

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

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

**Motion for:** Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

**Statement of relief sought:** Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

**MOVING PARTY:** Dr. Richard Cordero  
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**OPPOSSING PARTY:** See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** May 31, 2004

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**ORDER**

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

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

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re PREMIER VAN et al.,

case no. 03-5023

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Motion For The Hon. John M. Walker, Jr., Chief Judge,  
Either To State His Arguments For Denying The Motions  
That He Disqualify Himself From Considering The Pending  
Petition For Panel Rehearing And Hearing En Banc And From  
Having Anything Else To Do With This Case  
Or Disqualify Himself  
And Failing That  
For This Court To Disqualify The Chief Judge Therefrom

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

1. Last March 22 and subsequently on April 18, Dr. Cordero filed two related motions, namely:
  1. Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc (21, infra)
  2. Motion for leave to Update the motion for the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case with Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules further Calling into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal (33, infra)

2. These motions were predicated on 28 U.S.C. §455(a) and laid forth reasons based on facts and law why the Hon. John M. Walker, Jr., Chief Judge of this Court, should recuse himself from the pending rehearing and hearing en banc and from considering any other matter therein.
3. Nevertheless, on May 4, an order captioned “Recusal of Chief Judge Walker from petition for rehearing and petition for rehearing en banc”, signed by Motions Staff Attorney Arthur M. Heller, and amended on May 10, stated merely that “It is hereby ordered that the motion be and it hereby is denied”. (55 and 56, *infra*).

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**I. Why the Chief Judge has a duty either to disqualify himself upon the reasonable questioning of his impartiality or to state his arguments why the questioning is not reasonable so that the self-disqualification obligation has not attached**

4. Section 455(a) provides that a federal judge “**shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” (emphasis added). Thus, the law lays on judges a statutory obligation to disqualify themselves if the stated condition is met.
5. That condition is that “his impartiality might **reasonably** be questioned.” (emphasis added). Hence, it suffices that reasons –not evidence, let alone proof-questioning the judge’s impartiality be presented for the self-disqualification obligation to attach.
6. This means that §455(a) relies on a rule of reason. The standard by which that rule is to be applied is implicit in the section’s language, for it requires only the possibility that the judge’s impartiality “**might** reasonably be questioned”. The verb “might” lies, of course, at the bottom of the modal continuum of might>may>could>can>must>ought to. This grammatical choice of the §455(a) legislators conveys their choice of the legal standard by which the sufficiency of the reasons is to be assessed: as it were, by a preponderance of persuasiveness.
7. Applying the rule of reason under this standard, the questioning is “evaluated on

an objective basis, so that what matters is not the reality of bias or prejudice but its appearance”, *Liteky v. United States*, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994); not how it appears from the subjective standpoint of the judge internally assessing his feelings toward a litigant or her legal position, but rather “from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances” enabling her to conduct an ‘objective inquiry’, *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1309 (2d Cir. 1988).

8. “Objective” here means that what matters in the impartiality inquiry is how the judge, as its object, appears to the reasonable observer, rather than how the judge, as a subject, assesses it personally. This follows from the Supreme Court’s statement that, “The goal of 28 USC §455(a)...is to avoid even the appearance of partiality...created even though no actual partiality exists because the judge (1) does not recall the facts, (2) actually has no interest in the case, or (3) is pure in heart and incorruptible.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847; 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988).
9. Hence, the rule of reason is applied to a §455(a) questioning to preserve the appearance of the judge’s impartiality, rather than to ascertain the reality of his lack of it. Since the section’s purpose calls for a low threshold for the rule’s application, it follows that the questioning is reasonable when it is more likely than not to persuade of the judge’s lack of impartiality. Hence, the section’s

language and purpose support the correctness of the standard of preponderance of persuasiveness to assess the sufficiency of the reasons for questioning the judge's impartiality. It is a standard easy to satisfy that cuts in favor of the reasonableness of the questioning.

10. Section 455(a) is so phrased as to allow the questioning to be done by the judge himself to begin with. This Court recognized that in *United States v. Wolfson*, 558 F.2d 59; 1977 U.S. App. LEXIS 13096 (2d Cir. 1977), note 11, where it stated that "Section 455 is a self-enforcing provision that is directed towards the judge, but may be raised by a party." The judge's foremost obligation is no longer a "duty to sit" on an assignment, *In Re: International Business Machines*, 618 F.2d 923, at 929 (2d Cir. 1980); rather, it is to preserve even the appearance of impartiality for the "purpose of promoting public confidence in the integrity of the judicial system"; *id.* Liljeberg.
11. If by a preponderance of persuasiveness the facts and circumstances available to the judge yield reasons that persuaded him of the possibility that his impartiality "**might** reasonably be questioned", the consequence is inescapable: he "shall disqualify himself", for the self-disqualification obligation has attached.
12. Once that obligation attaches, the judge must not wait until a litigant or another person actually questions his impartiality. If he has reasons that persuade him that it might be, then, even though his impartiality has not yet been questioned

by another person, the judge has the obligation to disqualify himself sua sponte.

13. It follows that the self-disqualification obligation attaches with even more strength when an observer is the person who questions the judge's impartiality, for the questioning has evidently proceeded from a possibility that might occur to a fact that has occurred. Consequently, once an observer has questioned the judge's impartiality, the only concern left is whether the questioning might persuade a reasonable person of the judge's likely lack of impartiality. If no inquiry is conducted or no determination is made, the easily meet standard of preponderance of persuasiveness weighs in favor of a reasonable questioning that attaches the self-disqualification obligation. The judge has no discretion but he "**shall** disqualify himself" and "his failure to disqualify himself [is] a plain violation of § 455(a)", *id. Liljeberg*.
14. The only way for the judge not to find himself under such obligation is for him to argue that the questioning of his impartiality is not reasonable and that, as a result, the self-disqualification obligation has not attached. That he can only do, of course, by stating his arguments therefor.
15. The obligation to state those arguments is all the more evident the more prominent the judge is whose impartiality has been questioned, lest he claim that the higher the judge's visibility or station in the judicial hierarchy, the higher above the law he is so that not even a statute can place on him the obligation to

disqualify himself despite his impartiality having in fact been questioned. A judge that shows such contempt for the law as to put below his feet an obligation that the law places on him, despite the obligation being unambiguous and critically important for the judicial systems that he serves and the public that must trust it and him, breaches his oath of office to “administer justice without respect to persons...and...faithfully and impartially **discharge** and perform **all duties** incumbent upon me as [judge] **under the** Constitution and **laws** of the United States”, 28 U.S.C. §453, (emphasis added). He thereby forfeits his right to apply the law just as he loses any right to require others to show respect for the law and him.

**II. The reasons presented in the motions to question the Chief Judge’s impartiality satisfied the standard of preponderance of persuasiveness and caused the self-disqualification obligation to attach**

16. Among the reasons on which the motions of March 22 and April 18 (21 and 33, *infra*) urged the Chief Judge to disqualify himself are these:

a) On August 11, 2003, a judicial misconduct complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, as well as District Judge David Larimer and their administrative staff in their courts in Rochester, was filed with Chief Judge Walker under 28 U.S.C. §351 et seq. and this Circuit’s Rules Governing such complaints. (57 and 62, *infra*) Those law and rules impose on the chief



judge of the circuit the obligation to handle the complaint “promptly” and “expeditiously”. (63, infra) The promptness obligation is all the more categorical and non-discretionary because both §351 and the Governing Rules state that the gravamen of the complaint is that the complained-about judge “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts”. (emphasis added) That statement unequivocally makes expeditious action an essential obligation of the conduct of judges as well as a key element of the application of the law. For its part, the promptness obligation is justified by the need both to protect the complainant from a judge’s misconduct and to safeguard the trust of the public at large in the integrity of the judicial system. But disregarding their welfare and general interest, to date, ten months later!, Chief Judge Walker has still not dealt with the complaint at all. Not even additional grounds for complaint arising in the meantime and expectedly brought to his attention have made him aware of the urgency of the situation enough to cause him to comply with his statutory and regulatory obligations. (67-69, infra) The Chief Judge’s failure to discharge them shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts. Thus, his conduct provides the basis for the well-grounded fear that in his participation in deciding the pending petition in this case for panel rehearing and hearing en banc the Chief Judge

can likewise disregard legality so as to apply extrajudicial considerations, including personal interests, and, given his preeminent position not only in this Court, but also in the Circuit, influence others to do the same.

b) Through such disregard of his obligations under §351 and the Rules, and by at least tolerating his own administrative staff to engage in a pattern of non-coincidental, intentional, and coordinated disregard of law and rules (33, infra), the Chief Judge engaged in the same conduct, namely, a pattern of non-coincidental, intentional, and coordinated disregard of law, rules, and facts that Judges Ninfo and Larimer together with their administrative staff engaged in. Thereby the Chief Judge condoned their conduct and called into question his impartiality to condemn the very disregard for legality in which he engaged. Such questioning is all the more reasonable in light of the fact that the Chief Judge is a member of the panel that dismissed the appeal from those judges' orders without even discussing how their pattern of disregard for legality and bias for the local parties and against Dr. Cordero, the only non-local, tainted their orders and rendered them null and void.

c) By disregarding the precise statutory and regulatory obligation to deal with the misconduct complaint "promptly" and "expeditiously", the Chief Judge intentionality subjected the complainant to the reasonable consequences of his acts, that is, to suffering at the hands of the complained-about judges and

administrative staff further loss of effort, time, and money, as well as additional emotional distress (cf. 69-70, *infra*) and deprivation of his constitutional right to due process before an unbiased judge. (Cf. *William Bracy v. Richard B. Gramley, Warden*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (noting that due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case). In order to avoid providing a basis for his own liability, the Chief Judge now has a personal interest in neither condemning their prejudicial conduct nor referring the case to the FBI. Such referral has been requested for the FBI to investigate, among other things, how bankruptcy fees in *thousands of open cases per trustee*, including cases obviously undeserving of relief under the Bankruptcy Code, may be driving the pattern of wrongdoing among judges and their administrative staff. (70 and 71, *infra*) Evidence obtained by the FBI could reveal the motive for bias and support the claim of its resulting harm. Consequently, Chief Judge Walker's self-interest in the disposition of every aspect of this case reasonably calls into question his objectivity and impartiality and causes his self-disqualification obligation to attach.

17. Applying the standard of preponderance of persuasiveness to the above-stated reasons upon which Chief Judge Walker's impartiality 'might be questioned',

those reasons appear persuasive enough to cause “an objective, disinterested observer fully informed of the[se] underlying facts [to] entertain significant doubt that justice would be done absent recusal”, *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992). Hence, the self-disqualification obligation has attached upon the Chief Judge.

18. These impartiality-questioning reasons and the obligation deriving from the “shall disqualify himself” command would spur a judge respectful of the law to disqualify himself or state his arguments why the obligation has not attached. But the Chief Judge slapped this reasonable questioning away with the hand of a staffer penning a mere “denied”. It cannot honestly be said that by merely doing that, the Chief Judge was paying respect in action to the principle that “Justice should not only be done, but should manifestly and undoubtedly be seen to be done”; *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923).

19. The only thing that such “denied” undoubtedly did and may have been intended to do was slap Dr. Cordero’s face. Indeed, he complained in his appeal precisely that District Judge Larimer, in his first two orders, made gross and numerous mistakes of fact and disregarded his obligation to provide a legal basis for the onerous requirements that he imposed on Dr. Cordero without making even a passing reference to the latter’s legal and factual arguments for the relief requested, whereby Judge Larimer showed that he had not even read Dr.

Cordero's motions and thus, had responded ex parte to Judge Ninfo's recommendations. Then in his subsequent two orders, Judge Larimer disregarded his obligation as a judge to be seen doing justice through the application and explanation of the law and instead gave two offhand and lazy strokes of the pen to write a mere "The motion is in all respects denied", for which he did not have to even see the motions...though at least he signed his own orders. (cf. paras. 9-11, Rehearing petition of March 10, 2004 [A:884])

20. The Chief Judge did not do even that, limiting himself contemptuously to a mere "denied" penned by a staffer to slap away the reasons for his disqualification presented in two motions that he did not even have to see. That the only error corrected by the amended denial order was precisely in the name of one of the judges is not reassuring as to who saw, read, and decided what. (55 and 56, infra) Such slap does no justice where arguments for not abiding by the "shall disqualify himself" command are required. That mere "denied" also slaps in the face the Supreme Court's principle of "preserving both the appearance and reality of fairness," which "generat[es] the feeling, so important to a popular government, that justice has been done"; *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980).

