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Trustees with thousands of open cases and two cases that open a window into the operation of a bankruptcy fraud scheme

I. A scheme that works by taking money from many credit card issuers but not so much from anyone as to make it cost-effective to spend time, effort, and money pursuing a pennies-on-the dollar recovery in risky bankruptcy proceedings

1. The critical fact that should pique one's curiosity and intrigue one into examining this topic is that it deals with bankruptcy trustees who have thousands of cases each, one of them 3,909 *open cases*. This fact can be corroborated independently through PACER (Public Access to Court Electronic Records), as shown below. It inescapably begs the question: How can one lawyer in a one or two lawyer law firm, as that in *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY, can possibly have the time to pay anything remotely close to adequate attention to so many cases? Keep in mind that the trustee must examine each petition to determine whether it meets the requirements of the Bankruptcy Code so that he may recommend to the court that its plan of debt repayment be confirmed. That requires his review of not only all the schedules that make up a petition, but also financial documents that provide the basis for the figures and statements that the debtor used to fill out the schedules.

2. Indeed, the trustee, as the representative of the creditors, must ascertain, for example, whether the debtor has truthfully stated all his debts, has neither hidden any of his assets nor underestimated the value of those that he has declared, and has not overestimated his current expenditures. But that is just the beginning, for then the trustee must monitor the debtor's performance of his debt repayment plan as the debtor makes monthly payments over the three to five years of the plan's life. How many seconds a month can the trustee dedicate to each of *3,909 open cases!*? Meanwhile he continues to take in new ones and must conduct in person the meeting of creditors, which he may have to adjourn one or more times. He must also appear in court not only to confirm debtors' plans, but also to state his views at hearings of motions raised by any of the parties. That is why he cannot waste time reviewing petitions. Here is where knowledge of other people's normal behavior in bankruptcy cases or, better still, what others have agreed to do, becomes such a key element for the trustee.

3. Many creditors, including institutional ones, cannot afford to spend the considerable amount of time, effort, and thus money necessary to recover on their bankruptcy claims unless the latter exceed a certain threshold of cost-effective participation. It comes down to not throwing good money after bad. As a result, people who know this cost barrier exploit their knowledge: They incur debts below the threshold, but to as many creditors as they can. Hence, the ideal target creditor is a credit card issuer, whose debt is unsecured and whose balance transfer feature allows the debtor to regulate his debt's threshold levels. So the debtor can charge to a card up to

a certain limit of debt; keep making the minimum monthly payment to avoid a negative credit bureau report that would alert other issuers and could trigger their acceleration clauses; and move on to charging the next credit card. An industry insider, such as a bank loan official, would be in a position, not only to find out the threshold of participation of many credit card issuers, but also to use that knowledge for personal benefit as well as for the benefit of others, whether his clients or other parties. Knowledge is a valuable asset and if it joins the legal authority vested in officers in the right position, the basic elements of a scheme are in place.

4. As this knowledge is provided to more people and as more and more bankruptcy peti-tions are approved without any review of supporting documents, let alone any determination of their good faith, the number of debtors filing petitions just keeps growing. Overwhelmed by them, the creditors must increase their threshold of participation. This dynamic puts in motion a vicious circle in which a necessary threshold is exploited by petitions below it and the increasing number of such petitions requires setting a higher threshold, which is exploited in turn and so on.

5. At the same time, money keeps rolling in for the schemers. For one thing, even if the total debt to any one creditor is intentionally kept relatively low, the debts to all creditors add up to serious money, as shown below. To escape paying all that money, a debtor has an incentive to pay all fees, legal and otherwise, demanded by the schemers. Similarly, even if the schemers make a small amount of money on each petition, they accept so many cases, *thousands of them!*, that their total in-take also adds up to serious money. They can be so indiscriminate in accepting cases regardless of their merits precisely because they do not waste time reviewing any petition beyond what is strictly necessary to make sure that it is below the creditors' threshold of participation. Actually, in the logic of the scheme, the fewer the merits for relief under the Bankruptcy Code a petition has, the higher its value to the schemers, who can raise any acceptance fee proportionally higher. High too as well as widespread are the loss and pain that they cause to so many creditors: those who trusted them enough to lend them their money and those who believed them to be doing the right thing on their behalf rather than engaging in irresponsible and self-serving conduct that rendered them liable for claims of compensation. Neither debtors not schemers should be allowed to break bankruptcy laws and get rich with it.

