STATEMENT OF FACTS FROM
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Case no. 08-8382

IN THE

SUPREME COURT OF THE UNITED STATES

Dr. Richard Cordero, Petitioner

v.

David and Mary Ann DeLano, Respondents
docket no. 06-4780-bk in
the United States Court of Appeals
for the Second Circuit

and

James Pfuntner

v.

Trustee Kenneth Gordon et al.
sub nom. *In re Premier van*, docket no. 03-5023 in
the United States Court of Appeals
for the Second Circuit

On Petition for a Writ of Certiorari to

The United States Court of Appeals
for the Second Circuit

Petition for a Writ of Certiorari

October 3, 2008

by

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IX. STATEMENT OF FACTS

A. The DeLanos, inherently suspicious debtors in bankruptcy, and other scheming insiders of the bankruptcy system

1. The DeLanos are exceptional bankrupts, for Mr. DeLano was at the time of filing the bankruptcy petition on January 27, 2004, a 39-year career financial and banking officer (Transcript, page 15 Line 17 to pg 16 L15=Tr:15/17-16/15) and Mrs. DeLano was a Xerox technician, a person experienced in thinking methodically along a series of technical steps. Both knew exactly what moves to make to prepare for a debt-free asset-loaded golden retirement by filing a voluntary petition although their assets of $263,456 far exceeded their liabilities of $185,462. (D:29) Indeed, when they filed their petition, Mr. DeLano was and continued to be employed as an officer in precisely the bankruptcy department of a major bank, M&T Bank, with $65 billion in assets at the end of 2007. Hence, they filed their petition in the U.S. Bankruptcy Court, WBNY, under 11 U.S.C. Chapter 13 "Adjustment of debts of an individual with regular income", thus avoiding liquidation under Chapter 7. Together with the petition they filed a plan for debt repayment to their creditors for the minimum of 3 years, at the end of which Mr. DeLano, 62, would be 65 and could collect a 100% of his social security pension. Timing matters.
2. An insider of the bankruptcy system, Mr. DeLano had learned during his 39-year long career how to keep people afloat with financial advice and how to sink them with stories of their wrongdoing with one of the two most insidious corruptors: *Money!* Mr. DeLano's petition came as a farewell wish list before Bankruptcy Judge John C. Ninfo, II, WBNY (D:317, 325, 327).
3. Judge Ninfo too was exceptional: "At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester [where] from 1970 until 1992 he engaged in private law practice". (http://www.nywb.uscourts.gov/about_judge_ninfo_46.php, Add:636) That firm represents M&T Bank and Banker DeLano in *Pfuntner* (Add:531), which is pending before the Judge. Mr.

DeLano mishandled the bankruptcy concerned in that case, thus harming Dr. Cordero, a defendant in *Pfuntner*, who impleaded him as a third party defendant (Add:785); so arose the claim there that later became at stake in *DeLano*. Judge Ninfo handled the other most insidious corruptor: *Power!* Judicial power over people's property, liberty, and even life that is in practice unaccountable becomes absolute power…and corrupts absolutely.

4. The DeLanos listed Dr. Cordero among their unsecured creditors in their voluntary bankruptcy petition. (D:40) They submitted it and their debt repayment plan for evaluation to the chapter 13 trustee, who is supposed to represent unsecured creditors. (Revision Notes and Legislative Report on 11 U.S.C. §704, 1978 Acts, 2nd para.; D:882§II) That Trustee was George Reiber, Esq.
5. Trustee Reiber too is especial: According to PACER, he had 3,907 *open* cases before Judge Ninfo out of his 3,909 *open* cases. After his evaluations, he depends on Judge Ninfo to have his recommendations for bankrupts' plans approved so that he may keep his 10% fee of every payment made through him under the plan to the creditors. (28 U.S.C. §586(e)(1)(B)(ii)(I)) His frequent appearances before the Judge and his financial interest in the Judge's goodwill toward him have developed a modus operandi between them that has led the Trustee's loyalties to run to the Judge, not to one-time creditors, much less to non-local ones who live hundreds of miles away from Rochester, NY, such as Dr. Cordero, a resident of NY City. When the Trustee and the Judge rubberstamp petitions smoothly, so flows the enormous amount of money that they control …in just this one case the whereabouts of $673,657 of the DeLanos' are still unknown. (CA:1654)
6. It was Assistant U.S. Trustee Kathleen Dunivin Schmitt, Trustee Reiber's supervisor, who allowed him to amass such an unmanageable number of cases. So much so that since he could not be at the same time in all places where he was needed, she let him conduct the meeting of creditors (11 U.S.C. §341: D:23) of the DeLanos on March 8, 2004, not only in a room connected to her office, but also unlawfully by his attorney, James Weidman, Esq. For a trustee not to conduct a

