLano's response to your discovery demands contained in your letter dated September 29, 2004 faxed to our office on September 30, 2004.

Your impatience for our response seems misplaced – first, as we do not recognize service by fax and only recognize service in accordance with FRCP §6. Further, we note that you delayed your demand to precisely coincide with my first day of absence from the office on a two week vacation of which you were well aware. Lastly, our response is timely under the Federal Rules – even had your demand been properly served.

Nonetheless, we have no intention of impeding discovery and respond accordingly.

We note, however, that your demands are largely irrelevant to your alleged claim and our objection, which is the only active matter before the Court. As indicated, we have not responded to your demands with respect to Mr. and Mrs. Delano's finances etc. generally, which have no relevance to your claim which supposedly emanates from the Premier Van Lines matter in some fashion.

Contrary to your suggestion, we expect the Court will consider and determine your application to obtain discovery of such items as we have declined.

BOYLAN, BROWN,
CODE, VIGDOR & WILSON, LLP

Christopher K. Werner

CKW/trm
Enclosure

cc: David G. and Mary Ann DeLano
Michael Beyma, Esq.
George M. Reiber, Esq.
Hon. John C. Ninfo, II

2400 Chase Square • Rochester, New York 14604 • 585-232-5300 • FAX: 585-232-3528
60-70 South Main Street, Suite 250 • Canandaigua, New York 14424 • 585-396-0400 • FAX: 585-232-3528
http://www.boylanbrown.com

UNITED STATES BANKRUPTCY COURT
COUNTY OF MONROE STATE OF NEW YORK

In re:

DAVID G. DELANO and
MARY ANN DELANO,

Debtors.

RESPONSE TO DISCOVERY DEMAND OF RICHARD CORDERO – OBJECTION TO CLAIM OF RICHARD CORDERO

Case No. 04-20280

DAVID. DELANO and **MARY ANN DELANO**, by their attorneys, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in response to Richard Cordero's discovery request dated September 29, 2004, as follows:

1. With respect to Paragraphs A and B (1-6) of Cordero's discovery request, such items do not contain specific discovery requests and, therefore, no response is given. Moreover, all of the correspondence in previous demands or inquiries listed have no relation or relevance to the claim of Cordero against the Debtors, and any demand contained therein is not properly relevant. Therefore, response is declined.

2. With respect to Paragraph C (7-14) of Cordero's discovery request, all of such demands are not relevant to the claim of Richard Cordero against the Debtors, which is the sole subject of the pending Objection to Claim and, therefore, discovery demand in this regard is declined.

3. With respect to Paragraph C (15) of Cordero's discovery requests, the Debtors hold no documents personally relating to David Palmer, any business associates or Mr. Palmer's personal bankruptcy, or otherwise as requested. Any such documents are held by M&T Bank and Mr. DeLano's involvement with respect to the same is only as an employee of M&T Bank and is not in his personal possession or control.

4. With respect to Paragraph C (16) of Cordero's discovery requests, the Debtors are not aware of any insurance with respect to the alleged claim by Cordero, but do expect that if there is any liability to Cordero, which liability is strongly disputed by all parties, that M&T Bank will satisfy the same, as in all respects, Mr. DeLano acted with respect to Premier Van Lines as an employee of M&T Bank.

5. With respect to Paragraph C (17) of Cordero's discovery requests, there are no subpoenas issued in connection with this request, other than previous subpoenas to the Debtors' creditors pursuant to the Chapter 13 Trustee's request, which are not relevant to Cordero's claim or the Debtors' objection to the same.

6. With respect to Paragraph C (18) of Cordero's discovery requests, the Debtors have no other documents or information relating to Cordero's claim.