II. A Chapter 13 trustee with 3,909 *open* cases 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

6. PACER is the federal courts' electronic document retrieval service. The information that it provides sheds light on why trustees may be quite unwilling and unable to spend any time investigating the bankruptcy petitions submitted to them by debtors to establish the reliability of their figures and statements. When queried with the name George Reiber, Trustee, -the standing Chapter 13 trustee in the Western District of New York- it returns this message at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl: "This person is a party in 13250 cases." When queried again about open cases, PACER comes back at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 with 119 billable pages that end as in the table below:

7. Trustee Reiber has 3,909 *open* cases at present! This is not just a huge abstract figure. Right there are the real cases, in flesh and blood, as it were, for PACER personalizes each one of them with the debtors' names; and each has a throbbing heart: a hyperlink in the left cell that can call

that case to step up to the screen for examination. What is more, they are in good health since PACER indicates that, with the exception of fewer than 44, they are asset cases. This means that Trustee Reiber has taken care to "consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as **an asset case**" (emphasis added; §2-2.1. of the Trustee Manual). By the way, JCN after the case number in the left cell stands for John C. Ninfo, the judge before whom the case has been brought.

Table 1. Illustrative row of PACER's presentation of Trustee George Reiber's 3,909 *open* cases in the Bankruptcy Court

2-04-21295-JCN	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe

Total number of cases: 3909

Open cases only

PACER Service Center

8. Trustee Reiber is the trustee for *In re DeLano*, no. 04-20280, WBNY, (section IV, infra). For him "meaningful distribution" under the DeLanos' debt repayment plan is 22 cents on the dollar with no interest accruing during the repayment period. No doubt, avoiding 78 cents on the dollar as well as interest is even more meaningful to the DeLanos. By the same token, that means that the Trustee has taken care of his fee, which is paid as a percentage of what the debtor pays (28 U.S.C. §586(e)(1)(B)).
9. Given that a trustee's fee compensation is computed as a percentage of a base, it is in his interest to increase the base by having debtors pay more so that his percentage fee may in turn be a proportionally higher amount. However, increasing the base would require ascertaining the veracity of the figures in the schedules of the debtors as well as investigating any indicia that they have squirreled away assets for a rainbow post-discharge life, such as a golden pot retirement. Such investigation, however, takes time, effort, and money. Worse yet from the perspective of the trustee's economic interest, an investigation can result in a debtor's debt repayment plan not being confirmed and, thus, in no stream of percentage fees flowing to the trustee. (11 U.S.C. §§1326(a)(2) and (b)(2)). "Mmm…not good!"
10. The obvious alternative is "never investigate anything, not even patently suspicious cases. Just take in as many cases as you can and make up in the total of small easy fees from a huge number of cases what you could have made by taking your percentage fee of the assets that you sweated to recover." Of necessity, such a scheme redounds to the creditors' detriment since fewer assets are brought into the estate and distributed to them. When the trustee takes it easy, the creditors take a heavy loss, whether by receiving less on the dollar or by spending a lot of money, effort, and time investigating the debtor only to get what was owed them to begin with.
11. Have U.S. Trustees contributed to the development of such an income maximizing mentality and implementing scheme by failing to demand that trustees perform their duty "to investigate the

financial affairs of the debtor" (11 U.S.C. §§1302(b)(1) and §704(4)) and to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest" (§704(7))?

12. This income maximizing scheme has a natural and perverse consequence: As it becomes known that trustees have no time but rather an economic disincentive to investigate debtors' financial affairs, ever more debtors with ever less deserving cases for relief under the Bank-ruptcy Code go ahead and file their petitions. What is worse, as people with no debt problems yet catch on to how easy it is to get a petition rubberstamped, they have every incentive to live it up by binging on their credit as if there were no repayment day, for they know there is none, just a bankruptcy petition waiting to be filed with the required fee…or perhaps 'fees'?