### **III. The Court must disqualify the Chief Judge upon his failure to disqualify himself or state his arguments that the obligation to do so has not attached**

21. A reasonably prudent and disinterested person faced with the criticism of lacking impartiality would naturally want to dispel it by providing reasons why it is unfounded. The urge to do so would be greater if the person is a judge charged with lack of impartiality, for then what is at stake is not only his fairness, but also his professional integrity and effectiveness. Section 455(a) still raises the stakes because it automatically attaches on the judge the obligation that he “**shall** disqualify himself” upon his impartiality being reasonably questioned. The section does not accord him any margin of discretion to determine any other appropriate reaction. The judge can only argue the non-attachment of the obligation because the questioning is so unreasonable that it does not meet even the low threshold of the preponderance of persuasiveness standard.
22. The above-stated reasonable questioning of Chief Judge Walker’s impartiality caused that obligation to attach to him. Therefore, for the Chief Judge to slap away that obligation without bothering to provide any arguments demonstrates that he has neither factual nor legal grounds to rebut such questioning, but instead puts himself above the law to escape that obligation.
23. However, if the Chief Judge did have such arguments, he could not skip stating them just to save his effort and time or out of contempt for a pro se movant or

one who dared question his impartiality. By the preponderance of persuasiveness standard the questioning was reasonable and the self-disqualification obligation attached. The Chief Judge could not merely have the motions “denied”: He had to argue against the obligation ever attaching. He owed to the law, to the Movant, and to the public at large a statement of arguments why he would stay on the case, not despite the self-disqualification obligation, but because of its absence; otherwise, he had to disqualify himself, for “Quite simply and quite universally, recusal [i]s required whenever ‘impartiality might reasonably be questioned’”, *id*, *Liteky*, 510 U.S. 540.

24. The Chief Judge also owed those arguments to the Supreme Court so as to enable it to assess on appeal the legal basis and analysis that he relied upon in deciding not to recuse himself. From nothing but a “denied” slapped by a staffer, how are the Justices to determine whether Chief Judge Walker meant that the he did not want to read the motions, had no time to waste writing a memorandum, has a cavalier attitude toward his statutory obligations, treated dismissively a mere pro se litigant, or clearly abused his discretion by failing to recognize that a fiat does not rise above the level of arbitrariness to appear as an act of justice until it ascends from a controversy on a stable platform of precedent and sound reasoning?

### **A. Justice Scalia's law-abiding reactions to motions for his recusal**

25. In this context, it is illustrative to contrast the Chief Judge's slapped denial and Justice Scalia's two examples of respect for the law and his duty as a judge to promote public confidence in both his integrity and the judicial process. In one instance, Justice Scalia was confronted with a motion filed by Sierra Club for his self-disqualification because the Justice had spent several days duck hunting with Vice President Cheney, who was a named party in a case asking the Supreme Court whether broad discovery is authorized under the Federal Advisory Committee Act (FACA), 5 U. S. C. App. 1, §§1 *et seq.*, so as to determine whether the Vice President, as the head of the Task Force gathering information to advise the President on the formulation of a national energy policy, was responsible for the involvement of energy industry executives in the Task Force's operations. Justice Scalia denied the motion, but only after stating his arguments in detail in a memorandum; *Cheney v. U.S. District Court for the District of Columbia*, 541 U.S. \_\_\_\_ (2004).
26. Justice Scalia showed equal respect for his obligation to avoid even the appearance of lack of impartiality in another case, which challenged the "one nation under God" phrase in the Pledge of Allegiance as a violation of the Establishment Clause of the 1<sup>st</sup> Amendment. There Appellant Michael Newdow moved for the Justice to recuse himself because his impartiality might



reasonably be questioned after the Justice commented at a Religious Freedom Day event, before reading the briefs and knowing the facts in a case that he would likely hear, that the Ninth Circuit's decision finding a violation was based on a flawed reading of the Establishment Clause; *Newdow v. United States*, App. No. 03-7 in the Supreme Court, September 5, 2003. In that case, Justice Scalia, before writing any argument concerning the questioning of his impartiality, immediately announced his self-disqualification; *Elk Grove Unified School District v. Newdow*, 540 U. S. \_\_\_\_ (cert. granted, Oct. 14, 2003).

27. When the Chief Judge of this Circuit, the preeminent judicial officer herein, has his impartiality questioned, he too has the obligation either to put forth his arguments why the questioning thereof is not reasonable or to disqualify himself. If he fails to acquit himself of either obligation, those judges of this Court who still hold sufficient respect for the law not to put themselves above it or allow anybody else to do so, regardless of his station in the judiciary or in society at large, must enforce the obligation that has attached to the Chief Judge by disqualifying him from the case. Only by taking such action can those judges attest to their belief that "Justice must satisfy the appearance of justice", *Offutt v. United States*, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954), and that having a mere "denied" slapped on two reasonable disqualification motions satisfies neither justice nor them. Either they believe in those words and act to

fulfill their lofty mission as judges dispensing justice according to law or they must admit that they simply administer another system for disposing of vested interests, theirs and others, where justice and respect for the law do not just appear, but rather are mere shams.

#### **IV. Relief requested**

28. Therefore, Dr. Cordero respectfully requests that:

- a) Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
- b) in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
- c) this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

Respectfully submitted on,

May 31, 2004

tel. (718) 827-9521

Dr. Richard Cordero

Dr. Richard Cordero  
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Brooklyn, NY 11208

## Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by USPS on the following parties copies of my motion for a statement of arguments from the Chief Judge of the Court of Appeals for the Second Circuit or for his disqualification from the case.

---

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May 31, 2004

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## V. Table of Exhibits

accompanying the motion for Chief Judge Walker  
either to state his arguments for denying the motions  
that he disqualify himself from considering the pending petition for  
panel rehearing and hearing en banc  
or disqualify himself  
and failing that for the Court of Appeals to disqualify him therefrom  
by  
**Dr. Richard Cordero**

1. Dr. **Cordero's** motion of **March 22**, 2004, for the Hon. Chief Judge John M. **Walker**, Jr., to **recuse** himself from this case and from considering the pending petition for panel rehearing and hearing en banc.....19 [A:903]
2. Dr. **Cordero's** motion of **April 18**, 2004, for leave to **update** the motion for Chief Judge **Walker** to **recuse** himself from *In re Premier Van Lines*, no. 03-5023, with recent **evidence** of a tolerated **pattern of disregard** for law and rules further calling into question the Chief Judge's objectivity and impartiality to judge similar conduct on appeal .....33 [A:917]
3. CA2's **order** of **May 4**, 2004, **denying** the motion for **recusal** of Chief Judge **Walker** from petition for rehearing and petition for rehearing en banc.....55 [A:1031]
4. CA2's **amended order** of **May 10**, 2004, **denying** the motion for **recusal** of Chief Judge Walker from petition for rehearing and petition for rehearing en banc .....56 [A:1032]
5. Dr. **Cordero's** Statement of Facts of **August 11**, 2003, 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.....57 [A:971]
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8. Dr. Cordero’s Statement of Facts of March 19, 2004, setting forth a complaint under 28 U.S.C. §351 against Chief Judge Walker 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.....	66	[A:946]
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Excerpt from

Request of May 31, 2004, that the FBI open an investigation

into the link between the pattern of non-coincidental, intentional, and coordinated disregard for the law, rules, and facts in the U.S.

Bankruptcy and District Courts for the Western District of New York and the money generated by the concentration in the hands of individual trustees of thousands of open cases, including cases patently undeserving of relief under the Bankruptcy Code

by

Dr. Richard Cordero

**IX. 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**

1. 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](https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1) with 119 billable pages that end as in Table 1 infra.
2. 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**

<a href="#">2-04-21295-JCN</a>	bk	13	William J. Hastings and Carolyn M. Hastings	Ninfo Reiber	Filed: 04/01/2004	Office: Rochester Asset: Yes Fee: Paid County: 2-Monroe
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Total number of cases: 3909

Open cases only

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**PACER Service Center**

- Trustee Reiber is the trustee for the DeLano case (section X, *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)).
- 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!”
- 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.

6. 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))?
7. 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 Bankruptcy 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’?

**X. 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 approval by the bankruptcy court**

8. 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 (case 04-20280; [A:1095]). The figures in its schedules [A:1097-1114] and the surrounding circumstances (¶¶9-23 infra) should have alerted the trustee and his attorney to the patently suspicious nature of the petition. Yet, the DeLanos’ Chapter 13 Trustee, George Reiber and the latter’s attorney, James Weidman, Esq., were about to submit the DeLanos’ repayment plan [A:1093] 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:
  9. The DeLanos incurred scores of thousands of dollars in credit card debt,
  10. at the average interest rate of 16% or the delinquent interest rate of over 23%,

11. carried it for over 10 years by making only the minimum payments,
12. have ended up owing \$98,092 to 18 credit card issuers listed in Schedule F,
13. owe also a mortgage of \$77,084,
14. have near the end of their work life an equity in their house of only \$21,415,
15. declared earnings in 2002 of \$91,655 and in 2003 of \$108,586,
16. yet claim that after a lifetime of work their tangible personal property is only \$9,945,
17. claim as exempt \$59,000 in a retirement account,
18. claim another \$96,111.07 as a 401-k exemption,
19. make a \$10,000 loan to their son and declare it uncollectible,
20. but offer to repay only 22 cents on the dollar without interest for just 3 years,
21. 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
22. pretend that it is irrelevant to their having gotten into financial trouble and filed a bankruptcy petition that Mr. DeLano is *a 15 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!
23. 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 approving the petition and getting it ready for submission to the court?

24. 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?
25. Did Trustee Reiber and Attorney Weidman ever get the hint that the figures and circumstances of this petition just did not make 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 financial documents? How many of their 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?
26. 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 (§6, 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.
27. 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 give rise to the question of what kind of supervision the Trustee and his attorney have been receiving from the assistant and the regional U.S. trustees. From there 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 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.

**XI. Another trustee with 3,092 cases was upon a performance 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**

29. 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. [A:1, 19]
30. Dr. Cordero requested a review of Trustee Gordon’s performance and fitness to serve as trustee in a complaint filed with Judge Ninfo [A:8], 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”. [A:29] 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 [A:53], was infirm with mistakes of fact and inadequate coverage of the issues raised [A:102].

31. Dr. Cordero appealed Trustee Schmitt’s opinion to her superior at the time, Carolyn S. Schwartz, U.S. Trustee for Region 2. [id]. 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](http://www.nywb.uscourts.gov)) [A:448/19]. But Trustee Schwartz would not investigate the matter.
32. 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	# OF CASES AND CAPACITY IN WHICH APPEARING SINCE					
	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		

33. Chapter 7 Trustee Gordon, just as Chapter 13 Trustee George Reiber, 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 [A:451/55; 238-239]). 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?

34. 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.
35. 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**

<b>NAME</b>	<b># of APPEARANCES</b>	<b>NAME</b>	<b># of APPEARANCES</b>
Kenneth Gordon	1	David MacKnight	3
Kathleen Schmitt	3	Raymond Stilwell	2

36. 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.

37. 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.
38. 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 [A:234] 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" [A:235], 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 [A:452/57), whereby he made the motion untimely and therefore denied it! Dr. Cordero's protest was to no avail. [cf. A:249§B;
39. 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?

May 31, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

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**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) Prorata	Interest Rate (If specified)
Capitol One Auto Finance	5,500.00		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 revert 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

<b>FORM B1</b>	<b>United States Bankruptcy Court Western District of New York</b>	<b>Voluntary Petition</b>
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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):
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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
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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
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Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
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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.

<p><b>Type of Debtor</b> (Check all boxes that apply)</p> <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____ <input type="checkbox"/> Clearing Bank	<p><b>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box)</p> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input checked="" type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding
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<p><b>Nature of Debts</b> (Check one box)</p> <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business	<p><b>Filing Fee</b> (Check one box)</p> <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> 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.
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<p><b>Chapter 11 Small Business</b> (Check all boxes that apply)</p> <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)	
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<p><b>Statistical/Administrative Information</b> (Estimates only)</p> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> 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																								
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Estimated Number of Creditors</td> <td style="text-align: center;">1-15</td> <td style="text-align: center;">16-49</td> <td style="text-align: center;">50-99</td> <td style="text-align: center;">100-199</td> <td style="text-align: center;">200-999</td> <td style="text-align: center;">1000-over</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>											
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<table style="width:100%; border-collapse: collapse;"> <tr> <td colspan="8" style="text-align: left;">Estimated Assets</td> </tr> <tr> <td style="text-align: center;">\$0 to \$50,000</td> <td style="text-align: center;">\$50,001 to \$100,000</td> <td style="text-align: center;">\$100,001 to \$500,000</td> <td style="text-align: center;">\$500,001 to \$1 million</td> <td style="text-align: center;">\$1,000,001 to \$10 million</td> <td style="text-align: center;">\$10,000,001 to \$50 million</td> <td style="text-align: center;">\$50,000,001 to \$100 million</td> <td style="text-align: center;">More than \$100 million</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	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	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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\$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																		
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<table style="width:100%; border-collapse: collapse;"> <tr> <td colspan="8" style="text-align: left;">Estimated Debts</td> </tr> <tr> <td style="text-align: center;">\$0 to \$50,000</td> <td style="text-align: center;">\$50,001 to \$100,000</td> <td style="text-align: center;">\$100,001 to \$500,000</td> <td style="text-align: center;">\$500,001 to \$1 million</td> <td style="text-align: center;">\$1,000,001 to \$10 million</td> <td style="text-align: center;">\$10,000,001 to \$50 million</td> <td style="text-align: center;">\$50,000,001 to \$100 million</td> <td style="text-align: center;">More than \$100 million</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	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	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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																		
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>																		

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>	Name of Debtor(s): <span style="float: right;"><b>FORM B1, Page 2</b></span> DeLano, David G. DeLano, Mary Ann
---	--

<b>Prior Bankruptcy Case Filed Within Last 6 Years</b> (If more than one, attach additional sheet)		
Location Where Filed: - None -	Case Number:	Date Filed:

<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet)		
Name of Debtor: - None -	Case Number:	Date Filed:
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.