Dated: October 28, 2004

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

GEORGE M. REIBER
CHAPTER 13 TRUSTEE
SOUTH WINTON COURT
3136 SOUTH WINTON ROAD
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER
JAMES W. WEIDMAN

November 2, 2004

585-427-7225
FAX 585-427-7804

Dr. Richard Cordero
59 Crescent St.
Brooklyn, NY 11208

Dear Dr. Cordero,

RE: David & Mary Ann DeLano; BK#04-20280

This is in response to your fax to me dated October 28, 2004. Thank you for sending me a copy of the Order which I requested. Regarding the other points which you raised, these appear to repeat the assertions made in your prior letters to me. I have replied to those and my position is not changed by anything you have sent me.

Very truly yours,

GEORGE M. REIBER

GMR/mb

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano
Chapter 13 case, dkt. no: 04-20280

Notice of Motion To enforce Judge Ninfo's Order of August 30, 2004 For Discovery from David DeLano And to obtain a declaration that it does not exempt the Trustee from his obligations under B.C. §341

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, will move this Court at the U.S. Courthouse on 100 State Street, Rochester, New York, 14614, at 9:30 a.m. on November 17, 2004, or as soon thereafter as he can be heard, to request enforcement of the Court's Order of August 30, 2004, requiring Debtor David DeLano to provide discovery to Dr. Cordero.

In his Response of October 28, 2004, by his attorney, Christopher Werner, Esq., Mr. DeLano declines discovery of all items requested by Dr. Cordero in his request of September 29 either as irrelevant or not in his possession. Thereby Mr. DeLano disregards the Court's Order of August 30, just as he and Mrs. DeLano disobeyed the Court's Order of July 26 for production of documents and ignored Trustee George Reiber's requests for documents and those of Dr. Cordero's, and contravenes the provisions of the Bankruptcy Code, the FRBkrP, and the FRCivP. Such repeated contempt for his legal obligations reveals that his real motive behind his motion to disallow Dr. Cordero's claim is precisely to avoid producing the documents that can reveal whether the bankruptcy petition filed by Mr. DeLano, who for 15 years has been and still is a bank *loan* officer and as such knowledgeable about abusive bankruptcies to avoid repayment of loans to his bank, is itself a vehicle of fraud to avoid payment of claims and conceal assets.

Therefore, Mr. DeLano should be ordered to produce all the documents listed in Dr. Cordero's September 29 request or the motion to disallow Dr. Cordero's claim should be dismissed and this case referred to the U.S. Attorney and the FBI for investigation.

Dr. Richard Cordero

Dated: November 4, 2004

59 Crescent Street
Brooklyn, NY 11208

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

E-234

RB:398

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano
Chapter 13 case, docket no: 04-20280

Brief in Support of the Motion To enforce Judge Ninfo's Order of August 30, 2004 For Discovery from David DeLano

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

I. A gratuitous implication of bad faith is not to be left unanswered

1. After the Court in Rochester, U.S. Bankruptcy Judge John C. Ninfo, II, presiding, issued its Order of August 30, 2004, and a copy of it was received in New York City by Dr. Cordero, the latter took steps, among others, in connection with it to research and write the following papers:

    a. Dr. Cordero's motion of September 9, 2004, to quash the order of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to sever a claim from the case on appeal in the Court of Appeals for the Second Circuit, dkt. no. 03-5023, so as to try it in the DeLano bankruptcy case; 21 pages with references to the accompanying 157 pages of exhibits;

    b. Dr. Cordero's letter of September 22, 2004, to Trustee George Reiber proposing dates to examine the DeLanos under 11 U.S.C. §341 and describing the broad scope of the examination as provided under FRBkrP Rule 2004(b); 2 pages;

    c. Dr. Cordero's letter of September 29, 2004, to the attorney for the DeLanos, Christopher Werner, Esq., requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9 to quash it in the Court of Appeals; 9 pages setting out the scope of discovery under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure and including 8 tables with many columns setting out in organized fashion the documents and information requested.