III. Another trustee with *3,092 cases* was upon a perform-ance and fitness to serve complaint referred by the court to the Assistant U.S. Trustee for a "thorough inquiry", which was limited to talking to him and a party and to uncritically writing their comments in an opinion that the Trustee for Region 2 would not investigate

13. At the beginning of 2002, Dr. Richard Cordero, a New York City resident, was looking for his property in storage with Premier Van Lines, Inc., a moving and storage company located in Rochester, NY. He was given the round-around by its owner, David Palmer, and others who were doing business with Mr. Palmer. After the latter disappeared from court proceedings and stopped answering his phone, the others eventually disclosed to Dr. Cordero that Mr. Palmer had filed a voluntary bankruptcy petition under Chapter 11 on behalf of Premier and that the company was already in Chapter 7 liquidation. They referred Dr. Cordero to the Chapter 7 trustee in the case, Kenneth Gordon, Esq., for information on how to locate and retrieve his property. However, Trustee Gordon refused to provide such information, instead made false and defamatory statements about Dr. Cordero, and merely referred him back to the same people that had referred him to Trustee Gordon.

14. Dr. Cordero requested a review of Trustee Gordon's performance and fitness to serve as trustee in a complaint filed with Judge Ninfo, before whom Mr. Palmer's petition was pending. Judge Ninfo did not investigate whether the Trustee had submitted to him false statement, as Dr. Cordero had pointed out, but simply referred the matter to Assistant U.S. Trustee Kathleen Dunivin Schmitt for a "thorough inquiry". However, what she actually conducted was only a quick 'contact': a substandard communication exercise limited in its scope to talking to the trustee and a lawyer for a party and in its depth to uncritically accepting at face value what she was told. Her written supervisory opinion of October 22, 2002, was infirm with mistakes of fact and inadequate coverage of the issues raised.

15. Dr. Cordero appealed Trustee Schmitt's opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. He sent her a detailed critical analysis, dated November 25, 2002, of that opinion against the background of facts supported by documentary evidence. It must be among the files now in the hands of her successor, Region 2 Trustee Deirdre A. Martini. It is also available as entry no. 19 in docket no. 02-2230, *Pfuntner v. Trustee Gordon et al*. (www.nywb.uscourts.gov). But Trustee Schwartz would not investigate the matter.

16. Yet, there was more than enough justification to investigate Trustee Gordon, for he too has *thousands* of cases. The statistics on PACER as of November 3, 2003, showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases!

Table 2. Number of Cases of Trustee Kenneth Gordon in the Bankruptcy Court
compared with the number of cases of bankruptcy attorneys appearing there
https://ecf.nywb.uscourts.gov/cgi-bin/login.pl

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

17. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee Reiber (section 0, supra), could not possibly have had the time or the inclination to spend more than the strictly indispensable time on any single case, let alone spend time on a person from whom he could earn no fee. Indeed, in his Memorandum of Law of February 5, 2003, in Opposition to Cordero's Motion to Extend Time to Appeal, Trustee Gordon unwittingly provided the motive for having handled the liquidation of Premier Van Lines negligently and recklessly: "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00" (docket no. 02-2230, entry 55, pgs. 5-6). Trustee Gordon had no financial incentive to do his job…nor did he have a sense of duty! But why did he ever think that telling the court, that is, Judge Ninfo, how little he would earn from liquidating Premier would in the court's eyes excuse his misconduct?

18. The reason is that Judge Ninfo does not apply the laws and rules of Congress, which together with the facts of the case he has consistently disregarded to the detriment of Dr. Cordero (1-5 and 11-12, supra). Nor does he cite the case law of the courts hierarchically above his. Rather, he applies the laws of close personal relationships, those developed by frequency of contact between interdependent people with different degrees of power. Therein the person with greater power is interested in his power not being challenged and those with less power are interested in being in good terms with him so as to receive benefits and/or avoid retaliation. Frequency of contact is only available to the local parties, such as Trustee Gordon, as oppose to Dr. Cordero, who lives in New York City and is appearing as a party for the first time ever and, as such, in all likelihood the last time too.