meeting of creditors personally is such a serious violation of his duty that it is listed in 28 CFR §58.6(10) among the causes for removal. (SApp:1689) On that occasion, Trustee Reiber was taking care of business, of all places, downstairs in Judge Ninfo's courtroom. In a well coordinated scheme everybody has to pitch in. Trustee Schmitt's friendly next door neighbor is the local office of the U.S. Department of Justice in the cozily small federal building in Rochester.

7. Accompanying the DeLanos to the meeting were their one of a kind attorneys (D:79¶3): Christopher Werner, Esq., had brought 525 cases before Judge Ninfo, according to PACER, and at the time had spent 28 years in the business. (D:217) Michael J. Beyma, Esq., is also a partner in Underberg & Kessler, the same law firm in which Judge Ninfo was a partner at the time of his appointment by CA2 under 28 U.S.C. §152 to his first 14-year term as bankruptcy judge. He represents both Mr. DeLano and his employer, M&T Bank. (Add:531, 532, 778, 784, 811). Mr. Beyma "was a founding partner of Boylan, Brown LLP in 1974", the law firm in which Mr. Werner is a partner. (http://www.underberg-kessler.com/Attorneys/Detail/?ID=30) It is better when everything remains in the family. (law firm addresses at US:2466 infra)

B. The meeting of creditors of the DeLanos confirms that the insiders knew that they had committed bankruptcy fraud

8. Att. Weidman knew perfectly well what was going on with the DeLanos and the other co-schemers. At that meeting of creditors, he examined the DeLanos under oath while being officially recorded on an audio-tape. After examining the DeLanos, Mr. Weidman asked whether any of their creditors were in the audience. Dr. Cordero was the only one present. He identified himself and stated his desire to examine them. Mr. Weidman asked him to fill out an appearance form (D:68) and to state what he objected to. Dr. Cordero submitted to him and Mr. Werner copies of his Objection to Confirmation of the DeLanos' Plan of Debt Repayment (D:63). No

sooner had he asked Mr. DeLano to state his occupation –he answered 'a bank loan officer'- and then how long he had worked in that capacity -he said 15 years, but see Tr:15/17-16/15- than Mr. Weidman unjustifiably asked Dr. Cordero whether and, if so, how much he knew about the DeLanos' having committed fraud. When Dr. Cordero would not reveal what he knew, Att. Weidman put an end to the meeting even though Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)

9. Later that afternoon at the confirmation hearing before Judge Ninfo in the presence of Trustee Reiber and Att. Weidman and without being contradicted, Dr. Cordero brought to the Judge's attention how that Attorney had prevented him from examining the Debtors. Rather than uphold the law and Dr. Cordero's right thereunder, Judge Ninfo faulted Dr. Cordero for applying the Bankruptcy Code too strictly and thereby missing "the local practice". He stated that Dr. Cordero should have phoned 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. (D:99§C) Thereby the Judge protected the co-scheming "locals" from the law of the land of Congress, which provides for not one, but rather a series of meetings where creditors can engage in a very wide-scope examination of the debtors. (11 U.S.C. §341; FRBkrP 2004(b); D:283¶¶a-b, 98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)

10. For months thereafter, the DeLanos continued to treat Dr. Cordero as a creditor, pretending to be obtaining the documents that he had requested through Trustee Reiber. (D:63, 151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203) They also pretended to be available for an adjourned meeting of creditors where those documents would be used to examine them under oath. (CA:1731¶25) But the documents only trickled in. Worse yet, the documents that they produced during the dragged-on period were incomplete, even missing pages! (D:194§II) Would Mr. DeLano have lasted 39 years in banking if his performance in

producing his own documents had been a reflection of his competency to obtain the documents necessary for his employer, M&T Bank, to decide on its clients' financial applications?