2. Thus, Dr. Cordero sent the September 29 discovery request to the attorney for the DeLanos, Christopher Werner, Esq., as soon as he finished working on matters that a) would have rendered legally unnecessary to request discovery from Mr. DeLano, as party to another case, or b) would have allowed Dr. Cordero to obtain discovery through the legal provisions that require the DeLanos, as Debtors, to provide it. He faxed that request to Att. Werner just as he had faxed other papers to him for months and the Attorney has accepted service of them, for which Dr. Cordero used the fax number stated on the Attorney's letterhead, whereby was created the reasonable presumption that service by fax is accepted.

3. Contrary to Att. Werner's gratuitous assertion in his letter of October 28 to Dr. Cordero, the latter did not 'delay his demand precisely to coincide with Att. Werner's first day of absence

from the office on a two week vacation of which he was well aware'. That is not in keeping with the standards of professional behavior that Dr. Cordero has demonstrated in all his dealings in this case in well over half a year.

4. Moreover, Dr. Cordero is also well aware that Att. Werner has a secretary who in his absence forwards any correspondence to the respective principal, in this instance, Mr. DeLano.

5. In addition, Dr. Cordero diligently called Att. Werner on October 14, the second day after the Attorney's return, to alert him to the September 29 request and ask him by when he would reply to it. Not finding Att. Werner in his office, Dr. Cordero recorded a message for him on his voice mail.

6. Since that first call, which was not returned, Dr. Cordero had to call Att. Werner several times and both record messages on his voice mail and leave messages for him with the receptionist of his office, Ms. Patricia Casilo.

7. It was not until Friday, October 22, when Dr. Cordero informed Ms. Casilo that he wanted to speak with the Managing Partner of Att. Werner's Office, Patrick Malgeri, Esq., that Att. Werner returned Dr. Cordero's call within the hour. In their conversation, Att. Werner informed him that Mr. DeLano would not produce the items requested, except for item 15, because 'the other items are not relevant and have nothing to do with Dr. Cordero's claim against him'. As to item 15, Att. Werner stated that the file was so thin that he could fax it to Dr. Cordero, who does not make his fax number available for service.

8. Therefore, by October 22, over 3 weeks after the request was faxed and within a week and a half after Att. Werner's return, Mr. DeLano already knew that he was not going to produce any of the same or similar documents which he had previously decided not to produce, for they had been *requested in 14 previous documents* by Dr. Cordero or, at his instigation, by Trustee Reiber, and even Judge Ninfo himself (see ¶16 below). As to item 15, why did Att. Werner indicate that there were documents in that file that could be faxed only to write in paragraph 3 of Mr. DeLano's Response to Discovery Demand thus?:

> 3. With respect to Paragraph C (15) of Cordero's discovery requests, the Debtors hold no documents personally relating to David Palmer, any business associates or Mr. Palmer's personal bankruptcy, or otherwise as requested. Any such documents are held by M&T Bank and Mr. DeLano's involvement with respect to the same is only as an employee of M&T Bank and is not in his personal possession or control.

9. Mr. DeLano's Response is one side of one page and two lines long. Yet, it took Att. Werner another week until October 28 to write it and more than two weeks since his arrival from vacation. So, why was it so difficult for Att. Werner to realize that Dr. Cordero, a pro se litigant and a non-local one, should have taken about three and a half weeks to write 32 pages and compile 157 more to prepare three documents each of which was served on him by Dr. Cordero? The question is all the more pertinent since Mr. DeLano needed barely any time, certainly not 28 days, to produce nothing and simply repeat once more his wholesale denial of document requests.

10. Att. Werner's statement implying bad faith on Dr. Cordero because his September 29 request arrived when Att. Werner was on vacation is indeed gratuitous and contradicted by Att. Werner's own work time requirements. Hence, Att. Werner should withdraw his statement.