/s/ David G. DeLano  
Signature of Debtor David G. DeLano

/s/ Mary Ann DeLano  
Signature of Joint Debtor Mary Ann DeLano

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

January 26, 2004  
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.

/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 Attorney**

/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 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:

**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.

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Printed Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

\_\_\_\_\_  
Date

\_\_\_\_\_  
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

Case No. \_\_\_\_\_

Debtors

### 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)

A:1098 DeLanos' bankruptcy petition under 11 USC Ch 13, 04-20240, WBNY, Schedules & Stat of Finan. Affairs

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

## 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	N O N E	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 > 3,335.50  
(Total of this page)

3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	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 retirement 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 > 155,121.07  
(Total of this page)

Sheet 1 of 3 continuation sheets attached  
to the Schedule of Personal Property



In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	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 > 6,500.00  
(Total of this page)

Sheet 2 of 3 continuation sheets attached to the Schedule of Personal Property

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	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

Case No. \_\_\_\_\_

Debtors

### 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
<b>Real Property</b>			
1262 Shoecraft Road, Webster (value per appraisal 11/23/03)	NYCPLR § 5206(a)	20,000.00	98,500.00
<b>Household Goods and Furnishings</b>			
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
<b>Books, Pictures and Other Art Objects; Collectibles</b>			
misc books, misc wall decorations, family photos, family bible	NYCPLR § 5205(a)(2)	100.00	100.00
<b>Wearing Apparel</b>			
misc wearing apparel	NYCPLR § 5205(a)(5)	50.00	50.00
<b>Furs and Jewelry</b>			
wedding rings, wrist watches	NYCPLR § 5205(a)(6)	100.00	100.00
<b>Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans</b>			
Xerox 401-K \$38,000; stock options \$4,000; retirement account \$17,000 - all in retirement 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
<b>Automobiles, Trucks, Trailers, and Other Vehicles</b>			
1993 Chevrolet Cavalier 70,000 miles	Debtor & Creditor Law § 282(1)	1,000.00	1,000.00

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**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.)	C O D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION IF ANY
		H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN					
Account No. 5687652			2001					
Capitol One Auto Finance PO Box 93016 Long Beach, CA 90809-3016		J	auto lien  1998 Chevrolet Blazer 56,000 miles (value Kelly Blue Book average of retail and trade-in - good condition)				10,285.00	4,785.00
			Value \$ 5,500.00					
Account No.			fist mortgage					
Genesee Regional Bank 3670 Mt Read Blvd Rochester, NY 14616		J	1262 Shoecraft Road, Webster (value per appraisal 11/23/03)				77,084.49	0.00
			Value \$					
Account No.								
			Value \$					

0 continuation sheets attached

Subtotal  
(Total of this page)

87,369.49

Total

87,369.49

(Report on Summary of Schedules)

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

### 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, whichever 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.

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**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.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
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
Subtotal (Total of this page)						20,187.06

3 continuation sheets attached

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B R O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	A M O U N T O F C L A I M	
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
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. <u>1</u> of <u>3</u> 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

Case No. \_\_\_\_\_

Debtors

**SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
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. <u>2</u> of <u>3</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal (Total of this page)	20,454.90



In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**SCHEDULE F. CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM	
		H W J C					DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.
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. <u>3</u> of <u>3</u> 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

In re David G. DeLano,  
Mary Ann DeLano

Case No. \_\_\_\_\_

Debtors

**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:  Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP None.	AGE
<b>EMPLOYMENT:</b>	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	

	DEBTOR	SPOUSE
INCOME: (Estimate of average monthly income)		
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
<b>SUBTOTAL</b>	<b>\$ 5,760.00</b>	<b>\$ 1,741.00</b>
<b>LESS PAYROLL DEDUCTIONS</b>		
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
<b>SUBTOTAL OF PAYROLL DEDUCTIONS</b>	<b>\$ 2,179.25</b>	<b>\$ 435.25</b>
<b>TOTAL NET MONTHLY TAKE HOME PAY</b>	<b>\$ 3,580.75</b>	<b>\$ 1,305.75</b>
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
<b>TOTAL MONTHLY INCOME</b>	<b>\$ 3,580.75</b>	<b>\$ 1,305.75</b>
<b>TOTAL COMBINED MONTHLY INCOME</b>	<b>\$ 4,886.50</b>	

(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

Case No. \_\_\_\_\_

Debtors

**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)	.....	\$	<u>1,167.00</u>
Are real estate taxes included?	Yes <u>X</u> No _____		
Is property insurance included?	Yes _____ No <u>X</u>		
Utilities: Electricity and heating fuel	.....	\$	<u>168.00</u>
Water and sewer	.....	\$	<u>30.00</u>
Telephone	.....	\$	<u>40.00</u>
Other <u>Cell Phone \$62 (req. for work); cable \$55; Internet \$23.95</u>	.....	\$	<u>140.95</u>
Home maintenance (repairs and upkeep)	.....	\$	<u>50.00</u>
Food	.....	\$	<u>430.00</u>
Clothing	.....	\$	<u>60.00</u>
Laundry and dry cleaning	.....	\$	<u>5.00</u>
Medical and dental expenses	.....	\$	<u>120.00</u>
Transportation (not including car payments)	.....	\$	<u>295.00</u>
Recreation, clubs and entertainment, newspapers, magazines, etc.	.....	\$	<u>107.50</u>
Charitable contributions	.....	\$	<u>50.00</u>
Insurance (not deducted from wages or included in home mortgage payments)			
Homeowner's or renter's	.....	\$	<u>0.00</u>
Life	.....	\$	<u>0.00</u>
Health	.....	\$	<u>0.00</u>
Auto	.....	\$	<u>110.00</u>
Other	.....	\$	<u>0.00</u>
Taxes (not deducted from wages or included in home mortgage payments)			
(Specify) _____	.....	\$	<u>0.00</u>
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan.)			
Auto	.....	\$	<u>0.00</u>
Other <u>reserve for auto</u>	.....	\$	<u>50.00</u>
Other <u>Parking</u>	.....	\$	<u>58.05</u>
Other _____	.....	\$	<u>0.00</u>
Alimony, maintenance, and support paid to others	.....	\$	<u>0.00</u>
Payments for support of additional dependents not living at your home	.....	\$	<u>0.00</u>
Regular expenses from operation of business, profession, or farm (attach detailed statement)	.....	\$	<u>0.00</u>
Other <u>family gifts - Christmas/Birthdays</u>	.....	\$	<u>20.00</u>
Other <u>Haircuts and personal hygiene</u>	.....	\$	<u>45.00</u>
<b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)</b>	.....	<b>\$</b>	<b><u>2,946.50</u></b>

[FOR CHAPTER 12 AND 13 DEBTORSONLY]

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	.....	\$	<u>4,886.50</u>
B. Total projected monthly expenses	.....	\$	<u>2,946.50</u>
C. Excess income (A minus B)	.....	\$	<u>1,940.00</u>
D. Total amount to be paid into plan each <u>Monthly</u>	.....	\$	<u>1,940.00</u>

(interval)

**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.

**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.

**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
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### 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
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**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
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**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 ID. 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 <u>January 26, 2004</u>	Signature <u>/s/ David G. DeLano</u> David G. DeLano Debtor
------------------------------	---

Date <u>January 26, 2004</u>	Signature <u>/s/ Mary Ann DeLano</u> 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.....	\$	<u>1,350.00</u>
Prior to the filing of this statement I have received.....	\$	<u>1,350.00</u>
Balance Due.....	\$	<u>0.00</u>

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

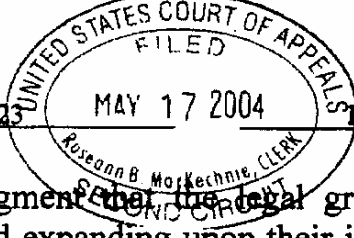
MBNA America  
P.O. Box 15102  
Wilmington, DE 19886-5102

Sears Card  
Payment Center  
P.O. Box 182149  
Columbus, OH 43218-2149

Wells Fargo Financial  
P.O. Box 98784  
Las Vegas, NV 89193-8784

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



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

**Motion 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

**Statement of relief sought:** That this Court:

- a) declare the correctness of the legal arguments presented here which demonstrate under what circumstances federal law, FRAP, the local rules, and this Circuit's rules governing the application of 28 U.S.C. Chapter 16 allow the submission of letters, motions, and evidentiary documents to the Court, and, consequently, act on them; and
- b) grant any other relief that to the Court may appear just and fair.

<b>MOVING PARTY:</b> Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521 <a href="mailto:corderoric@yahoo.com">corderoric@yahoo.com</a>	<b>OPPOSING PARTY:</b> N/A
---	----------------------------

Court-Judge/Agency appealed from: N/A

**Has consent of opposing counsel been sought?** N/A

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Movant Pro Se:**

**Has service been effected?** Yes; proof is attached

*Dr. Richard Cordero*

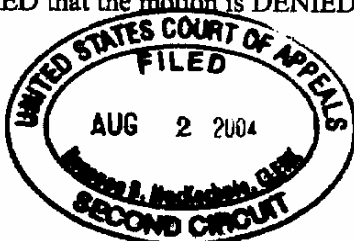
**Date:** May 15, 2004

**ORDER**

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

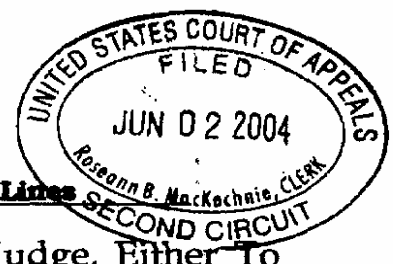
IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004  
Date



FOR THE COURT:  
Roseann B. MacKechnie, Clerk  
by *Arthur M. Heller*  
Arthur M. Heller  
Motions Staff Attorney.

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



Docket Number(s): 03-5023

In re: Premier Van Lines

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

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

**OPPOSING PARTY:** See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of Moving Petitioner Pro Se:**

**Has service been effected?** Yes; proof is attached

*Dr Richard Cordero*

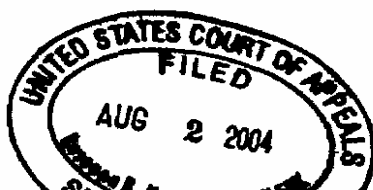
**ORDER**

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

IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004

Date



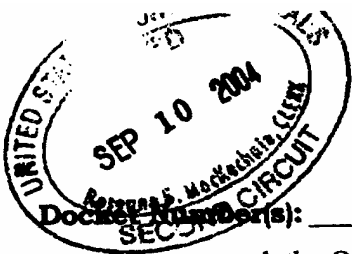
FOR THE COURT:

Roseann B. MacKechnie, Clerk

by

*Arthur M. Heller*

Arthur M. Heller  
Motions Staff Attorney.



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 Pfunter 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, Pfunter, 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 WBNY 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

**OPPOSING 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

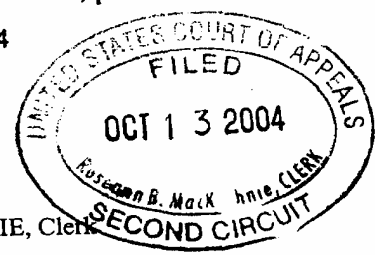
**Argument date of appeal:** December 11, 2003

**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.

**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:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** September 9, 2004

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**ORDER**

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

**FOR THE COURT:**

ROSEANN B. MacKECHNIE, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

A:1130 Dr. Cordero's motion of 9/9/4 for CA2 to quash J Ninfo's order that he take discovery of issue on appeal

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

In re PREMIER VAN et al.

case no. 03-5023

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

Chapter 7 bankruptcy  
case no. 01-20692, Ninfo, WBNY

---

JAMES PFUNTNER,  
Plaintiff

Adversary proceeding  
no. 02-2230, Ninfo, WBNY

-v-

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

Defendants

---

RICHARD CORDERO  
Third party plaintiff

-v-

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

Third party defendants

---

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.

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V. Relief requested .....	1147

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**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 warehousemen, 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;<sup>1</sup>

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 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.

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<sup>1</sup> 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).

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). However, 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. revd., 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 Re-ports 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<sup>2</sup> *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,

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<sup>2</sup> As reported by PACER at [https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L\\_916\\_0-1](https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1) on 4/2/04.