11. The DeLanos' production of documents was so objectionable that Trustee Reiber himself moved to dismiss the petition "for unreasonable delay which is prejudicial to creditors, or to convert to a Chapter 7 proceeding", that is, liquidation. (D:164) This was only for show, or for other purpose, given that the Trustee never asked the DeLanos, despite Dr. Cordero's requests, to produce documents as obviously pertinent to determine the good faith of any petition (11 U.S.C. §1325(a)(3)) as their bank account statements, which they have not produced to date. Neither Trustee Schmitt nor her superior, U.S. Trustee for Region 2, Deirdre A. Martini, required Trustee Reiber or the DeLanos to produce those documents. Yet, it was the trustees' duty to obtain that type of documents of each bankrupt to determine their compliance with the Bankruptcy Code and to meet the request of a party in interest. (11 U.S.C. §§1302(b)(1), 704(a)(4) and (7)) Those trustees had especial reasons to do so in the case of the DeLanos: Their petition contained a statement of financial affairs so intrinsically incongruous and implausible as to give rise to probable cause to suspect that it was a vehicle of concealment of assets and evasion of debts.

C. The DeLanos′ intrinsically incongruous and implausible statement of financial affairs

12. The DeLanos stated in Schedules A-J, the Statement of Financial Affairs, the Plan for Debt Repayment, and various Declarations accompanying the petition (all referred to herein as the petition):

    a. that their total assets were $263,456 while their total liabilities were only $185,462, yet they proposed to repay only 22¢ on the dollar (D:29, 23);

    b. that they had in cash and on account only $535 (D:31), although they declared that their

excess income after subtracting from their monthly income their monthly living expenses was $1,940 (D:45), and that in just the three fiscal years preceding their bankruptcy filing they had earned $291,470 (D:47; 2001-03 1040 IRS forms at D:186-188);

c. that they owed $98,092 on 18 credit cards (D:38), while they valued their household goods at only $2,810 (D:31), less than their $3,880 excess income in only two months and less than even 1% of the $291,470 that they had earned in the previous three years! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their worklives of more than 30 years;

d. that their only real property was their home, appraised two months before their filing at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and having received during that period at least $382,187 through a string of eight known mortgages! (D:341-354) *Mind-boggling!* For each of those mortgages they had to pay closing costs. For example, just for the last known mortgage they had to pay $3,444. (D:351, 354 lines 1400 and 1602) None of the trustees or any of the judges that had the duty to review the facts could have either competently or honestly believed that Career Banker DeLano would waste on closing costs for eight mortgages more money than the equity he ended up with in his home. They had to ask: "What did you do with all that money received from eight mortgages?"

13. None did despite their power to do so (11 U.S.C. §521(a)(4)) and Dr. Cordero's request that they do it. (D:77, 492) Far from it, Trustee Reiber was ready to recommend after that meeting of creditors the confirmation by Judge Ninfo of the DeLanos' debt repayment plan without either of them having checked the underlying bankruptcy petition against any supporting documents. Only Dr. Cordero's Objection (D:63) stopped their rubberstamping the plan; otherwise, they would have given the DeLanos a retirement gift at the expense of the creditors and gotten insurance for

themselves by avoiding that the denial of the petition as fraudulent and the indictment of the DeLanos could have led Mr. DeLano to plea bargain by trading up his stories about the officers' role in the fraud scheme against leniency for the couple.

D. To stop Dr. Cordero from proving a bankruptcy fraud scheme, the DeLanos used the artifice of a motion to disallow his claim as creditor and Judge Ninfo staged a sham evidentiary hearing, for which both denied him *every single document* that he requested and at which the Judge disregarded Mr. DeLano's testimony and disallowed Dr. Cordero's claim for failure to introduce documents

14. Dr. Cordero continued analyzing the petition intrinsically and extrinsically for its consistency with the few documents produced. (D:63, 165-188) In a written statement submitted to Judge Ninfo (D:193), he showed that the DeLanos had concealed assets, a violation of 18 U.S.C. §152(1), and thereby committed bankruptcy fraud. That crime is punishable by up to 20 years in prison and a fine of up to $500,000 under 18 U.S.C. §§152-157, 1519, and 3571 (D:46).