II. A wholesale denial of production of documents contravenes the FRBkrP and the FRCivP

11. In his September 29 request of documents, Dr. Cordero cited and discussed the legal basis for it (see an excerpt from it in subsection A below). By contrast, in his Response, Mr. DeLano denies production wholesale, without offering any legal support, just the lazy allegation that:

> 2. With respect to Paragraph C (7-14) of Cordero's discovery request, all of such demands are not relevant to the claim of Richard Cordero against the Debtors, which is the sole subject of the pending Objection to Claim and, therefore, discovery demand in this regard is declined.

12. Nor does Mr. DeLano even take cognizance of the fact that discovery is allowed under the Federal Rules not only to establish a claim, but also to set up a defense.

13. In fact, it was the DeLanos' belated and unjustified motion to disallow Dr. Cordero's claim that led to the Order of August 30, which requires Dr. Cordero to take discovery from Mr. DeLano. Hence, Dr. Cordero is entitled to discovery that will allow him to establish, among other things, that the DeLanos' motion is a desperate attempt in contravention of FRBkrP 9011(b) to remove from their January 26 bankruptcy case Dr. Cordero, the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of financial documents that can show the bad faith of their petition in violation of 11 U.S.C. §1325(a)(3) and whether they are engaged in debt underreporting, account unreporting, and concealment of assets.

A. Scope of discovery and notice and opportunity for production

14. In determining the scope of discovery, Dr. Cordero relies on FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), which provides that

> Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

15. This description of the broad scope of discovery is enhanced by the Advisory Committee Explanatory Statement on the mechanics of discovery that:

> A showing of good cause is no longer required for discovery of documents and things and entry upon land (Rule 34).

16. The documents requested below have already been requested but for the most part not produced in the following documents:

1) Dr. Cordero's Objection of March 4, 2004, to Confirmation of the DeLanos' Plan
2) Dr. Cordero's Memorandum of March 30, 2004, ¶80.b)
3) Dr. Cordero's letter of April 15, 2004, to Trustee Reiber, ¶6, with copy to Att. Werner
4) Trustee George Reiber's letter of April 20, 2004, to Att. Werner
5) Dr. Cordero's letter of April 23, 2004, to Trustee Reiber with copy to Att. Werner
6) Dr. Cordero's letter of May 16, 2004, to Trustee Reiber, ¶¶2&7, with copy to Att. Werner
7) Trustee Reiber's letter of May 18, 2004, to Att. Werner
8) Dr. Cordero's letter of May 23, 2004, to Att. Werner
9) Dr. Cordero's letter of June 8, 2004, to Trustee Reiber with copy to Att. Werner
10) Trustee Reiber's motion to dismiss of June 15, 2004, for the DeLanos' "unreasonable delay" in producing the requested documents
11) Dr. Cordero's requested order for document production in his Statement of July 9, 2004
12) Dr. Cordero's document production order proposed on July 19, at Judge Ninfo's request at the hearing on July 19, 2004
13) Judge Ninfo's order of July 26, 2004
14) Dr. Cordero's motion of August 14, 2004, for docketing, issue of production order, etc.

17. It follows that the DeLanos have had enough notice and opportunity to produce the requested documents. Likewise, these are documents "regarding any matter, not privileged, that is relevant to the claim or defense of any party", such as Dr. Cordero's claim against both the DeLanos, against Mr. DeLano in particular, and his defense against the motion to disallow his claim. Hence, they are within the scope of Rule 26.

III. The §341 examination of the DeLanos is not prohibited by any court order

18. As a matter of fact, the August 30 Order does not prevent Trustee Reiber from examining the DeLanos under 11 U.S.C. §341, which in any event would have been a contradiction in terms since the Order requires Mr. DeLano to provide discovery to Dr. Cordero.
19. As a matter of law, the court does not have the authority to order the trustee not to hold such examination, in particular, or not to discharge any of his other duties as trustee, in general.
20. It is Congress that imposed on the trustee the duty to hold that examination by providing that:

> §341. Meetings of creditors and equity security holders
>
> (a) Within a reasonable time after the order for relief in a case under this title, **the United States trustee** *shall* convene and preside at a meeting of creditors. (emphasis added)