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**

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 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....[A:671]

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's 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 con-firmed 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) prejudices 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

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

# TABLE OF EXHIBITS

of the motion of September 11, 2004, filed in CA2 to quash  
the August 30 order of Judge John C. Ninfo, II, WBNY,  
for discovery to be taken of an issue on appeal

by

**Dr. Richard Cordero**

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3. Dr. <b>Cordero's Objection</b> of <b>March 4, 2004</b> , to <b>Confirmation</b> of the DeLanos' Chapter 13 Plan of Debt Repayment .....	41 [D:63]
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5. Dr. <b>Cordero's</b> letter of <b>April 15, 2004</b> , to Chapter 13 Trustee George <b>Reiber</b> requesting that he send the missing letter and state the nature and scope of his investigation of the DeLanos .....	69 [D:112]
6. Trustee <b>Reiber's</b> letter of <b>April 20, 2004</b> , requesting Christopher <b>Werner</b> , Esq., attorney for the DeLanos, to <b>provide</b> him with financial <b>documents</b> concerning the DeLanos.....	73 [D:120]
7. Dr. <b>Cordero's proof of claim</b> of <b>May 15, 2004</b> , against the DeLanos.....	75 [D:142]
8. Dr. <b>Cordero's</b> letter of <b>May 16, 2004</b> , to Trustee <b>Reiber</b> requesting once more the letter(s) that he sent to Att. Werner but not to him and requesting financial documents from the DeLanos .....	80 [D:147]
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15. Att. <b>Werner’s notice</b> of hearing and order of <b>July 19, 2004, objecting</b> to Dr. Cordero’s <b>claim</b> and moving to <b>disallow</b> it .....	101	[D:218]
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18. Judge <b>Ninfo’s</b> order of <b>July 26, 2004, providing</b> 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” .....	107	[D:220]
19. Dr. <b>Cordero’s</b> motion of <b>August 14, 2004, for docketing</b> and issue, <b>removal</b> , referral, examination, and other relief, noticed for August 23 and 25 .....	109	[D:231]
20. Dr. <b>Cordero’s</b> reply of <b>August 17, 2004, in opposition to Debtor’s</b> objection to claim and <b>motion to disallow</b> it.....	127	[D:249]
21. Dr. <b>Cordero’s motion</b> of <b>August 20, 2004, for sanctions</b> on and compensation from Christopher <b>Werner, Esq.</b> and his law firm for violation of FRBkrP Rule 9011(b).....	136	[D:258]
22. Judge <b>Ninfo’s</b> Interlocutory <b>Order</b> of <b>August 30, 2004, requiring Dr. Cordero to take discovery</b> of his claim against Debtor <b>DeLano</b> arising from the <i>Pfuntner v. Gordon et al.</i> , no. 02-2230, WBNY, <b>on appeal</b> in the Court of Appeals for the Second Circuit .....	149	[A:1051]
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## 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:

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

September 9, 2004

59 Crescent Street  
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*Dr. Richard Cordero*

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♦D:=Designated items in the record for the appeal from Bkr Court in *In re DeLano*, 04-20280, WBNY, to Dis. Court in *Cordero v DeLano*; 05cv6190L, WDNY; see the D folder and files on the accompanying CD.

A:1150 Dr. Cordero's motion of 9/9/4 for CA2 to quash J Ninfo's order that he take discovery of issue on appeal

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

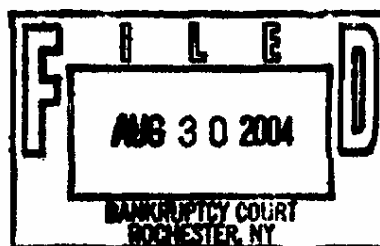
4. The Claim Objection Proceeding shall be called on the Court's December 15, 2004 Evidentiary Hearing Calendar at 9:00 a.m. so that an evidentiary hearing could be scheduled on that day with a day certain in January, February or March of 2005, depending upon the Court's schedule and its availability.

SO ORDERED.

DATED: August 30, 2004



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



# 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  
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August 31, 2004

Bradley E. Tyler, Esq.  
Attorney in Charge  
100 State St., 620 Federal Bldg.  
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 [A:1047]. 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 in the Bankruptcy Court, WBNY, by David and Mary Ann DeLano  
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 ON AUGUST 31, 2004**

**FOR REVIEW BY ATT. TYLER**

by

**Dr. Richard Cordero**

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 [D:218]
  - b) Dr. Cordero's reply of August 17, 2004, to Debtors' objection to claim and motion to disallow it .....3 [D:249]
  - 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 [D:258]



**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

September 27, 2004

Att.: Arthur Heller, Esq.  
Ms. Roseann B. MacKechnie  
Clerk of Court  
U.S. Court of Appeals for the Second Circuit  
40 Foley Square  
New York, NY 10007

faxed to (212)857-8684

In re Premier, docket no. 03-5023  
[In re DeLano, docket no. 04-20280, WBNY]

Dear Ms. MacKechnie,

Last September 9, I filed a motion to quash the Order of August 30, 2004, issued by U.S. Bankruptcy Judge John C. Ninfo, II, to sever a claim from the *Premier* case on appeal in this Court to try it in another bankruptcy case, namely, *In re DeLano*, docket no. 04-20280, WBNY.

That Order requires me to undertake and complete by next December 15, discovery from Mr. DeLano, a party in the *Premier* case who resides in Rochester, NY, for the purpose of determining the DeLanos' motion to disallow my bankruptcy claim against them. Apart from the issues raised in my motion concerning the Order's unlawfulness and bad faith, there is the practical issue of the enormous amount of effort, time, and money as well as tremendous aggravation that compliance will cause me. Compounding the disregard for legality is the fact that the Order suspends all proceedings in the *DeLano* case until the motion to disallow is determined. Moreover, Judge Ninfo stated at the hearing on August 25, that no motion or paper that I may submit would be acted upon. Thus, it would be futile for me to apply to Judge Ninfo to stay his Order only to wait for months for a decision that the Judge already stated will not be forthcoming.

Consequently, I requested this Court to either stay the Order or treated my motion to quash it on an emergency basis so that I may not be forced to comply with the Order as a matter of precaution only to find out that the Order is quashed and my toil was unnecessary. To date, no action has been taken on my motion other than to file it.

Therefore, I respectfully request that the Court stay the Order or treat my motion on an emergency basis and that in either case if the motion is denied the Court provide for the 107 days for compliance under the Order –from August 30 to December 15- to run from the date of denial.

I also reiterate my request that the *Premier* case and the case from which it derives, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY, together with the DeLano case 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 to investigate into the judicial misconduct and bankruptcy fraud scheme evinced by those cases, as shown in my briefs and motions on appeal. I submit that the result of such investigation could provide valuable insight into the workings of the court in Rochester and its relation to the local parties that can enlighten this Court, in particular, in deciding the motion to quash and, in general, in restoring not only the appearance of justice to the proceedings in that court, but also respect for the rule of law.

Sincerely,

Dr. Richard Cordero

## Certificate of Service

I certify that I sent the accompanying letter to Clerk of Court Roseann B. MacKechnie, dated September 27, 2004, to 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  
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, 21<sup>st</sup> Floor  
New York, NY 10004  
tel. (212) 510-050; 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 (ext. 207)  
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

September 27, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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 29, 2004

Christopher K. Werner, Esq.  
Boylan, Brown, Code, Vigdor & Wilson, LLP  
2400 Chase Square  
Rochester, NY 14604

Premier, **docket no. 03-5023**

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:

- a. produce within the response period of 30 days and without waiting to receive any documents that they may have to request;
- b. 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
- c. all the information available to them;
- d. 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;
- e. provide the information requested, for the sake of clarity of presentation, complete-ness, 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;
- f. mark on the appropriate cells in the tables or indicate using their identifiers whether the documents requested;
- g. 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;
- h. are being produced in reply to this request; or
- i. 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.<sup>1</sup>

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<sup>1</sup> 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)

<b>iden.</b>	<b>I.a</b>	<b>I.b</b>	<b>I.c</b>	<b>I.d</b>	<b>I.e</b>	<b>I.f</b>
	<b>Creditors' names (in the order in which they appear in their respective Schedules)</b>	<b>Account numbers</b>	<b>Bill or closing dates covered by statements</b>	<b>Date of cover letter from Att. Werner to Trustee Reiber</b>	<b>Date of receipt by Dr. Cordero</b>	<b>Current balance</b>
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 12/17/02	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				

<b>iden.</b>	<b>I.a</b>	<b>I.b</b>	<b>I.c</b>	<b>I.d</b>	<b>I.e</b>	<b>I.f</b>
	<b>Creditors' names (in the order in which they appear in their respective Schedules)</b>	<b>Account numbers</b>	<b>Bill or closing dates covered by statements</b>	<b>Date of cover letter from Att. Werner to Trustee Reiber</b>	<b>Date of receipt by Dr. Cordero</b>	<b>Current balance</b>
<b>19.</b>	Wells Fargo Financial	1772-0544				
<b>20.</b>	Capital One Auto Finance	568 7652				
<b>21.</b>	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

<b>iden.</b>	<b>II.a</b>	<b>II.b</b>	<b>II.c</b>	<b>II.d</b>
	<b>Credit bureau</b>	<b>Date of issue</b>	<b>Date of cover letter from Att. Werner to Trustee Reiber</b>	<b>Date of receipt by Dr. Cordero</b>
<b>1.</b>	Equifax	April 26, 04 Mr.D <sup>2</sup> May 8, 04 Mrs.M incomplete reports  April 26, 04 Mr.D May 8, 04 Mrs.M  May 8, 04 Mrs.M July 23, 04 Mr.D July 23, 04 Mrs.M	June 14, 04  July 20, 04 July 20, 04  August 5, 04 August 5, 04 August 5, 04	June 04  July 04 July 04  August 04 August 04 August 04
<b>2.</b>	Experian	July 26, 04Mr.D July 26, 04 Mrs.M	August 5, 04 August 5, 04	August 04 August 04
<b>3.</b>	TransUnion	July 26, 04Mr.D July 26, 04 Mrs.M	August 5, 04 August 5, 04	August 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.

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<sup>2</sup> 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**

<b>iden.</b>	<b>III.a</b>	<b>III.b</b>	<b>III.c</b>	<b>III.d</b>	<b>III.e</b>	<b>III.f</b>	<b>III.g</b>	<b>III.h</b>	<b>III.i</b>
	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	Titles, Deeds, Other instruments <sup>3</sup>	Account statements <sup>4</sup> since opening date and cancelled checks
<b>1.a</b>	<b>Credit card accounts</b>								
<b>1.b</b>									
<b>2.a</b>	<b>Debit card accounts</b>								
<b>2.b</b>									
<b>3.a</b>	<b>Checking accounts</b>								
<b>3.b</b>									
<b>4.a</b>	<b>Savings accounts</b>								
<b>4.b</b>									
<b>5.a</b>	<b>Brokerage accounts</b>								
<b>5.b</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:

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<sup>3</sup> 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.

<sup>4</sup> 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.

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 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

<b>iden.</b>	<b>IV.a</b>	<b>IV.b</b>	<b>IV.c</b>	<b>IV.d</b>	<b>IV.e</b>	<b>IV.f</b>	<b>IV.g</b>	<b>IV.h</b>	<b>IV.i</b>
	Jobs (by order or place of work)	Periods of employment	Titles of positions and salaries and bonuses	Addresses and phone numbers of the sites worked at and headquarters	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 reprimands, admonitions, censures, commendations, and promotions	<b>Pay stubs; Bank statements where pay checks were deposited; And 1040 IRS forms</b>
<b>1.</b>	First job								
<b>2.</b>	Each other job								
<b>3.</b>	First National Bank								
<b>4.</b>	Each other job								
<b>5.</b>	M & T Bank								
<b>6.</b>	Current job								

**Table V.** The DeLanos' Expenses for their Children's Education

<b>iden.</b>	<b>V.a</b>	<b>V.b</b>	<b>V.c</b>	<b>V.d</b>	<b>V.e</b>	<b>V.f</b>	<b>V.g</b>	<b>V.h</b>	<b>V.i</b>	<b>V.j</b>
	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 transportation	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 <b>And</b> amounts of loans	Instruments of loans; or if such instruments <i>never</i> existed  Terms of verbal agreements  <b>And</b>  Acknowledgment of receipt of money	Purposes of loans	Names of institutions from which lent money was withdrawn  <b>And</b> Copy of both sides of <b>Order</b> of withdrawal, <b>Cancelled</b> check, or <b>Instrument</b> of transfer to child or his or her account	Names of institutions where lent money was deposited	Amounts of installments  <b>And</b> Amounts and dates of installment payments actually made	Outstanding balances  <b>And</b> Current arrangement for repayment	Documents confirming that money was used for stated purposes, e.g.  Title, Deed, Other instruments <sup>5</sup>  <b>Or</b> Statement 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;

<sup>5</sup> See footnote 3, supra.



- 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.