15. Only thereafter, in July 2004, after the DeLanos had treated Dr. Cordero as creditor for six months, did they come up with the idea of a motion to disallow his claim. (D:218) They did not cite any authority at all for challenging the presumption of validity of a creditor's claim. (D:256§VII) Moreover, their challenge had become barred by waiver and laches. (D:255§VI) Indeed, they themselves had listed in Schedule F (D:40) Dr. Cordero's claim against them in *Pfuntner* precisely because Mr. DeLano had been aware for more than a year and a half that in November 2002, he had been brought into *Pfuntner* as a third party defendant by Dr. Cordero (Add:785). In addition, months before his motion, in May 2004, he had been reminded thereof by Dr. Cordero filing his proof of claim (D:142) with relevant excerpts of his third party complaint in *Pfuntner* (D:250§I). What is more, in April 2004 the DeLanos had raised the objection,

already untimely after treating Dr. Cordero as their creditor for months, that he "is not a proper creditor in this matter". (D:118) Less than 10 days later, Dr. Cordero countered their objection. (D:128) Then they dropped the issue…for months. Their conduct shows that their motion to disallow was a desperate attempt to get rid of Dr. Cordero and his overt charge of their commission of bankruptcy fraud as part of the bankruptcy fraud scheme. (D:253§V)

16. Judge Ninfo came through to assist Co-schemer DeLano with his disallowance motion artifice. Sua sponte, he called in his order of August 30, 2004, for an evidentiary hearing to determine the motion. (D:272) He required that thereat Dr. Cordero introduce evidence to establish his claim against Mr. DeLano in *Pfuntner*, that is, in isolation from all the other parties, their claims and defenses, and issues. Dr. Cordero realized that he was being set up to try piecemeal in *DeLano* one claim severed from *Pfuntner*. So he moved in CA2 to quash the Judge's order. (D:441) CA2 merely "Denied" with no explanation the motion to disallow. (D:312) Thereby it covered up for his use of a process-abusive motion and encouraged him to engage in even more abuse.

17. Judge Ninfo got the message and resorted to even more egregious abuse, knowing that he would soon be rewarded with his reappointment to a second 14-year term bankruptcy judgeship, as he was in 2006, and that for Dr. Cordero to complain about him to CA2 would prove useless, as it already had before (D:425; SApp:1655, 1657; CA:1721, 1859 fn.5). So he required that discovery for the evidentiary hearing be completed by December 15, 2004, when he would set its date. (D:278¶3) On the strength of that order, Dr. Cordero requested documents from the DeLanos, including those to which he was entitled not only as a creditor, but also as a mere party in interest and as a party to *Pfuntner*. (D:287) But the DeLanos and Mr. Werner, the attorney who had brought 525 cases before Judge Ninfo, denied him *every single document*, self-servingly characterizing all as irrelevant. (D:313, 314) Dr. Cordero moved Judge Ninfo to order the DeLanos to comply with the discovery provisions of his order and respect his right to

discovery under FRBkrP 7026-7037 and FRCivP 26-37. (D:320§II) Disregarding his own order and showing contempt for the rules, Judge Ninfo aided and abetted the DeLanos' blatant violation of the right to discovery (D:325) and denied him *every single document!* (D:327) In December, he scheduled the evidentiary hearing for March 1, 2005. (D:332)

18. Having no documents to introduce, Dr. Cordero examined Mr. DeLano at the evidentiary hearing. Judge Ninfo acted as Mr. DeLano's Chief Advocate, as if he still were a partner in the law firm of his other attorney, Mr. Beyma, who was there and had entered his appearance. (Tr:2) The Judge objected on behalf of Mr. DeLano to Dr. Cordero's questions, warned him about how to answer them, and engaged Dr. Cordero in an adversarial discussion. (Pst:1266§E)
19. Although Judge Ninfo reduced Atts. Beyma and Werner to deferential second chairs, they were not inactive at all. Far from it. So confident did they feel in the presence of Mr. Beyma's old buddy John and Mr. Werner's frequent trier of 525 cases that they signaled answers to Mr. DeLano while he was on the stand being examined under oath by Dr. Cordero. When the latter protested in each of several occasions, Judge Ninfo ludicrously pretended that he had not seen them do so even though the attorneys were only a few feet in front of him and near Dr. Cordero's table in the well. (Beyma Tr.28/13-29/4, 75/8-76/3; Werner: 141/20-143/16; Pst:1289§f). No doubt, their experience with the Judge had assured them that they could suborn perjury right in front of his eyes with no adverse consequences for themselves or Career Banker-Insider DeLano.
20. Indeed, Mr. Werner felt so confident that the Judge would grant his motion to disallow Dr. Cordero's claim against Mr. DeLano that neither of them had read the complaint containing it (Add:785) or the proof of claim (D:142) or even brought a copy of either to the hearing. So in the middle of it, Mr. Werner asked Dr. Cordero to lend them his copy! (Tr.49/13-50/25; Pst:1288§e)
21. What prompted Atts. Werner and Beyma's effort to suborn perjury was that the testimony that Mr. DeLano was giving confirmed Dr. Cordero's claim against him in *Pfuntner*. (Pst:1285¶70)