21. The duty to hold a §341 meeting is imposed by the Legislative Branch of government directly on the United States trustee, who is a member of the Executive Branch. The judge, as a member

of the Judicial Branch, cannot roughride his way into those branches to invalidate a mandate from the legislator and prevent a member of the Executive from carrying out his duty. On the contrary, §341(c) expressly provides that

> §341(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

22. It follows that if Congress forbade the court to attend such meetings, the court lacks authority to prevent them from being held at all. As a matter of fact supporting that reasoning, Congress did not give the court authority to prevent §341 meetings of creditors from taking place.

23. On the contrary, Congress considered such meetings so important for the operation of its bankruptcy mechanism that it imposed the duty to hold them directly on the, not just on a panel or standing trustee. So, if the trustee is allowed to preside over such meetings, it can only be by delegation from the United States trustee. What the court does not have the authority to forbid the principal, that is, the United States trustee, to do, it cannot prevent the latter's agent, such as a Chapter 13 trustee, from doing. The trustee does not take his marching orders from the court. Rather, he follows the United States trustee as she goes about executing an order from Congress.

24. By the same token, a §341 examination is not a court proceeding and consequently, does not fall within the court proceedings suspended by the August 30 Order. Hardly could that examination be encompassed by a suspension that is in itself:

    a. unlawful as unsupported by any provision of law since none was cited therefor;

    b. contrary to §1325(a)(3) requiring the Court to determine whether the repayment plan has been proposed "by any means forbidden by law";

    c. unjustified in its imposition on Dr. Cordero of the burden to proof his claim despite its presumption of validity under Rule 3001(f); and

    d. inimical to the other 20 creditors of the DeLanos, who have an interest in the case moving forward so they can start receiving payment of their debts.

25. Instead, a §341 examination is a specific means for the trustee to fulfill his general duty under 11 U.S.C. §§1302(b)(1) and 704(4), which require the trustee "to investigate the financial affairs of the debtor". Additionally, §§1302(b)(1) and 704(7) require the trustee to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". Those duties do not depend on any grant of authority from the court. They are imposed on the trustee by the law of Congress, which provided as follows:

> §704. Duties of trustee
> The trustee **shall**- (emphasis added)

26. The trustee does not have the option to investigate at the will of the court; he has the duty to investigate and do so specifically at the request of a party in interest, which Dr. Cordero certainly is.

27. Consequently, it was unlawful for Trustee Reiber not to conduct personally the §341 meeting of creditors in the DeLano case on March 8, 2004, when he instead appointed his attorney, James Weidman, Esq., to conduct it in violation of C.F.R. §58.6(a)(10).

28. What is more, it was not only unlawful, but also highly suspicious, for Att. Weidman to ask Dr. Cordero at that meeting how much he knew about the DeLanos having committed fraud and when he did not reveal anything, to prevent him from examining the DeLanos although he had asked only two questions! The suspicion was only heightened by the fact that Dr. Cordero was the only creditor present so that there was more than ample time for him to keep asking questions in order to do precisely what the purpose of the meeting is, namely, to examine the debtors under oath. Yet, Trustee Reiber ratified in open court and for the record that very same day and has ever since defended Att. Weidman's unlawful termination of the meeting.

29. To compound that disregard for his duty, Trustee Reiber has decided not to hold the adjourned §341 examination of the DeLanos on the allegation that the August 30 Order prevents him from so doing, as stated in his letters to Dr. Cordero of October 1 and 13 and November 2. In light of the above considerations, that decision is a thinly veiled excuse to avoid exposing himself to the same risk that his attorney felt he must avoid, that is, the risk of having the DeLanos' answer questions under oath from a creditor. But…

    a. What could Trustee Reiber and Att. Weidman fear that the DeLanos might say?

    b. Why would Trustee Reiber not want to find out how an insider of the lending industry, such a Mr. DeLano, could possibly have gone bankrupt without even having consolidated his debt of $98,092 on 18 credit cards?

    c. What holds Trustee Reiber back from finding out the whereabouts of the $291,470 that the DeLanos declared on their 1040 IRS forms to have earned in just the 2001-03 fiscal years while declaring in their petition only $535 in hand and on account?!