**Table VIII.** Mr. DeLanos' Borrowing Clients since January 1, 1999

<b>iden.</b>	<b>VIII.a</b>	<b>VIII.b</b>	<b>VIII.c</b>	<b>VIII.d</b>	<b>VIII.e</b>	<b>VIII.f</b>	<b>VIII.g</b>
	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: filing date and provision of law invoked	Federal or state courts where filed and case numbers	Amounts owed at filing time	Disposition of cases
<b>1.</b>							
<b>2.</b>							
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*

## Certificate of Service

I certify that I sent the accompanying letter of September 29, 2004, addressed to Christopher Werner, Esq., attorney for Debtors David and Mary Ann DeLano, to the following parties:

Christopher K. Werner, Esq.  
Boylan, Brown, Code, Vigdor &  
Wilson, LLP  
2400 Chase Square  
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Ms. Judy Landis  
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P.O. Box 15083  
Wilmington, DE 19850-5083  
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fax (614)771-7839

September 29, 2004

59 Crescent Street  
Brooklyn, NY 11208-1515

*Dr. Richard Cordero*

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

**GEORGE M. REIBER**  
CHAPTER 13 TRUSTEE  
SOUTH WINTON COURT  
3138 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

Att.: Arthur Heller, Esq., CA2: COPY

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, CA2**

Re: Section 341 examination of the DeLanos, dkt. no. 04-20280, WBNY

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 nom. *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 matter 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 off-loaded 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:

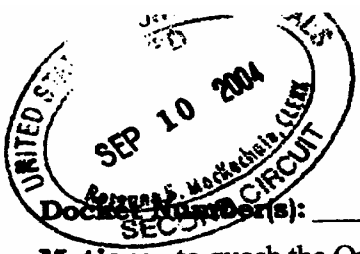
Tuesday, October 26, 2004	Wednesday, November 3, 2004
Wednesday, October 27, 2004	Thursday, November 4, 2004
Thursday, October 28, 2004	

- 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*



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

ORIGINAL

Document 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 WBNY 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

**OPPOSING 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

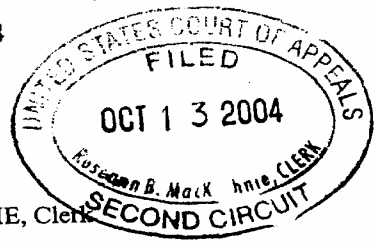
**Signature of Moving Petitioner Pro Se:**  
Dr. Richard Cordero

**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

OCT 13 2004

by Arthur M. Heller  
Arthur M. Heller, Motions Staff Attorney

\* 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.

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  
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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

CA2 docket no. 03-5023

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<sup>1</sup> 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

<sup>1</sup> As reported by PACER at [https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L\\_916\\_0-1](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](http://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 ncentry  
Doc 62

GEORGE M. REIBER  
CHAPTER 13 TRUSTEE  
SOUTH WINTON COURT  
3136 SOUTH WINTON ROAD  
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER  
JAMES W. WEIDMAN

October 13, 2004

585-427-7225  
FAX 585-427-7804

Dr. Richard Cordero  
59 Crescent St.  
Brooklyn, NY 11208

Dear Dr. Cordero,

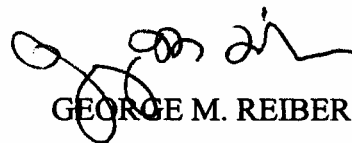
RE: David & Mary Ann DeLano; BK#04-20280

This is in 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

COPY for CA2 docket no. 03-5023

October 21, 2004

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
Federal Office Building  
100 State Street, Room 6090  
Rochester, NY 14614

faxed to (585) 263-5862

Re: §341 examination of the DeLanos, dkt. no. 04-20280 WBNY

Dear Ms. Schmitt,

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: If 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, 

GEORGE M. REIBER  
CHAPTER 13 TRUSTEE  
SOUTH WINTON COURT  
3136 SOUTH WINTON ROAD  
ROCHESTER, NEW YORK 14623

GEORGE M. REIBER  
JAMES W. WEIDMAN

October 27, 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

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	Maniow				
Co./Dept.	George Reiber, Esq.				
Phone #	(585) 427-7225				
Fax #	718-827-9521 (585) 427-7804				

*file*



**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  
Rochester, NY 14623

faxed to (585)427-7804

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

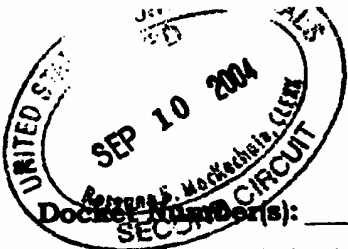
Tuesday, **November 16**, and Wednesday, **November 17**, 2004

- 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*



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

ORIGINAL

Document 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**

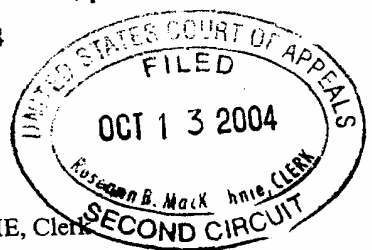
Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges\**

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

OCT 13 2004

FOR THE COURT:  
ROSEANN B. MACKECHNIE, Clerk

by Arthur M. Heller  
Arthur M. Heller, Motions Staff Attorney



\* 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.

## Certificate of Service

I certify that I sent the accompanying letter to Trustee George Reiber, dated October 28, 2004, to 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  
100 State Street, Room 6090  
Rochester, NY 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, 21<sup>st</sup> 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  
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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 (ext. 207)  
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

October 28, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

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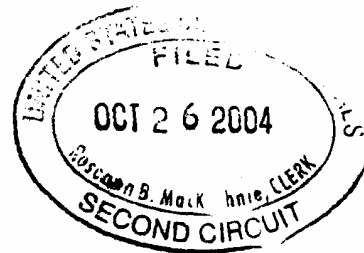
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
THURGOOD MARSHALL U.S. COURT HOUSE  
40 FOLEY SQUARE  
NEW YORK 10007

Roseann B. MacKechnie  
CLERK

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

IN RE: PREMIER VAN LINES, INC.

03-5023

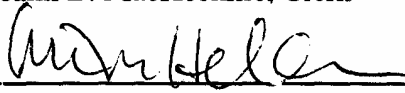


A petition for a panel rehearing and a petition for rehearing en banc having been filed herein by the cross and third party appellant Richard Cordero.

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

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

For the Court,  
Roseann B. MacKechnie, Clerk

BY:   
Motion Staff Attorney

OCT 26 2004

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

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

**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

**Statement of relief sought:** That this Court:

1. stay the mandate;

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

**OPPOSSING PARTY:** See caption on first page of brief

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

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of moving party:**

**Has service been effected?** Yes; proof is attached

*Dr. Richard Cordero*

**Date:** November 2, 2004

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**ORDER**

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

**FOR THE COURT:**

ROSEANN B. MacKECHNIE, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

# UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

**In re Premier Van et al.**

case no. 03-5023

MOTION 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 of the United States

---

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.

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### **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<sup>1</sup> against that one party, here the Appellant<sup>2</sup>, 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<sup>3</sup>:

a) Does it violate the Appellant's right to due process of law under the Fifth Amendment of the Constitution<sup>4</sup> and the right to equal protection of the laws<sup>5</sup> included in the due process clause<sup>6</sup> 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<sup>7</sup>, 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<sup>8</sup> to inflict

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<sup>1</sup> *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).

<sup>2</sup> See pages 9 et seq. infra.

<sup>3</sup> See pages 27 et seq. and 47 et seq., infra.

<sup>4</sup> *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).

<sup>5</sup> *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").

<sup>6</sup> 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.

<sup>7</sup> *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.")

<sup>8</sup> *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").



upon Appellant further unjust and unfair treatment<sup>9</sup> 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<sup>10</sup> to question the impartiality of the complained-about judges<sup>11</sup>; 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. §3057(a) to report the case to the United States attorney, so that it has taken no action<sup>12</sup> 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

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<sup>9</sup> *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).

<sup>10</sup> *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."

<sup>11</sup> *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.'").

<sup>12</sup> 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.

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 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 Kafkaian 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.

**VI. Table of exhibits**

1. Dr. Richard Cordero’s motion of August 14, 2004, in WBNY for docketing and issue of the proposed order, removal, referral, examination, and other relief, noticed for August 23 and 25, 2004 .....	9	[A:1241]
2. Dr. Cordero’s motion of September 9, 2004, for CA2 to quash the order of Judge John C. Ninfo, II, of August 30, 2004, to sever a claim from the case on appeal <i>In re Premier Van et al.</i> , in the Court of Appeals for the purpose of trying it in <i>In re DeLano</i> in Bankruptcy Court, WBNY.....	27	[A:1130]
3. Judge Ninfo’s Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor David DeLano arising from <i>Pfuntner v. Gordon et al.</i> , no. 02-2230, WBNY, on appeal sub nom. <i>In re Premier Van et al.</i> , no. 03-5023, CA2, to try it in <i>In re DeLano</i> , docket no. 04-20280, WBNY .....	47	[A:1151]

Respectfully submitted on

November 2, 2004  
 59 Crescent Street  
 Brooklyn, NY 11208

*Dr. Richard Cordero*  
 \_\_\_\_\_  
 Dr. Richard Cordero, Movant Pro Se  
 tel. (718) 827-9521

## 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:

---

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

**In re David G. DeLano and Mary Ann DeLano**

Chapter 13 bankruptcy  
case no. 04-20280

NOTICE OF MOTION AND  
supporting brief for docketing  
and issue of proposed order,  
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 ..... 1242

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 ..... 1244

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 ..... 1250

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..... 1252

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 ..... 1254

VI. Relief requested ..... 1256

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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<sup>1</sup> 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:

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<sup>1</sup> 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.

07/20/2004	<a href="#">53</a>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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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	<a href="#">51</a>	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: # <u>1</u> Proposed Order # <u>2</u> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
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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 Ninno, 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 Resignation 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	<a href="#">19</a>	Objection to A Claim of Exemptions. Filed by Interested Party Richard Cordero . (Attachments: # <u>1</u> Appendix)(Tacy, K.) (Entered: 04/08/2004)
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04/09/2004	<a href="#">20</a>	Deficiency Notice (RE: related document(s) <a href="#">19</a> Objection to Confirmation of the Plan and Notice of Motion for a declaration of the mode of Computing the timelessness of an objection to a claim of exemptions and for a written statements on and of Local Practice, filed by Interested Party Richard Cordero) (Finucane, P.) (Entered: 04/09/2004)
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f.i. 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 "exemptions", but rather "exemptions";
  - c) it is not "a written statements", but rather "a written statement".

f.ii. 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 your 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 evi-

dence 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!<sup>2</sup>

**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.
  - 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

---

<sup>2</sup> 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.

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

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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



## CERTIFICATE OF SERVICE

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

**In re David G. DeLano and Mary Ann DeLano**

Chapter 13 bankruptcy  
case no. 04-20280

**ORDER  
FOR DOCKETING and ISSUE of ORDER,  
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



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# Online Activity Statement for all your SmartTouch<sup>SM</sup> 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
<b>Ending Balance</b>	<b>\$14.32cr</b>

## 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 COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

MOTION INFORMATION STATEMENT

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

**Motion:** For the Court to state the names of the panel members that reviewed the motion for panel rehearing and hearing en banc

**Statement of relief sought:** That this Court:

1. state the names of the judges who denied the motion for panel rehearing given that the Court's Order of October 26 denying it states that it was denied "Upon consideration by the panel that decided the appeal". However, Dr. Cordero's motion of September 9 to quash an order of Judge Ninfo was denied by an Order of this Court of October 13, 2004, which states that "Hon. John M. Walker, Jr. Chief Judge, has recused himself from further consideration of this case". The Chief Judge was a member of the panel who denied the appeal as stated in the Court's Order of January 26, 2004;
2. state whether Chief Judge Walker participated in any way in the decision to deny the motion for panel rehearing and hearing en banc.

<b>MOVING PARTY:</b> Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	<b>OPPOSSING PARTY:</b> See caption on first page of brief
---	--

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

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of moving party:**

**Has service been effected?** Yes; proof is attached

Dr. Richard Cordero

**Date:** November 3, 2004

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**ORDER**

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

**FOR THE COURT:**  
ROSEANN B. MacKechnie, Clerk of Court

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

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

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

**Motion:** For the Court to report this case to the U.S. Attorney General under 18 U.S.C. §3057(a) for investigation

**Statement of relief sought:** That this Court:

1. Report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:
  - a) Premier Van Lines, dkt. no. 03-5023, in this Court;
  - b) Mr. Palmer's Premier Van Lines case, dkt. no. 01-20692, WBNY;
  - c) Pfuntner v. Gordon et al., dkt. no. 02-2230, WBNY; and
  - d) David and Mary Ann DeLano, dkt. no. 04-20280, WBNY;
2. Address the report to U.S. Attorney General John Ashcroft with the recommendation that he appoint investigators who are unrelated to and unacquainted with any of the parties and who 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;
3. Grant Dr. Cordero any other relief that is just and proper.