So Judge Ninfo explicitly disregarded Mr. DeLano's testimony against self-interest as "confused", although it concerned his own handling of the bankruptcy at stake in *Pfuntner*, and found that Dr. Cordero had not introduced any documents to prove his claim, the very same ones that they had taken care to deny him during discovery. Then he entered the predetermined disallowance of Dr. Cordero's claim and deprived him of standing to participate in *DeLano* anymore. (Pst:1281.d) Judge Ninfo can be "heard" as the partisan, leading voice of the schemers in the transcript. (Pst:1255§E). Dr. Cordero had in fact been set up.

22. Does the use of a disallowance motion as an artifice to conceal incriminating documents and of a sham evidentiary hearing to eliminate a troublesome party that could blow the cover of a bankruptcy fraud scheme seem to you to have anything to do with due process, the rule of law, fairness, or equity? Or are they means of coordinated wrongdoing used by bankruptcy system insiders to escape detection? Will you too condone their fraud scheme without qualms because it involves peers and friends or condemn it with outrage because it offends justice and the conscience?

E. District Judge Larimer in coordination with court clerks tried to keep Dr. Cordero from obtaining incriminating transcripts and denied him *every single document* that he requested

23. On appeal from the disallowance of the claim against the DeLanos, District Judge David G. Larimer, WDNY, covered up for Judge Ninfo, his peer downstairs, by denying *every single documen*t that Dr. Cordero requested (Add:951, 1021; Pst:1307), including the transcripts of the initial and the adjourned meetings of creditors (D:333; Pst:1262¶¶13-21). He even maneuvered together with Bankruptcy clerks, trustees, and Court Reporter Mary Dianetti to prevent the incriminating transcript of the evidentiary hearing from being incorporated into the record on appeal by being sent the record from the Bankruptcy clerk before it was complete, in violation of

FRBkrP 8006 and 8007 (Add:679), and repeatedly scheduling Dr. Cordero's brief before the Reporter had even had time to respond to his letter requesting the transcript (Add: 692, 695, 831, 836, 839). It cost Dr. Cordero seven month's worth of effort and money (Add:870, 911, 991, 993, 1019; Pst:1264 ¶22-26) to thwart their maneuver and have that transcript produced so that he could use it to write and support his appellate briefs to the District Court and eventually to CA2 and this Court. (Add:1027, 1031; CA1735§1)

24. Despite the transcript, Judge Larimer affirmed the disallowance in a conclusory order (SApp:1501) that did not make even one reference to it or to Dr. Cordero's brief. What is more, he did not use once the term 'fraud' even though it and 'a bankruptcy fraud scheme' were the express key notions of the four questions presented on appeal (Pst:1257§C; CA:1749§2) and permeated the brief. Actually, Judge Larimer did not address even one of those questions. On the contrary, he committed the gross mistake of stating that the "'preserved, appellate issues" had been "set forth" by the DeLanos' attorneys'. (SApp:1502 2nd para.) However, those attorneys never filed a cross appeal and thereby could not present any issues on appeal at all. (CA:1746§1) The issues that Judge Larimer went on to name were those "set forth" by those attorneys in their response to Dr. Cordero's brief. (Pst:1365) Yet, he did not engage in any legal analysis of even those issues. (CA:1756§4) In fact, to write his order Judge Larimer need not have read Dr. Cordero's brief at all; he only needed to skim over the DeLanos'. (Pst:1361, 1398§§II-III, 1409§V)

25. Judge Larimer showed blatant partiality. (CA:1752§3) He refused to take notice of the controversy that was put to him by Appellant Dr. Cordero, thus denying him opportunity to be heard while confirming Judge Ninfo's taking of his property right for the benefit of the schemers. Consequently, Judge Larimer denied Dr. Cordero due process of law and did so intentionally as part of coordinated wrongdoing aimed at covering up and running a bankruptcy fraud scheme.

F. CA2 denied *every single document* that Dr. Cordero requested as an exercise of his right to discovery and that CA2 itself needed to discharge its duty both to know the facts so as to determine which properly stated rule of law to apply and to exercise its supervisory power to safeguard the integrity of judicial process in the circuit from its corruption by judges participating in a bankruptcy fraud scheme

26. CA2 docketed the appeal in *DeLano* (06-4780-bk) on October 25, 2006 (Sapp:1571), and the following day entered Dr. Cordero's Statement of Issues (SApp:1508).