IV. Request for relief

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

    a. order Mr. David DeLano to comply with the rules of discovery as well as the Court's own August 30 Order and produce the documents requested in the September 29 request; otherwise, that the DeLanos' motion to disallow Dr. Cordero's claim be dismissed; if not,…

    b. extend the deadline of December 15 by 45 days after Mr. DeLano actually produces all the documents requested, an extension necessary for Dr. Cordero to be able to examine the documents and prepare to depose Mr. DeLano and then double-check the information provided;

    c. declare that the August 30 Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos;

    d. refer this case under 18 U.S.C. 3057(a) to United States Attorney General John Ashcroft for appointment of investigators that are neither friends of nor acquainted with the DeLanos, Trustee Reiber, or the Office of the U.S. Trustee in Rochester or the Office of the Region 2 Trustee in New York City so that such investigators may determine with all impartiality, zealously, and exhaustively whether there has been fraud in connection with the DeLanos' bankruptcy petition and, if so, who is involved and to what extent;

e. allow Dr. Cordero to present his arguments by phone and that the Court not cut off the phone connection to him until after it declares the hearing concluded and that thereafter no other oral communication between the Court and a party be allowed on this case until the next scheduled event for all the parties, including Dr. Cordero.

Dr. Richard Cordero

November 4, 2004

59 Crescent Street
Brooklyn, NY 11208

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

UNITED STATES BANKRUPTCY COURT
COUNTY OF MONROE STATE OF NEW YORK

In re: **DAVID G. DELANO** and **MARY ANN DELANO,** Debtors.	**DEBTORS' STATEMENT IN OPPOSITION TO CORDERO MOTION REGARDING DISCOVERY** **Case No. 04-20280**

The Debtors, **DAVID G. DELANO** and **MARY ANN DELANO**, by their attorney, Christopher K. Werner, Esq., of counsel to Boylan, Brown, Code, Vigdor & Wilson, LLP, state in opposition to the Motion of Richard Cordero dated November 4, 2004, as follows:

1. Mr. Cordero's discovery demand is nothing more than a recitation of the same itemss that he has been pursuing in Debtors' Chapter 13 proceeding, which is currently held in suspense pending determination of Cordero's Motion.

2. All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtors' finances and have nothing to do with the matter at hand, which is Cordero's claim.

3. The only item demanded which has even a passing relevance to Cordero's claim is paragraph C 15, requesting documents associated in some fashion with David Palmer, who apparently was one of the former principals of Premier Van Lines.

4. As indicated in Debtors' response, such documents, if any exist, are not in Debtors' individual possession, but rather belong to M&T Bank, by whom the Debtor, David G. DeLano, is employed and are not in debtor's individual control other than as employee of M & T Bank.

5. If Mr. Cordero wishes to make a demand and subpoena M&T Bank, he is free to do so as the proper source of such documents.

6. Moreover, such documents will likely bear little relevance to Cordero's claims, as there is no basis for claim against David G. DeLano and, clearly, no claim against Mary Ann DeLano.

7. The Debtors' response to Mr. Cordero's discovery demands were in all respects timely under the federal rules.

WHEREFORE, Debtors request that Cordero's Motion be denied in all respects.

Dated: November 9, 2004

Christopher K. Werner, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
Attorneys for Debtors
2400 Chase Square
Rochester, New York 14604
Telephone: (585) 232-5300

TO: U.S. Bankruptcy Court
George M. Reiber, Chapter 13 Trustee
David G. and Mary Ann DeLano
Mr. Richard Cordero

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13

Debtors.