<b>MOVING PARTY:</b> Dr. Richard Cordero Movant Pro Se 59 Crescent Street Brooklyn, NY 11208-1515 tel. (718) 827-9521; corderoric@yahoo.com	<b>OPPOSSING PARTY:</b> See no. 1, above.
---	---

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

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of moving party:**

**Has service been effected?** Yes; proof is attached

*Dr. Richard Cordero*

**Date:** November 8, 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

In re Premier Van et al.

case no. 03-5023

## MOTION

For the Court to report this case to the U.S. Attorney  
General under 18 U.S.C. §3057(a) for investigation

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Dr. Richard Cordero affirms under penalty of perjury as follows:

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### **I. Judges' obligation to act on their reasonably grounded belief that an investigation should be had**

1. Every United States judge is under an obligation to contribute to the integrity of the judicial system. This obligation flows, among others, from 18 U.S.C. §3057(a), which provides thus:



(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, **shall** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed...[emphasis added]

2. Judges remain under this obligation regardless of their disposition of an appeal or motion, and thus, regardless of whether they had jurisdiction over the appeal or a non-final order was the subject of the motion. It follows that they must fulfill that obligation independently of their attitude toward the particular appellant or movant before them, for the obligation is not so conditioned and, in any event, the benefit of fulfilling it inures to the general public. Indeed, judges enhance the public's trust in the importance of and respect for the rule of law when they care to act on their reasonable belief that a violation of federal law has been committed and report their grounds for such belief to the U.S. Attorney or his assistants for investigation.
3. In the case at hand there are reasonable grounds for such belief...and that is all the law requires a judge to have in order for him to make such report: not incontrovertible evidence of the commission of a crime; actually, no evidence at all is required, much less that each individual fact or circumstance of the case constitute a violation of the law. Indeed, §3057(a) does not require any violation of the law to be set out, but it is satisfied if the judge simply have "reasonable grounds for believing...that an investigation should be had". Certainly, the section does not demand the objectivity necessary to meet the standard of probable cause, but merely a subjective belief that rests on grounds that are reasonable.
4. That little is what the law requires of judges for a §3057(a) report to the U.S. Attorney, although given their legal training and experience, they could have been used as filters to assess the sufficiency of evidence to support an indictment and asked that they report only evidence that would survive at arraignment. What is more, judges have both authority to compel a person before them to answer questions and power to compel a litigant and even others to produce evidence and witnesses. Nevertheless, §3057(a) only requires judges to have a reasonably grounded belief in order to report that an investigation should be had. If that is all the law requires of judges, why should they impose any other requirement on a litigant, such as that his claims meet criminal evidence sufficiency standards, let alone that he submit concrete evidence that a crime was committed, before they would even consider granting a litigant's request for a

§3057(a) report?

5. It would be all the more incomprehensible and unwarranted to impose a higher than the §3057(a) requirement on Dr. Cordero, for he has complained from the beginning –in the statement of issues on appeal of May 5, 2003, and the appeal brief of July 9, 2003- and since then in many of his papers submitted to this Court –as in his recent motion to quash of September 9, 2004, an order of Judge Ninfo- that the judges, trustees, parties, and debtors in this case have unjustifiably denied him the discovery and documentary evidence that he is entitled to. Nevertheless, Dr. Cordero has submitted to this Court detailed descriptions, supported by any documents available, of the many instances in which those people have disregarded legality, concealed or misrepresented the facts, and shown bias against him, the only pro se party and a non-local one to boot.
6. The low threshold set by §3057(a) to trigger a judge’s obligation to report his belief in the need for an investigation is not an exception for the benefit of the judges to a normally higher requirement imposed on others. Rather, it is a means for the benefit of the public to satisfy the requirement that justice not only must be done, but must also be seen to be done. Hence, when judges do not have all the evidence to do justice, but have reason to belief that injustice may have been done by somebody’s offense or violation of the law, they must ask for an investigation that may gather the necessary evidence for justice to be seen to be done.
7. When judges fail to acquit themselves of their §3057(a) reporting obligation and in so doing give even as little as the appearance of partiality, whether toward their peers or against a litigant, then they trigger another obligation: that of disqualifying themselves so as to make room for another judge that will do justice and be seen to do justice.
8. By contrast, for judges that want to acquit themselves of their §3057(a) reporting obligation, this case presents enough grounds from which their belief can reasonably arise that it should be investigated by the U.S. Attorney General. To that end, it should be sufficient for those judges to look in the most favorable light at the following statement of those grounds in order to see how the totality of circumstances support the belief that at least one offense, or even more offenses, may have been committed and warrant investigation. Where §3057(a) only requires judges to ask for an investigation, judges should not ask a private citizen to submit the results of an investigation.

## II. The reasonable grounds for the belief that an investigation should be had

9. Such grounds have accumulated for over two years. They are contained or described in a file that now has more than 1,500 pages. Dr. Cordero's briefs, motions, and mandamus petition show how Judge Ninfo<sup>1</sup>, Judge Larimer<sup>2</sup>, court personnel<sup>3</sup>, trustees<sup>4</sup>, and local attorneys and their clients<sup>5</sup>, have disregarded legality<sup>6</sup> and dismissed the facts<sup>7</sup> in order to protect the local parties and advance their self-interests. In the process, they have caused Dr. Cordero an enormous waste of effort<sup>8</sup>, time<sup>9</sup>, and money<sup>10</sup>, and inflicted upon him tremendous emotional distress<sup>11</sup>. Of necessity, only some grounds can be mentioned here and then only as briefly as possible so as to maximize the chances that the judges will read this motion. Nevertheless, only a brief mention of those grounds should be needed, for the objective is not that the grounds establish a crime, let alone that each of them do so, but that all of them let judges of sound and impartial judgment use their common sense and knowledge of how the world goes to form the belief that something is wrong with these people and that an investigation should be had. Although these grounds are intertwined -just as are the activities of these people in the small federal building in which they work in Rochester- they can be grouped in a few categories:

A. U.S. Bankruptcy Judge John C. Ninfo, II, and other court staff and officers in the Bankruptcy and District courts in Rochester have disregarded the law, the rules, and the facts so repeatedly and consistently to the detriment of Dr. Cordero, the only non-local party as well as a pro se one, and to the benefit of the local parties as to have engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias,

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<sup>1</sup> **Judge Ninfo:** Opening Brief=OpBr-11.3; Appendix to OpBr=A-771.I; A-786.III.

<sup>2</sup> **Judge Larimer:** OpBr-16.7; Reply Brief-19.1; Mandamus Brief-10.D and 53.D; A-687.C.

<sup>3</sup> **court personnel:** OpBr-11.4; 15.6; 54.D; MandBr-14.1; 25.K-26.L; 69.F; A-703.F.

<sup>4</sup> **trustees:** OpBr-9.1; 38.B.; A-679.A

<sup>5</sup> **local attorneys and clients:** OpBr-18.8; 48.C; MandBr-53.3; 57.D; 65.3; A-691.D.

<sup>6</sup> **disregard for legality:** OpBr-9.2; 21.9 Mandamus Brief=MandBr-7.B; 25.A; MandBr-12.E; 17.G-23.J; A-684.B, 775.B; 6.I.

<sup>7</sup> **disregard for facts:** OpBr-10.2; 13.5; MandBr-51.2; 53.4; 65.4.

<sup>8</sup> **effort:** MandBr-55.2; 59.5; A-694.6.

<sup>9</sup> **time:** MandBr-60.6; 68.6; A-695.E.

<sup>10</sup> **money:** MandBr-8.C; A-695.E.

<sup>11</sup> **emotional distress:** MandBr-56.3; 61.E; A-690.3, 695.7.

including the new evidence of protecting from discovery debtors suspected of bankruptcy fraud, to the detriment not only of Dr. Cordero, but also of 20 other creditors.

B. 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.

C. Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, held on March 8, 2004, and Trustee Reiber has since continued to fail his duty to investigate the DeLanos, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

D. The totality of circumstances afford reasonable grounds for the belief that these events coalesce into a bankruptcy fraud scheme, with the DeLano case as the proverbial tip of the iceberg, that is, a test case through which insight can be gained into the scheme's operation, extent, and participants.

**A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing**

10. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery in *Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al*, WBNY dkt. no 02-2230, filed on September 27, 2002. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

11. 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, 2002, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court.

a) Indeed, the statistics on PACER as of November 3, 2003<sup>12</sup>, showed that since April 12,

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<sup>12</sup> <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>

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<sup>13</sup> 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.

- b) 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 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 having tolerated Trustee Gordon’s negligence and recklessness in this case...and in how many other of the Trustee’s *thousands* of cases? There is a need to investigate whatever is going on between those two...and the others, for there are more.

12. 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. However, Mr. Palmer had abandoned Dr. Cordero’s 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. Instead, 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 removed or stolen!

- a) Judge Ninfo would not compel Mr. Palmer to appear to answer Dr. Cordero’s claims even though Mr. Palmer’s address is known and he submitted himself to the court’s jurisdiction when he filed a voluntary bankruptcy petition. Why did Judge Ninfo need to protect Mr.

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<sup>13</sup> Id.

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 needs to be investigated...and the Judge's relation to other similarly situated debtors too.

13. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he 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! 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 the inspection, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both orders of discovery, 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?
14. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides invaluable insight into what drives such bias and shapes the activity of the biased actors 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**

15. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004. That petition is available electronically at <http://www.nywb.uscourts.gov/>, going to PACER and typing its docket no. 04-20280. The values declared in its 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. Just consider the following salient values and circumstances:
  - a) Mr. DeLano has been a bank officer for 15 years!, or rather more precisely, a bank *loan* 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, 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 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) but have near the end of their work lives equity in their house of only \$21,415;
- h) in their 1040 IRS forms declared these earnings in just the last three fiscal 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;
- 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 to their son a \$10,000 loan, which they failed to date but declare uncollectible ...which may be a voidable preferential transfer;
- n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest;
- o) refused for months to submit any credit card statement covering any length of time to the point that Trustee Reiber moved on June 15 for dismissal for “unreasonable delay”.

16. A comparison between the few documents that they first produced thereafter, that is, some credit card statements and Equifax reports with missing pages, with their bankruptcy petition and the court-developed claims register and creditors matrix called 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.

17. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, opposing Trustee Reiber's motion to dismiss. The DeLanos' response was swift: On July 19, they moved to disallow Dr. Cordero's claim. What an extraordinary move! 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, and for good reason, since;
  - c) Mr. DeLano has known of Dr. Cordero's claim against him since November 2002, when Dr. Cordero brought him into the Pfuntner case as a third-party defendant because Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his moving and storage company, Premier Van Lines, which then went bankrupt!
18. Extraordinary indeed, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It forces up 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?
19. Extraordinary but even more revealing is Judge Ninfo's reaction. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's 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 and their concealment of assets, among other things.
20. But not Judge Ninfo. By his Order of August 30, 2004, he has suspended all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. That could take years!, as shown by the appeal from the Pfuntner case. Meantime and without any justification, the other 20 creditors of the DeLanos are injured because they cannot begin to receive payments under the debt repayment plan. But their interest is just as of little consequence to Judge Ninfo as is the general interest in determining whether Lending Industry Insider Mr. DeLano and Technically-oriented Mrs. DeLano have engaged in bankruptcy fraud. Nevertheless, to determine whether these debtors submitted their petition "by any means forbidden by law" is the Judge's duty under 11 U.S.C. §1325(a)(3). Why Judge Ninfo disregarded his duty under the Bankruptcy Code and to the general public in order to protect



the DeLanos needs to be investigated.

21. By contrast, Judge Ninfo denied 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. But that is precisely what Judge Ninfo cannot allow to happen, for if he allowed the DeLanos' case to 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 if the DeLanos were left unprotected and decided to talk, they could 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. To afford protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! The stakes must be very high indeed.
22. And not only for Judge Ninfo. Trustee Reiber too has from the beginning been protecting the DeLanos from incriminating themselves and others.

**C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law**

23. 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. Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, a trustee with 3,909<sup>14</sup> *open* cases, cannot be all the time where he should be.
24. This raises an important question for the investigators: Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who 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's Office and the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could

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<sup>14</sup> As reported by PACER at [https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L\\_916\\_0-1](https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1) on April 2, 2004.

review the initial bankruptcy petition of each of those 3,909 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*? Could there be time for Trustee Reiber to do anything more than rubberstamping petitions? Something is not right here.

25. Actually, nothing is right here. Thus, 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 honesty of the DeLanos, and stated that their petition had been submitted in good faith.
26. But those were just words, for Trustee Reiber had not asked for any supporting document 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, and 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 the DeLanos to submit documents.
27. A pro forma request, to be sure, for 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 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 having in hand and on account only \$535 despite having earned in just the 2001-03 years \$291,470!
28. What this shows is not appalling lack of understanding of how credit card fraud works, but rather Trustee Reiber's unwillingness to uncover evidence of bankruptcy fraud. The evidence shows that the Trustee has refused to hold an adjourned meeting of creditors for the DeLanos. His excuse is that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined.
29. 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 forbid 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.