27. On 12 occasions, (Table at US:2484 infra) during the appeal, Dr. Cordero requested that CA2 order the production of the documents listed in his proposed order of production. But CA2 denied him *every single document*, doing so summarily, with no explanation, only an expedient circling around the option "Denied", as opposed to "Granted", on the Motion Information Sheet.

28. When even that proved to be too demanding, CA2 resorted to another expedient way to get rid of motions. On July 18, 2007, Dr. Cordero raised a "Motion suggesting en banc consideration of the 3 denials of the motions for document production; and if denied, for the Court to disqualify itself due to conflict of interests and refer the case to the Attorney General under 18 U.S.C. §3057(a)" (CA:1945) In its disposition on August 9, CA2 "ordered that this motion and all further motions filed by Dr. Cordero are referred to the panel assigned to hear this appeal". (CA:2079) By referring en bulk all of Dr. Cordero's future motions to the panel, CA2 signaled that it would not even bother to take notice of the nature of his motions, which could very well deal with a matter other than a request for documents. In effect, CA2 denied Dr. Cordero any further access to it and did so discriminatorily, for the order expressly concerned only Dr. Cordero's motions. So when on August 29, Dr. Cordero moved "for oral argument on the motion of July 18 suggesting en banc consideration of the three denials of the motions for document production to be held before argument is heard on the case in chief" (CA:2081), CA2 simply "ordered that the motion is referred to the panel that will hear the merits" (CA:2087).

29. The proof of CA2's discriminatory attitude came when Trustee Reiber filed a motion to dismiss

the appeal on October 30. (CA:2101). The Trustee knew that CA2 could not order production of the documents requested by Dr. Cordero and thereby risk exposing the district and bankruptcy judges' involvement in the bankruptcy fraud scheme and as a result, being incriminated therein for having supported or tolerated it. Hence, the Trustee had not bothered for over a year even to file an appearance in the appeal. In fact, he had filed none in the District Court either. Yet, in Dr. Cordero's briefs in both courts he had been implicated in the scheme and his removal had been requested. (Pst:1306¶123.d; CA:1773¶f) Trustee Reiber did not bother to file any paper in opposition even though if such relief had been granted, he would have lost his livelihood.

30. Even before that, while still in Bankruptcy Court, Dr. Cordero had requested Judge Ninfo on July 9, 2004, to remove Trustee Reiber from the *DeLano* case. (D:201¶32) But the Trustee did not bother to respond. The Trustee went about his business and in July 2005 he submitted to Judge Ninfo an undated "Trustee's Findings of Fact and Summary of 341 Hearing" –never mind that there is no such proceeding as a '341 Hearing'-, and an untitled form in Pidgin English that began "I/We filed Chapter 13 for one or more of the following reasons", which was unsigned and undated too! (D:937-939) Although Dr. Cordero analyzed in detail such shockingly unprofessional and perfunctory scraps of papers (Add:953§I) -on which Judge Ninfo nevertheless relied to confirm the DeLanos' plan of debt repayment (Add:941)- and requested District Judge Larimer to remove Trustee Reiber (Add:974¶4), he did not bother to file even a yellow stick-it in opposition. The Trustee's conduct shows that he knew that the judges would not let any harm come to him. Would the Trustee have proceeded with the same arrogant indifference if the case had been before a judge that he did not know and a jury free to find him an accomplice in the fraud scheme?

31. CA2 was not that judge. The Trustee knew that it would suffice to cobble together a motion to dismiss and CA2 would take it from there. Dr. Cordero provided a detailed analysis of the motion's arrogant perfunctoriness (CA:2111, 2135; cf. US:2460§B infra). It was so accurate and

fair that even CA2 would subsequently admit that "Appellant's argument that the Trustee's motion is deficient may be correct". (CA:2180) But instead of rejecting the motion as too deficient for its requested relief even to be considered, as Dr. Cordero urged the court to do, or even referring it to the panel just as CA2 had ordered regarding "all further motions filed by Dr. Cordero", the court placed the Trustee's motion on the substantive motion calendar for January 3, 2008 (CA:2143).