INTERLOCUTORY ORDER

WHEREAS, on August 30, 2004, the Court entered the attached Interlocutory Order, without the Exhibits attached to that Order (the "August 30, 2004 Interlocutory Order"); and

WHEREAS, the terms defined and used in the August 30, 2004 Interlocutory Order shall have the same meaning when used in this Interlocutory Order; and

WHEREAS, on November 8, 2004, Cordero filed a November 4, 2004 motion entitled "Notice of Motion to Enforce Judge Ninfo's Order of August 30, 2004, For Discovery from David DeLano and to Obtain a Declaration that it does not exempt the Trustee from his Obligations Under B.C. § 341" (the "Cordero Discovery Motion"); and

WHEREAS, the Court has reviewed the Cordero Discovery Motion, and, in its discretion, does not believe that it requires any oral argument to decide the detailed Motion.

It is therefore **ORDERED**, that:

1. The Cordero Discovery Motion is in all respects denied; and

2. The request for relief in Paragraph 30.a. of the Cordero Discovery Motion is denied because: (a) after reading Cordero's September 29, 2004 documentary discovery demand (the "Demand"), Cordero's October 27, 2004 follow-up letter, and the October 28, 2004 Response to the Demand (the "Response"), it appears that DeLano has complied with all of the documentary discovery requests made by Cordero that are relevant to the Claim Objection Proceeding; and (b) the August 30, 2004 Interlocutory Order clearly states that the Court will only hear those matters in the DeLano Case that are related to the Claim Objection Proceeding until the Court has made its final determination in that Proceeding; and

3. The request for relief in Paragraph 30.b. of the Cordero Discovery Motion is denied because DeLano has indicated in the Response that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding. Therefore, there is no need for an extension of the discovery deadline set forth in the August 30, 2004 Interlocutory Order; and

4. The request for relief in Paragraph 30.c. of the Cordero Discovery Motion is denied because the August 30, 2004 Interlocutory Order and the Bankruptcy Code and Rules as they relate to the Order are clear, so the Court is not required to interpret them for Cordero; and

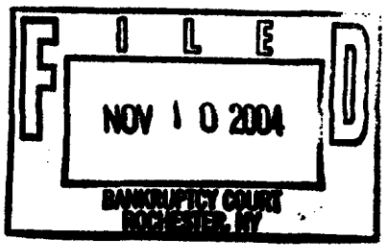
5. The request for relief in Paragraph 30.d. of the Cordero Discovery Motion is denied for the reasons set forth in the August 30, 2004 Interlocutory Order; and

6. The request for relief in Paragraph 30.e. of the Cordero Discovery Motion is moot as a result of the entry of this Interlocutory Order.

SO ORDERED.

DATED: November 10, 2004

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



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

November 14, 2004

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee — faxed to (212) 668-2255
55 Whitehall Street, 21st Floor
New York, NY 10004

Re: §341 examination of the DeLanos, dkt. no. 04-20280 WBNY

Dear Ms. Martini,

Last November 1, we finally spoke on the phone concerning my repeated request that you remove Trustee George Reiber from the case of David and Mary Ann DeLano, among other things, for his unwillingness and incapacity to investigate them and his refusal to hold a §341 examination of them, who filed their Chapter 13 petition back in January.

I indicated that Trustee Reiber has a conflict of interests because he approved their petition and was about to submit it for confirmation by the court of its repayment plan when I objected to it by pointing to its meritless and questionable basis for bankruptcy relief. So now Trustee Reiber does not want to investigate them only to find out that in fact their petition is fraudulent and that the DeLanos have engaged in concealment of assets, which Trustee Reiber could have realized if only he had done his job and reviewed the petition's schedules and statements. By way of example, the DeLanos declared that they had only $535 on cash and in hand at the time of filing. Yet, their 1040 IRS forms for just the 2001-03 years show that they earned $291,470. Not only are those earnings unaccounted for, but Trustee Reiber does not even want to request that the DeLanos produce their bank and debit card statements, nor has he pursued their production of credit card statements.