19. The importance for the locals, such as Trustee Gordon, to mind the law of relationships over the laws and rules of Congress or the facts of their cases becomes obvious upon realizing that in the Bankruptcy Court for the Western District of New York there are only three judges and the Chief Judge is none other than Judge Ninfo. Thus, the locals have a powerful incentive not to 'rise in

objections', as it were, thereby antagonizing the key judge and the one before whom they appear all the time, even several times on a single day. Indeed, for the single morning of Wednesday, October 15, 2003, Judge Ninfo's calendar included the following entries:

Table 3. Entries on Judge Ninfo's calendar for the morning of Wednesday, October 15, 2003

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

20. When locals must pay such respect to the judge, there develops among them a vassal-lord relationship: The lord distributes among his vassals favorable and unfavorable rulings and decisions to maintain a certain balance among them, who pay homage by accepting what they are given without raising objections, let alone launching appeals. In turn, the lord protects them when non-locals come in asserting against the vassals rights under the laws of Congress. So have the lord and his vassals carved out of the land of Congress' law the Fiefdom of Rochester. Therein the law of close personal relationships rules.

21. The reality of this social dynamic is so indisputable, the reach of such relationships among local parties so pervasive, and their effect upon non-locals so pernicious, that a very long time ago Congress devised a means to combat them: jurisdiction based on diversity of citizenship. Its potent rationale was and still is that state courts tend to be partial toward state litigants and against out-of-state ones, thus skewing the process and denying justice to all its participants as well as impairing the public's trust in the system of justice. In the matter at hand, that dynamic has materialized in a federal court that favors the locals at the expense of the sole non-local who dared assert his rights against them under a foreign law, that is, the laws of Congress.

22. Hence, when Trustee Gordon 'made the Court aware that "the sum total of compensation to be paid to the Trustee in this case is $60.00", he was calling upon the Lord to protect him. The Lord came through to protect his vassal. Although Trustee Gordon himself in that very same February 5 Memorandum of Law of his (para. 17, supra) stated on page 2 that "On January 29, 2003, Cordero filed the instant motion to extend time for the filing of his Notice of Appeal", thereby admitting its timeliness, Judge Ninfo found that "the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03" (docket no. 02-2230, entry 57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail.

23. Are the local assistant U.S. trustee with her supervisory power and Trustee Gordon with his 3,092 cases and the money in a vassal-lord relationship to each other? Does the Region 2 Trustee know that a non-local has no chance whatsoever of turning the trustee into the subject of a "thorough inquiry" by the local U.S. trustee? Consequently, should she have investigated Trustee Gordon? What homage do local and regional U.S. trustees receive and what fief do they grant?

IV. A case that illustrates how a bankruptcy petition riddled with red flags as to its good faith is accepted without review by the trustee and readied for confirmation by the bankruptcy court