30. Trustee George Reiber moved on June 15 to dismiss the DeLanos petition "for unreasonable delay" in producing documents. In so doing, he is motivated by self-preservation, for if he were to investigate the DeLanos effectively, he would uncover evidence of fraud that would also incriminate him for his approval in the first place of a patently suspicious petition. That could lead to his being investigated to determine how many other cases among his 3,909 cases are also meritless or even fraudulent. But his concern is even more immediate, for if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini, he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate or have countenanced his failure to investigate needs to be investigated.

**D. Reasonable grounds for believing that there is a bankruptcy fraud scheme**

31. Taking the totality of circumstances from the above statement of facts –supported as need be by the detailed legal arguments presented by Dr. Cordero in his papers to this Court- there emerge reasonable grounds to suspect that these people are acting, not separately, but rather in a coordinated fashion in violation of the law. 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 cases along the years that they have developed a modus operandi which disregards legality as well as the interests of those whom they deem not to be willing from a cost-effective viewpoint or able in terms of financial means and knowledge to defend their rights and oppose their abuse. They could not possibly have imagined that Dr. Cordero, a pro se, non-local, and non-institutional party, would not behave as their model predicted. Instead, Dr. Cordero has turned out to be a litigant who will not quit defending his rights and who in the process threatens to expose non-coincidental, intentional, and coordinated wrongdoing: a bankruptcy fraud scheme.
32. The way in which such a scheme works here remains to be determined by investigators. But the incentive to engage in bankruptcy fraud is typically provided by money, that is, the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare

the debtors. That leaves a lot of money to play with, for it is not necessarily the case that the debtors do not have money.

33. As for a standing trustee, 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 plan of each debtor’. Thus, after the trustee receives a petition, she is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that the debtor deserves bankruptcy relief from his debts, the trustee approves his debt repayment 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 them to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).
34. If the plan is not confirmed, the trustee must return all payments, 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. Cf. 11 U.S.C. §326(b).
35. The trustee would be compensated for his 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 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 her three times as much as if she 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 had no money and were bankrupt.
36. 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:
  - a) Trustee Reiber had 3,909 *open* cases on April 2, 2004 according to PACER;
  - b) approved the DeLanos’ petition without ever requesting a single supporting document;

- c) chose to dismiss the case rather than subpoena the documents;
- d) has refused to trace the substantial earnings of the DeLanos'; and
- e) refuses to hold an adjourned meeting of creditors, where the DeLanos would be examined under oath, including by Dr. Cordero.

37. Moreover, there is something fundamentally suspicious when:

- a) a bankruptcy judge protects bankruptcy petitioners from having to account for \$291,470;
- b) allows them to disobey his document production order with impunity, such as that of July 26, 2004, despite its being a watered down version of what Dr. Cordero had requested in his papers of July 9 and 19, 2004;
- c) before any discovery has taken place, prejudices in the DeLanos' favor in his order of August 30, 2004, that their July 19 motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case, although he is the only creditor that threatens to expose their bankruptcy fraud; and
- d) yet shields them from further process.

38. These facts and circumstances provide reasonable grounds for believing 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 the 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.

39. However, 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 all those that not only are their friends, but also those that are their acquaintances either because they work in the same building or live in the same small community. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation...starting by subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a bankruptcy fraud scheme!

### III. Relief requested

40. Therefore, Dr. Cordero respectfully requests that this Court:

- a) Report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:
  - 1) *Premier Van et al.*, dkt. no. 03-5023, in this Court;
  - 2) Mr. Palmer's *Premier Van Lines* case, dkt. no. 01-20692, WBNY;
  - 3) *Pfuntner v. Trustee Gordon et al.*, dkt. no. 02-2230, WBNY; and
  - 4) *In re David and Mary Ann DeLano*, dkt. no. 04-20280, WBNY;
- b) address the report to U.S. Attorney General John Ashcroft with the recommendation that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties and who 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;
- c) disqualify Judge Ninfo from these cases;
- d) remove these cases to an impartial court for trial by jury before a judge unrelated to and unacquainted with any of the parties, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;
- e) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted on,

November 8, 2004

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

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

# Proof of Service

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.  
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130 East Main Street  
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1686  
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Christopher K. Werner, Esq.  
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& Wilson, LLP  
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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

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Assistant U.S. Trustee  
100 State Street, Room 6090  
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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  
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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 (ext. 207)  
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

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

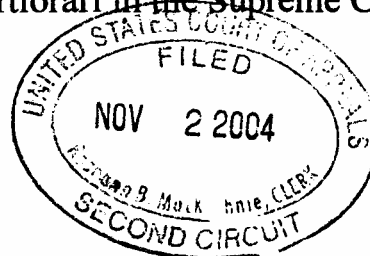
Docket Number(s): 03-5023

In re: Premier Van Lines

**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

**Statement of relief sought:** That this Court:

- 1. stay the mandate;



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

**OPPOSING PARTY:** See caption on first page of brief

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

**Has consent of opposing counsel been sought?** Not applicable

**FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL**

**Is oral argument requested?** Yes

**Argument date of appeal:** December 11, 2003

**Signature of moving party:**

**Has service been effected?** Yes; proof is attached

*Dr. Richard Cordero*

**Date:** November 2, 2004

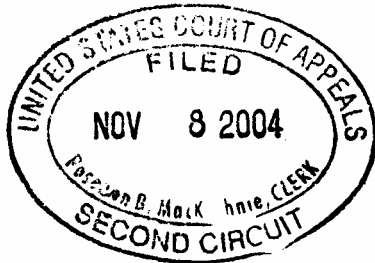
ORDER

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

NOV - 8 2004  
Date



*Arthur M. Heller*  
Arthur M. Heller  
Motions Staff Attorney

# MANDATE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

W.DNY (Rochester)  
03-cv-6031  
CARIMER

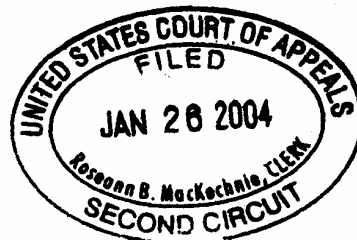
## SUMMARY ORDER

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

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

PRESENT:

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



-----X

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

-----X

RICHARD CORDERO,  
Third-Party-Plaintiff-Appellant,

v.

No. 03-5023

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

DAVID PALMER,  
Third-Party-Defendant-Appellee.

-----X

APPEARING FOR APPELLANT: Richard Cordero, Brooklyn, NY

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

ISSUED AS MANDATE 11-8-04

# General Docket

## US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

INDIV

CLOSED

Court of Appeals Docket #:03-5023-bk

Nsuit: 3422 STATUTES-Bkrup Appeals 801  
In Re: Premier Van v. Palmer  
Filed: 5/2/03

Appeal from: WDNY (ROCHESTER)

Case type information:

Bankruptcy  
District Court

None

Lower court information:

District: 03-cv-6021

Trial Judge David G. Larimer  
MagJudge:  
Date Filed: 01/15/03

Date 3/27/2003  
order/judgement:  
Date NOA filed: 4/25/2003

Fee status:Paid

Panel Assignment:

Panel: JLO JMW RAK 40 Foley Sq.  
Date of decision 1/26/04

Prior cases: NONE

Current cases: NONE

Docket as of May 05, 2005 7:06 pm

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Official Caption 1/  
-----

Docket No. [s] : 03-5023

IN RE: PREMIER VAN LINES, INC.,

Debtor.

-----  
RICHARD CORDERO,

Third-Party-Plaintiff - Appellant

v.

Docket as of May 05, 2005

7:06 pm

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KENNETH W. GORDON, Esq.,

Trustee - Appellee,

DAVID PALMER

Third-Party-Defendant - Appellee.

-----  
Docket as of May 05, 2005

7:06 pm

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Clerk,Bank Ct, RONY  
None

Clerk,Bank Ct, RONY  
n/a

68 Court St. U.S. Courthouse  
Buffalo , NY , 14202  
716-846-4130

David Palmer  
Defendant-Appellee

David Palmer  
n/a

1829 Middle Rd.  
Rush , NY , 14543

Kenneth W. Gordon  
Trustee-Appellee

Kenneth W. Gordon  
n/a  
Gordon & Schaal LLP  
100 Meridian Centre Blvd.  
Rochester , NY , 14618  
585-244-1070

Richard Cordero  
Third-Party-Plaintiff-App

Richard Cordero  
n/a

59 Crescent St.  
Brooklyn , NY , 11208  
718-827-9521

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5/2/03 Note: This appeal was PRO SE when filed.

5/2/03 Copy of decision and order dated March 11, 2003 (03-MBK-6001L), endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. [03-5023]

5/2/03 Copy of decision and order dated March 12, 2003, endorsed by Hon. David G. Larimer, United States District Judge, RECEIVED. (03-cv-6021L). [03-5023]

5/2/03 Copy of notice of appeal and district court docket entries on behalf of Appellant Richard Cordero filed. [03-5023] "FeePaid #64514".

5/2/03 Copy of judgment dated March 12, 2003, endorsed by Deputy Clerk, RECEIVED. [03-5023]

5/22/03 Record on appeal filed. (Original papers of district court.) Number of volumes: 1. Also included is the record from the bankruptcy court which is a separate volume.

5/28/03 Letter dated 5-5-03 from appellant pro se Dr. Cordero to the district court requesting that the district court correct the mistake listed on the district court docket received

5/28/03 Notice of appearance form on behalf of Richard Cordero, Esq., filed. (Orig in acco, copy to Calendar)

5/28/03 Resignation of items in the record and statement of issues on appeal from Appellant Richard Cordero received.

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5/28/03 Scheduling order #1 filed. Record on appeal due on 6/9/03. Appellant's brief and appendix due on 7/9/03. Appellee's brief due on 8/8/03 . Argument as early as week of 9/22/03.

5/28/03 Notice to counsel regarding scheduling order #1 filed on 5/28/03.

5/28/03 Notice of appeal acknowledgment letter from Richard Cordero for Appellant Richard Cordero received.

6/2/03 Notice of appeal acknowledgment letter from Kenneth W. Gordon for Appellee Kenneth W. Gordon received.

6/5/03 Record on appeal received in records room from team.

6/5/03 1st supplemental index on appeal filed.

6/13/03 Record on appeal received in records room from team.

7/14/03 Appellant Richard Cordero brief FILED with proof of service.

7/14/03 Appellant Richard Cordero appendix filed w/pfs. Number of volumes; 1.

8/11/03 Notice of appearance form on behalf of Kenneth W. Gordon, Esq., filed. (Orig in acco , copy to Calendar)

8/11/03 Appellee Kenneth W. Gordon MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due.

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CLOSED

8/19/03 Proposed for argument the week of 10/27/03.

8/25/03 Appellant Richard Cordero reply brief filed with proof of service.

9/16/03 Argument as early as week of 9/22/03.

9/30/03 Proposed for argument the week of 12/8/03.

10/20/03 Set for argument on 12/11/03 . [03-5023]

11/4/03 Appellant Richard Cordero motion to allow leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in it's order of October 23, 2003, denyig Dr. Cordero's request for a jury trial , which Dr. Cordero submitted to and is under consideration by this Court of Appeals FILED (w/pfs). [2471688-1]

11/6/03 Notice of Hearing Date from Appellant Richard Cordero received.

11/13/03 Order FILED GRANTING motion to allow"leave to introduce an updating supplement on the issue of the Bankrupt Court's bias against petition's evidenced in it's order of 10/23/03" [2471688-1] by Appellant Richard Cordero, endorsed on motion form dated 11/4/03(FOR THE COURT-AV).

11/13/03 Letter dated 11-5-03 from Kenneth W. Gordon, Esq. requesting permission from the Court to waive oral argument. received

11/13/03 Notice to counsel re:order dated 12/11/03.

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11/24/03 Copy of Bankruptcy Court order dated 10-23-03 scheduling order in connection with the remaining claims of the plaintiff, James Pfunter, and the cross-claims, counter-claims and third-party claims of the third-party plaintiff, which has attached to it the following additional orders: 1) an October 16 , 2003 order denying and recusal and removal motions and objection of Richard Cordero to proceeding with any hearings and trial on 10-16-03; 2) An October 16, 2003 order disposing of cause of action; and an October 23, 2003 decision & order finding a waiver of a trial by jury from Hon. John C. Ninfo, II, Chief U.S. U.S. Bankruptcy Judge. received.

12/11/03 Case heard before WALKER, CH.J; OAKES, KATZMANN, C.JJ . (TAPE: CD date: 12/11/03)

12/11/03 Outline of the oral argument from Appellant

Richard Cordero received.

12/29/03 Appellant Richard Cordero motion to allow leave to brief the issue raised by this Court at oral argument concerning its jurisdiction to entertain this appeal, FILED (w/pfs). [2509028-1]

1/26/04 Order FILED GRANTING motion to allow by endorsed on motion dated 12/29/2003. "IT IS HEREBY ORDERED that appellant Cordero`s motion for leave to file a brief on issue raised at oral argument be and it hereby is Granted". Before Hon. JMW, JLO, RAK, CJS. Endorsed by Arthur M. Heller, Motions Staff Attorney.