Trustee Reiber's conflict of interests is compounded by the fact that if the DeLanos' petition were proved fraudulent, then his other cases could also come under investigation, for if he could not handle properly a petition as glaringly suspicious as the DeLanos', he may not have been able to handle properly many of his other 3,909 *open* cases. You snapped "According to you!", thus casting doubt on my assertion that such a huge number of cases constitutes an unmanageable workload for a trustee -particularly one so prone to making mistakes as Trustee Reiber- who must not only review initially all petitions, but also must request and confront them with supporting documents, hold meetings of creditors, not to mention deal with creditors thereafter, and monitor the debtors' compliance with repayment plans *every month*.

At the end of our conversation you said that you had made your decision not to remove Trustee Reiber, but you did not state your reasons. I asked that you put them in writing and you said that you would as soon as you could. However, you have not sent me any such statement in two weeks, which shows how difficult it must be for a person with 3,909 *open* cases to take care of business in a timely fashion, if at all. Hence, I kindly request that you send me your statement.

In this vein, I am sending you my motion to have the court declare that Trustee Reiber must hold the §341 examination of the DeLanos regardless of the court's suspension of its own proceedings in this case. I respectfully request that you take a stand on this matter and if it is your opinion that Trustee Reiber has the obligation to hold such examination, that you require him to schedule it without further delay. Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

E-247

RB:411

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

December 27, 2004

Michael Battle, Esq.
U.S. Attorney for WDNY
U.S. Attorney's Office
138 Delaware Center
Buffalo, NY 14202

faxed (716)551-3052

Re: a judicial misconduct and bankruptcy fraud scheme

Dear Mr. Battle,

On 6 instant I faxed you a letter followed by a formal "REQUEST to Michael A. Battle, Esq. U.S. Attorney for the Western District of New York to report to the Acting U.S. Attorney General for investigation the evidence of a judicial misconduct and bankruptcy fraud scheme."

To date I have received no reply from you thereto although your Executive Assistant, Mrs. J. Bowman, has acknowledged receipt of both the letter and the Request. I have also left messages, recorded for you on your Office voice mail and in conversation with Mrs. Bowman, requesting a reply from you. However, I can reasonably expect a reply from you given that in your letter to me of last November 29, you stated the following:

> I am sorry, as you expressed that you feel I did not give adequate review to your claims following our most recent telephone conversation. The fact of the matter is I took what you said and requested very seriously.

If you really did mean this, then you can take only more seriously my letter and Request because not only does evidence of a judicial misconduct and bankruptcy fraud scheme keeps piling up, but also the wrongdoing of the participants in the scheme is now compounded by the statements in your November 29 letter showing, among other things, that your "trusted professionals":

1) gave you factually wrong and misleading information that my case was "resolved by a bankruptcy judge" although I am party to not one, but two cases and both are ongoing;

2) must have had direct ex parte or indirect contact with Judge Ninfo through which they have learned the outcome of a case still in progress, thus turning it into a sham process;

and **3)** have dissuaded you from opening an investigation into the judicial misconduct and bankruptcy fraud scheme that I complained about by pretending that I had complained about a "final legal resolution" that I was not "in agreement with" although there has not been a legal resolution to anything, let alone a final one, so that this matter is very much open and an investigation is very much called for. Anyway, who ever heard that a U.S. Attorney refrains from investigating evidence of bankruptcy fraud just because a judge complained-about for supporting it with his misconduct has "resolved" it?

Therefore, I respectfully reiterate my request that you:

a) reply to my letter and request of December 6;

b) refer the Request and its Exhibits to the Acting U.S. Attorney General for investigation by officers unrelated to the DoJ or FBI staff in Rochester or Buffalo; and

c) copy me to the referral.

Sincerely,

Dr. Richard Cordero

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