24. On January 27, 2004, a bankruptcy petition under Chapter 13 of the Bankruptcy Code (Title 11, U.S.C.) was filed in the Bankruptcy Court for the Western District of New York in Rochester by David and Mary Ann DeLano (*In re DeLano*, no. 04-20280; 28, infra). The figures in its schedules and the surrounding circumstances should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, Chapter 13 Trustee George Reiber (section II, supra) and Attorney James Weidman (11-12, supra) were about to submit its repayment plan to the court for approval when Dr. Richard Cordero, a creditor, objected in a five page analysis of the figures in the schedules. Even so, the Trustee and his attorney vouched for the petition's good faith. Let's list the salient figures and circumstances:
25. The DeLanos incurred scores of thousands of dollars in credit card debt,
26. at the average interest rate of 16% or the delinquent interest rate of over 23%,
27. carried it for over 10 years by making only the minimum payments,
28. have ended up owing $98,092 to 18 credit card issuers listed in Schedule F,
29. owe also a mortgage of $77,084,
30. have near the end of their work life an equity in their house of only $21,415,
31. declared earnings in 2002 of $91,655 and in 2003 of $108,586,
32. yet claim that after a lifetime of work their tangible personal property is only $9,945,
33. claim as exempt $59,000 in a retirement account,
34. claim another $96,111.07 as a 401-k exemption,
35. make a $10,000 loan to their son and declare it uncollectible,
36. but offer to repay only 22 cents on the dollar without interest for just 3 years,
37. argue against having to provide a single 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', even though the DeLanos must still receive every month the **monthly** credit card statement from each of the issuers of the 18 credit cards and as recently as last January they must have consulted such statements to provide in Schedule F their account number with, and address of, each of those 18 issuers, and
38. pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is *a 39 year bank officer!*, or rather more precisely, a bank **loan** officer, whose daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay over the loan's life, and who is still employed that capacity by a major bank, namely, Manufacturers and Traders Trust Bank. He had to know better!
39. Did Mr. DeLano put his knowledge and experience as a loan officer to good use in living it up with his family and closing his accounts down with 18 credit card issuers by filing for bankruptcy? How could Mr. DeLano, despite his "experience in banking", from which he should have learned his obligation to keep financial documents for a certain number of years, pretend that he

does not have them to back up his petition? Those are self-evident questions that have a direct bearing on the petition's good faith. Did Trustee Reiber and Attorney Weidman ever ask them? How did they ascertain the timeline of debt accumulation and its nature if they did not check those credit card statements before readying the petition for submission to the court?

40. Until the DeLanos provide financial documents supporting their petition, including credit card statements, let's assume arguendo that when Mr. DeLano lost his job at a financial institution and took a lower paying job at another in 1989, the combine income of his and his wife, a Xerox technician, was $50,000. Last year, 15 years later, it was over $108,000. 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 a home equity of merely $21,415!, and this does not begin to take into account what they already owned before 1989, let alone all their credit card borrowing. Where did the money go? Or where is it now? Mr. DeLano is 62 and Mrs. DeLano is 59. What kind of retirement are they planning for?

41. Did the Trustee and his Attorney ever get the hint that the petitions' figures and circumstances made no sense or were they too busy with their other 3,908 cases and the in-take of new ones to ask any questions and request any supporting documents? How many other cases did they also accept under the motto "don't ask, don't check, cash in"? Do other debtors and officers with power to approve or disapprove petitions practice the enriching wisdom of that motto? How many creditors, including tax authorities, are being left holding bags of worthless IOUs?

42. For his part, Trustee Reiber is being allowed to hold on to the DeLanos' case to belatedly "investigate" it, which he is doing only because of Dr. Cordero's assertion of his right to be furnished with financial information about the DeLanos (para. 11, supra). Yet, not to replace the Trustee –as requested by Dr. Cordero- but rather to allow him to be the one to investigate the DeLanos now, disregards the Trustee's obvious conflict of interest: It is in Trustee Reiber's interest to conclude his "investigation" with the finding that the DeLanos filed their petition in good faith, lest he indict his own agent, Attorney Weidman, who approved it for submission to the court, thereby rendering himself liable as his principal and casting doubt on his own proper handling of his other thousands of cases.

43. Indeed, if an egregious case as the DeLano's passed muster with them, what about the others? Such doubts could have devastating consequences for all involved. To begin with, they could trigger an examination of Trustee Reiber's other cases, which could lead to his and his agent-attorney's suspension and removal. Were those penalizing measures adopted, they would inevitably lead to questioning the kind of supervision that the Trustee and his attorney have been receiving from the U.S. assistant and regional trustees. 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.

44. What were they all thinking!? Whatever it was, from their perspective it is evident that the best self-protection is not to set in motion an investigative process that can escape their control and end up crushing them. This proves the old-axiom that a person, just as an institution, cannot investigate himself zealously, objectively, and reassuringly. A third independent party, unfamiliar with the case and unrelated to its players, must be entrusted with and carry out the investigation and then tender its uncompromising report to all those with an interest in the case.