1/26/04 Notice to counsel and pro se re: order dated 01/26/04 Granting motion for leave to file a brief on issue raised at oral argument.

1/26/04 Judgment filed; judgment of the district  
Docket as of May 05, 2005 7:06 pm

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court is Dismissed by detailed order of the court without opinion filed. (JMW)

1/26/04 Notice to counsel and pro se re: summary order dated 1/26/04.

2/9/04 Appellant Richard Cordero motion for extended time to file a petition for rehearing, filed with proof of service.

2/9/04 Appellant Richard Cordero motion for stay of mandate, filed with proof of service.

2/13/04 Order FILED REFERRING motion for extended time by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for extension of time to file petition for rehearing to Hon. JMW, JLO, RAK.

2/13/04 Order FILED REFERRING motion for stay by Appellant Richard Cordero, endorsed on motion dated 2/9/2004. As per Arthur M. Heller motion for stay mandate to Hon. JMW, JLO, RAK.

2/23/04 IT IS HEREBY ORDERED that the motion for an extension of time to file a petitionn for



rehearing and to stay the mandate is GRANTED.  
The petition shall be filed by March 10, 2004  
. Before Hon. JMW, JLO, RAK, CJ. Endorsed  
by Arthur M. Heller, Motions Staff Attorney.

2/26/04 Notice to counsel and pro se re: order dated  
02/23/04.

3/10/04 Appellant Richard Cordero motion for leave  
to attach some entries of the Appendix to the  
petition for panel rehearing and hearing en  
banc, filed with proof of service.

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3/10/04 APPELLANT Richard Cordero, petition for  
rehearing and rehearing en banc, received.

3/11/04 Appellant Richard Cordero Petition for  
rehearing and petition for rehearing en banc  
filed with proof of service.

3/22/04 Appellant Richard Cordero motion for the Hon  
. Chief Judge Walker to recuse himself from  
this case and from considering the pending  
petition for panel rehearing and rehearing en  
banc, filed with proof of service.

3/22/04 Papers (Booklet) of Evidentiary Documents  
supporting a complaint from APPELLANT  
Richard Cordero, received.

3/23/04 Order FILED GRANTING motion for leave to file  
by Appellant Richard Cordero, endorsed on  
motion dated 3/10/2004. IT IS HEREBY ORDERED  
that the motion be and it hereby is GRANTED.  
Before Hon. Walker, Oakes, Katzmann.  
Endorsed by Arthur M. Heller, Motions Staff  
Attorney.

3/24/04 Notice to counsel and pro se re: order dated  
03/23/04.

4/19/04 Appellant Richard Cordero -leave to update  
the motion for the Hon. Chief Judge John M.  
Walker, Jr., to recuse himself from this case  
with recent evidence.....filed with proof  
of service.

5/4/04 Order FILED DENYING motion to recuse by  
Appellant Richard Cordero, endorsed on

motion dated 3/22/2004. "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED." Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Richard C. Wesley, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

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CLOSED

5/4/04 Notice to counsel and pro se re: order dated 05/04/04.

5/10/04 AMENDED order stating "IT IS HEREBY ORDERED that the motion be and it hereby is DENIED," filed. Before Hon. John M. Walker, Jr., Chief Judge, Hon. James L. Oakes, Hon. Robert A. Katzmann, Circuit Judges. Endorsed by Arthur M. Heller, Motions Staff Attorney.

5/10/04 Notice to counsel and pro se re: amended order dated 05/10/04.

5/17/04 Appellant Richard Cordero motion 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, filed with proof of service.

6/2/04 Appellant Richard Cordero motion to allow for the Hon. John M. Walker, Jr., Chief Judge, Either to state his arguments for denying the motions that he disqualify himself from considering the pending petition for panel rehearing and hearing en banc; and from having anything else to do with this case or disqualify himself and failing that for this court to disqualify the chief judge therefrom, filed with proof of service.

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion is DENIED, endorsed on motion dated 6/2/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW, Chief Judge, JLO, RAK, C.J.J.)

8/2/04 Order filed: IT IS HEREBY ORDERED that the motion for declaratory judgment is denied, endorsed on motion dated 5/17/2004. Endorsed by AMH, Motions Staff Attorney. (Before: JMW

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CLOSED

, Jr. Chief Judge, JLO, RAK, C.J.J.)

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04.

8/9/04 Notice to pro se and counsel; re: Order dated 8/2/04 re: declaratory judgment.

9/10/04 Appellant Richard Cordero motion allow /to quash the Order of August 30, 2004 of WBNY J. John C. Ninfo, II, to sever claim from this case, filed with proof of service.

10/5/04 Copy of the letter dated 9-29-04 to Christopher K. Werner, Esq. from APPELLANT Richard Cordero, received.

10/13/04 Order FILED DENYING motion to quash order of August 30, 2004 of WBNY J. John C. Ninfo, II, to sever claim from this case by Appellant Richard Cordero, (JLO,RAK)

10/14/04 Notice to counsel (order dated 10-13-04)

10/18/04 Letter dated 10-12-04 from appellant pro se Cordero to George M. Reiber, Esq. received (copy to the Court)

10/26/04 Order FILED DENYING motion petition for rehearing and petition for rehearing en banc by Appellant Richard Cordero, (ah)

10/27/04 Notice to counsel (order dated 10-26-04)

11/2/04 Appellant Richard Cordero motion stay the mandate filed with proof of service.

11/2/04 Letter dated 10-20-04 from P. Finucane,  
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CLOSED

Deputy Clerk , U.S. Bankruptcy Court George M . Reiber, Esq. received (copy submitted by appellant pro se Cordero)

11/2/04 Letter dated 10-21-04 from appellant pro se Cordero to Kathleen Dunivin Schmitt, Esq. received (copy to the Court)

11/8/04 Order FILED DENYING motion stay the mandate by Appellant Richard Cordero, endorsed on motion dated 11/2/2004, (JLO,RAK)

11/8/04 Notice to counsel (order dated 11-8-04)

11/8/04 Judgment MANDATE ISSUED. CLOSED

11/9/04 Letter dated 10-27-04 from APPELLANT Richard Cordero, to Christopher K. Werner, Esq. Re: David and Mary Ann DeLano, Bkr. dkt no. 04-20280 received.

11/9/04 Copy of the Notice of Motion to enforced Judge Ninfo's order of 8-30,2004 submitted the the US Bankruptcy Court WDNY from APPELLANT Richard Cordero, received.

11/22/04 Acco received in records room from team. Number of Volumes: 2

11/30/04 Mandate receipt returned from the district court.

2/1/05 Notice of filing petition for APPELLANT Richard Cordero, dated January 27, 2005, filed. Supreme Court #: 04-8371.

4/4/05 Writ of Certiorari DENIED

Docket as of May 05, 2005 7:06 pm

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INDIV

CLOSED

4/11/05 Record on appeal RETURNED to lower court. 2 vols.)

W.D.N.Y. (Rochester)

Docket as of May 05, 2005 7:06 pm

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<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
05/15/2006 08:04:55			
<b>PACER Login:</b>		<b>Client Code:</b>	
<b>Description:</b>	dkt report	<b>Case Number:</b>	03-5023
<b>Billable Pages:</b>	13	<b>Cost:</b>	1.04

**U.S. DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK [LIVE] (Rochester)  
CIVIL DOCKET FOR CASE #: 6:03-cv-06021-DGL**

Cordero v. Gordon  
Assigned to: Hon. David G. Larimer  
Demand: \$0  
Cause: 28:1334 Bankruptcy Appeal

Date Filed: 01/15/2003  
Jury Demand: None  
Nature of Suit: 422 Bankruptcy  
Appeal (801)  
Jurisdiction: Federal Question

**Appellant**

**Dr. Richard Cordero**

represented by **Richard Cordero**  
59 Cresent Street  
Brooklyn, NY 11208  
PRO SE

V.

**Appellee**

**Trustee Kenneth Kenneth Gordon,  
Esq.**

represented by **Kenneth W. Gordon**  
Gordon & Schaal, LLP  
100 Meridian Centre Blvd.  
Suite 120  
Rochester, NY 14618  
(585) 244-1070  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
01/15/2003	1	BANKRUPTCY RECORD on appeal received (TO) (Entered: 01/16/2003)
01/16/2003	3	ORDER, that appellant shall file and serve its brief within 20 days after entry of this order; appellee shall serve its brief within 20 days after

		service of appellants brief ( signed by Chief USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard (TO) (Entered: 01/17/2003)
01/17/2003	2	MOTION by Kenneth Gordon to Dismiss appeal court to set return date (TO) (Entered: 01/17/2003)
01/22/2003	4	ORDER, Response to Motion set to 2/14/03 for [2-1] motion to Dismiss appeal ( signed by Chief USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (TO) (Entered: 01/22/2003)
01/24/2003	5	ORDER, Vacating [3-1] order that appellant shall file and serve its brief within 20 days after entry of this order; appellee shall serve its brief within 20 days after service of appellants brief all dates in the 1/22/03 order remain in full force and effect ( signed by Chief USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (TO) (Entered: 01/27/2003)
02/14/2003	6	REPLY BRIEF by Richard Cordero Re: [2-1] motion to Dismiss appeal by Kenneth Gordon (TO) (Entered: 02/14/2003)
03/12/2003	7	ORDER granting [2-1] motion to Dismiss appeal, to Dismiss action ( signed by USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (TO) (Entered: 03/12/2003)
03/12/2003	8	JUDGMENT for Kenneth Gordon against Richard Cordero ( signed by Clerk ). Notice and copy of judgment sent to Kenneth W. Gordon, Richard Cordero (TO) (Entered: 03/12/2003)
03/12/2003		Case closed (TO) (Entered: 03/12/2003)
03/12/2003		Bankruptcy File Returned. (TO) (Entered: 03/12/2003)
03/21/2003	9	MOTION by Richard Cordero for Reconsideration of [8-1] judgment order, [7-1] order to Dismiss action (TO) (Entered: 03/24/2003)
03/27/2003	10	ORDER denying [9-1] motion for Reconsideration of [8-1] judgment order, [7-1] order to Dismiss action ( signed by USDJ David G. Larimer ) Notice and copy of order sent to Kenneth W. Gordon, Richard Cordero (TO) (Entered: 03/27/2003)
04/25/2003	11	NOTICE OF APPEAL by Richard Cordero . Fee Status: 105.00 (Also appealing 03-mbk-6001) (MMG) (Entered: 04/28/2003)
04/28/2003		Notice of appeal and certified copy of docket to USCA: [11-1] appeal by Richard Cordero (Also sent certified copy of 03-mbk-6001 docket sheet) (MMG) (Entered: 04/28/2003)
04/29/2003		Rec'd Bankruptcy File again for appeal purposes. (MMG) (Entered:

		04/30/2003)
05/07/2003	12	LETTER to Clerk of Court, Mr. Early, dated May 5, 2003, with Redesignation of Items and Statement of Issues on Appeal to be made as part of ROA. (USCA# 03-5023) (MMG) (Entered: 06/02/2003)
05/16/2003		USCA Case Number Re: [11-1] appeal by Richard Cordero USCA NUMBER: 03-5023 (MMG) (Entered: 05/16/2003)
05/19/2003		Certified and transmitted record on appeal to U.S. Court of Appeals: [11-1] appeal by Richard Cordero (also sending ROA for 03-mbk-6001) (USCA# 03-5023) (MMG) (Entered: 05/19/2003)
05/21/2003		Received USCA Scheduling Order Re: [11-1] appeal by Richard Cordero USCA NUMBER: 03-5023 Appeal record due on 5/27/03 (ROA already sent on 5/19/03) (MMG) (Entered: 05/22/2003)
06/02/2003		Transmitted supplemental record on appeal: [11-1] appeal by Richard Cordero (MMG) (Entered: 06/02/2003)
10/22/2003	13	MANDATE of USCA granting Petitioner's motion for expedited action and DENYING the Manadamus Petition therefore dismissing appeal as to [11] Notice of Appeal filed by Richard Cordero (USCA# 03-3088) (MMG, ) (Entered: 10/23/2003)
10/22/2003	14	CORRECTED MANDATE of USCA granting Motion for expedited action and denying Mandamus Peition therefore dismissing appeal as to [11] Notice of Appeal filed by Richard Cordero (USCA# 03-3088) (MMG, ) (Entered: 10/28/2003)
11/05/2003		Returned Bankruptcy File (1) with copy of Mandate dismissing appeal (MMG, ) (Entered: 11/05/2003)
11/22/2004	<a href="#">15</a>	MANDATE of USCA dismissing appeal for lack of jurisdiction as to [11] Notice of Appeal filed by Richard Cordero, (USCA#03-5023) (MMG, ) (Entered: 11/22/2004)
05/12/2005		Appeal Record Returned: [11] Notice of Appeal (USCA# 03-5023) (MMG, ) Modified on 5/12/2005 (MMG, ). (Entered: 05/12/2005)

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