32. Dr. Cordero protested such placement as "arbitrary and discriminatory treatment that constitutes a denial of equal protection under law and a subterfuge for the Court to rid itself of this appeal and thus evade the conflict of interests with which it confronts the Court". (CA:2152) To no avail.

33. As for the Trustee, he did not bother to file any statement in defense of such placement, much less to appear to defend his motion before the panel. He knew that it was a done deal. As did the DeLanos, who throughout all these legal events remained undisturbed sipping piña colada in their golden retirement. The Trustee had already authorized them to pay $27,953 to their attorneys solely for the purpose of avoiding the production of the incriminating documents requested by Dr. Cordero (CA:1956¶20), which they knew that the DeLanos could pay since in their bankruptcy petition that the Trustee and the attorneys had approved, the DeLanos had declared the they had only $535 in hand and on account (D:31)…plus what they had not declared. Now it was somebody else's turn. No doubt, in a bankruptcy fraud scheme everybody has to do his share of the dirty work.

34. The panel too knew that. So at the hearing, they allowed Dr. Cordero merely 5 minutes. A pro-forma hearing! But those five minutes were enough for the judges to reveal through their questions that they ignored even the basic facts of the case. They did not ask questions whether the dismissal motion being heard should be granted, as Dr. Cordero reasonably expected them to do. (CA:2178) Instead, they asked questions to educate themselves on whatever evidence Dr. Cordero had to support his charge of fraud. After all, why would the panel have invested time in

doing their homework when they knew that they could just wing it through those five minutes and that the Trustee's motion and the hearing were but a pretext to dismiss the appeal that could incriminate CA2 in a bankruptcy fraud scheme? The hearing was a farce.

35. No reference was made to it when CA2 dismissed the appeal on February 7, 2008, (CA:2180), just as none was made to any brief, any motion, or any document in the record. Nor did it even use the term fraud, let alone bankruptcy fraud, much less bankruptcy fraud scheme. It did not even mention any of the four issues presented. (CA:1719§V) It simply grabbed a summary order form and in a three-liner slapped together a doctrine of equitable mootness and two citations and without discussing any dismissed the case. (CA:2180)

36. Dr. Cordero timely filed a "Motion for panel rehearing and hearing en banc to determine the question of exceptional importance: To what extent is the Court's integrity compromised by supporting or tolerating a bankruptcy fraud scheme?" (CA:2191) CA2 did not address it if only to show that it cared about its appearance of integrity. Rather, it used the other form, the one for denying rehearing petitions, and attached to it the dismissal summary order reissued as the mandate on May 9, 2008. (CA:2209)

37. Dr. Cordero file a motion of May 23 to recall and stay the mandate (CA:2211) and another of May 24 to remove and stay *Pfuntner* (CA:2222). On June 12, CA2 denied both motions, with no statement of reasons whatsoever, of course. (CA:2232, 2233) To these two motions, the Trustee filed another perfunctory and untimely "Response in opposition to motion", dated June 11, 2008.(CA:2234; cf. FRAP 27(a)(3)(A) and 26(a)(1-3))

X.

XI. WDNY LOCAL RULE 5.1(H) EXCEEDS THE LOCAL RULE-MAKING POWER AND WAS ABUSED TO PROTECT THE FRAUD SCHEMERS FROM RICO COUNTS

47. WDNY Local Rule 5.1(h)[1] requires exceedingly detailed facts to file a RICO claim, thus violating notice pleading under FRCivP, impeding in practice its filing, and protecting bankruptcy fraud schemers, the secrecy of which is protected by Local Rule 83.5 banning cameras and recording devices from the Court and its 'environs'.

48. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that "each averment of a pleading shall be simple, concise, and direct". For its part, FRCivP 83(a)(1) provides that "A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and 28 U.S.C. §2075"". As stated in the Advisory Committee Notes on the 1985 Amendment to Rule 83, local rules shall "not undermine the basic objective of the Federal Rules", which FRCivP 84 sets forth as "the simplicity and brevity of statement which the rules contemplate". Thereby the national Rules aim at preventing that a local rule with "the sheer volume of directives may impose an unreasonable barrier". (Advisory Committee Notes on

[1] http://Judicial-Discipline-Reform.org/Follow_money/Rule_impeding_RICO.pdf

the 1995 Amendments to Rule 83) In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (s 1st Cir. 2000) stated that "Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose".

49. Yet such barrier is precisely what the District Court, WDNY, erects with its Local Rule 5.1(h) (Add:633), which requires a party to provide over 40 discrete pieces of factual information to plead a claim under RICO, 18 U.S.C. §1961. This contravenes the statement of the Supreme Court that to provide notice, a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)). On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

50. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is "relaxed in situations where requisite factual information is peculiarly within defendant's knowledge or control", *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). This means that even in fraud cases the purpose of the complaint is to put defendants on notice of the claim, not to allow the court to prevent the filing of the case or enable it to dismiss the claim on the pleadings.

51. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances", by the absolute and strict standard of "facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party's RICO claim". To require "facts...in detail and with specificity" is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of "allegations and other factual contentions...likely to have evidentiary support after a reasonable opportunity for further investigation or discovery".

Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that "We recognize that the degree of particularity should be determined in light of such circumstances as whether the plaintiff has had an opportunity to take discovery of those who may possess knowledge of the pertinent facts". By contrast, Local Rule 5.1(h) provides no opportunity for discovery, but instead requires such 'numbered and lettered' "detail and specificity" in the pleadings as to make it easier to spot any "failure" to comply and "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a directive".

52. It is suspicious that Local Rule 5.1(h) singles out RICO and blatantly hinders the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting at the outset an evidentiary barrier that so starkly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose".

53. Given the bankruptcy fraud scheme supported by people doing business in the same cozily small federal building housing the bankruptcy and district courts and the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI, why would a Local Rule be adopted that forestalls any RICO claim? It smacks of a pre-emptive strike carried out against any potential RICO claim through the abusive exercise of the local rulemaking power. In so doing, that Rule contravenes its enabling provision and is void. Moreover, it causes injury in fact to Dr. Cordero inasmuch as it erects an insurmountable barrier at the outset to his bringing a RICO count against the schemers, thus depriving him of the protection and vindication of his rights under that federal law.

54. The pre-emptiveness of Local Rule 5.1(h) is strengthened by its companion Rule 83.5, which bans all cameras and recording devices from the court and its "environs". (SApp:1695) This defeats

the public policy expressed by the Judicial Conference "to promote public access to information", which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF (28 U.S.C. §1914). Defying logic, such devices may be allowed "for non-judicial hearings or gatherings", that is, for inconsequential activities in terms of the business of the Court as well as for the "informal procedures" of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits "a transcript or recording to be made" as a matter of course. However, a litigant is forbidden to bring a recording device to make a transcript of a 'formal proceeding', where matters that could support a RICO claim would be formally discussed.

55. In the context of the totality of circumstances surrounding the bankruptcy fraud scheme, Local Rule 83.5 reveals its insidious purpose of as a means to ensure secrecy and concealment of evidence of the scheme and the identify the schemers. Indeed, it is tailor-made to prevent the recording of prohibited ex-parte communications (D:433§D, 434¶¶22-24); conduct, such as lawyers signaling answers to their client on the stand before a complicit judge (Pst:1289§f); and items, such as documents, including the exposure of the inaccuracy, incompleteness, and tampered-with condition of a transcript by comparing it with the recording of an evidentiary hearing (Add:911, 991, 993, 1019).

…

Dated: October 3, 2008

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CERTIFICATE OF SERVICE

Dr. Richard Cordero v. David and Mary Ann DeLano, 06-4780-bk, CA2
Pfuntner v. Trustee Kenneth Gordon et al., 02-2230, WBNY

I, Dr. Richard Cordero, Esq., certify that I mailed or e-mailed to the parties listed below a copy of my petition to U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning the above captioned cases,

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4. Table

Document requests by Dr. Cordero and denials by CA2				
	Requests		**Denials**	
	page #	**date**	**page #**	**date**
	CA:1606	December 19, 06	SApp:1623	January 24, 07
	CA:1618	January 18, 07	SApp:1634	February 1, 07
	CA:1637	February15, 07	SApp:1678	March 5, 07
	CA:1777	March 17, 07	CA:2180	February 7, 08
	CA:1932	June 14, 07	CA:2180	February 7, 08
	CA:1975¶59a	July 18, 07	CA:2182	February 7, 08
	CA:2081¶c.1	August 29, 07	CA:2181	February 7, 08
	CA:2126¶e	November 8, 07	CA:2180	February 7, 08
	CA:2140¶e	November 27, 07	CA:2180	February 7, 08
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	CA:2179	January 3, 08	CA:2180	February 7, 08
	CA:2205¶25c	March 14, 08	CA:2209	May 9, 08

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