At the commencement of the Trial, the Court questioned Cordero in connection with the attached New York State Attorney Directory Westlaw Search (the "Search"), which indicated that he was a licensed (No. 2269389) attorney currently registered with the New York State Office of Court Administration, having: (1) graduated

from the University of Cambridge, England; and (2) been admitted in the Appellate Division Second Department in 1989. The Search also indicated that, at least as of the date of his last registration, Cordero was associated with the law firm of Heller, Jacobs & Kamlet, LLP, doing business at 261 Madison Avenue, New York, New York, a firm that the Search described as having ninety-eight percent (98%) of its practice devoted to litigation.

At the Trial, Cordero confirmed that he was a licensed and currently registered attorney, but denied that he had ever been associated in any way with the firm of Heller, Jacobs & Kamlet, LLP. Cordero further asserted that he had advised the Court that he was an attorney in one of his initial appearances in the Premier Case.[2]

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[2] Although Cordero asserted that he advised the Court that he was an attorney in one of his initial appearances in the Premier Case, neither the Court nor any of the courtroom staff recalls such an admission. The Search was made by the Court's Confidential Law Clerk after Cordero had a discussion with a Deputy Clerk about obtaining a CM/ECF password during which he indicated that he was an attorney. Many of the pleadings, statements, actions and inactions of Cordero in and in connection with the Premier and DeLano Cases, in which he makes much of his *pro se* litigant status, can be seen in a far different light when one is aware that he is a licensed, experienced and registered attorney.

Letters, briefs, motions, applications, and statements[1]
in which
Dr. Cordero gave notice since 2002 that he is a lawyer

to Judge Ninfo and the parties
and in turn the parties acknowledged that to the Judge,
which casts doubt on the truthfulness of the Judge's allegation that

"neither the Court nor any of the courtroom staff recalls such an admission"

or on his competency in reading those documents at all or with the minimal degree of due care required of a lawyer, let alone a judge

A. Writings in which notice was given to Judge Ninfo and the parties that Dr. Cordero was a lawyer

1. Dr. Cordero's very first letter **to** Judge **Ninfo,** of **September 27, 2002**, (Add:513)and

2. the accompanying Statement of Facts and **Application** for a Determination.

Judge Ninfo acknowledged receipt of them in his letter of October 8, 2002, to Dr. Cordero, wherein the Judge stated that he was transmitting them to Assistant U.S. Trustee Kathleen Dunivin Schmitt. (Add:514)

3. Dr. Cordero's letter of **October 14, 2002**, **to** Judge **Ninfo** after the commencement on September 27, 2002, of *Pfuntner v. Gordon et al.*, docket no. 02-2230, WBNY.

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[1] Most of these documents are collected in the bound volumes of Dr. Cordero's:

a) **Designation** of Items in the Record and Statement of Issues on Appeal of **January 23, 2003**, to the District Court, WDNY, where docketed as 03-cv-6021L (Add:537/entries 42 and 43);

b) **Redesignation** of Items in the Record and Statement of Issues on Appeal of **May 5, 2003**, to the Court of Appeals for the Second Circuit, where docketed as 03-5023, CA2 (Add:541/entry 80 and 542/87); and

c) **Appendix** submitted **to** the Court of Appeals for the 2nd Circuit in support of the Opening Brief, as supplemented for the Petition for a Writ of **Mandamus** of **September 12, 2003**, docket no. 03-3088 (Add:566).

4. When in reaction to Judge Ninfo's transmittal (¶2 above), **Trustee Schmitt** wrote her letter of **October 8, 2002**, **to** Dr. **Cordero**, she addressed him as a lawyer. (Add:816)

5. Dr. Cordero's letter of **October 14, 2002**, **to** Assistant U.S. **Trustee Schmitt** and

6. accompanying **Rejoinder** and Application for a Determination,

7. with **copy to** Judge **Ninfo**;

8. to which Trustee **Schmitt replied** on **October 22, 2002**, again addressing Dr. Cordero as a lawyer and

9. noting after her signature "cc: The Honorable John C. Ninfo, II".

10. Dr. Cordero's **Appeal** of **November 25, 2002**, **to** U.S. **Trustee for Region 2** Carolyn S. **Schwartz** from a Supervisory Opinion of Kathleen Dunivin Schmitt, Assistant United States Trustee,

11. with **copy to** Judge **Ninfo**.

12. Dr. Cordero's letter of **January 10, 2003**, **to** Mr. Lawrence A. **Friedman**, Director, of the Executive Office for the United States Trustees,

13. with **copy to** Judge **Ninfo**.

14. Dr. Cordero's letter of **May 21, 2002**, **to** Raymond **Stilwell**, Esq., attorney for Mr. David Palmer, owner of Premier Van Lines, and

15. of **May 30, 2002**.

16. Dr. Cordero's letter of **May 30, 2002**, **to** Chapter 13 **Trustee** Kenneth **Gordon**, who in turn addressed him as an attorney:

17. in his letter of **June 10, 2002**, **to** Dr. **Cordero**; (Add:809)

18. in his Notice of **December 5, 2002**, of **motion** to Dismiss Cross-claim Against Trustee in an Adversary Proceeding; and

19. in his letter of **December 17, 2002**, **to** Dr. **Cordero** which bears the notation "pc: Hon. John C. Ninfo, II – via hand delivery".

20. Dr. Cordero's letter of **May 31, 2002**, **to** Mr. David M. **Dworkin**, owner of the Jefferson-Henrietta warehouse and subsequently a third-party defendant in *Pfuntner*, in which Mr. DeLano is also a third-party defendant.

21. Dr. Cordero's letter of **June 29, 2002**, **to** Amber M. **Barney**, Esq., attorney for M&T Bank - a defendant in *Pfuntner* and the employer of Mr. DeLano- at Underberg & Kessler, LLP, the law firm of which Judge Ninfo was a partner before being appointed to the bench in 1992.

22. Dr. Cordero's letter of **July 15, 2002**, **to** Mike **Beyma**, Esq., at Underberg & Kessler, attorney for M&T Bank and Mr. DeLano,

23. who addressed him as an attorney in his letter of **August 1, 2002, to** Dr. **Cordero**. (Add:784)

24. Dr. Cordero's letters of **August 7, 2002**, and

25. of **October 14, 2002**, **to** Mike **Beyma**, Esq.

26. Dr. Cordero's letters of **August 26, 2002**, **to** David **MacKnight**, Esq., attorney for Mr. James Pfuntner, Plaintiff in *Pfuntner*, and

27. of **October 7, 2002**, after the commencement of that case.

28. Chapter 13 **Trustee** George **Reiber** wrote to Dr. Cordero a letter dated **October 13, 2004**, making **express reference** to the fact that **Dr. Cordero** was **an attorney**.

B. Filings to one or more of which the above writings were attached as exhibits

29. Dr. Cordero's **Rejoinder** and Application for a Determination of **October 14, 2002**.

30. Dr. Cordero's **Answer** and Counterclaim of **November 1, 2002**.

31. Dr. Cordero's **Amended Answer** with Cross-claims of **November 20, 2002.**

32. Dr. Cordero's **Third-party Complaints** and Cross-claims of **November 21, 2002**.

33. Dr. Cordero's **Designation** of Items in the Record and Statement of Issues on Appeal of **January 23, 2003**, in U.S. Bankruptcy Court; WBNY.

34. Dr. Cordero's Motion of **January 27, 2003**, for an Extension of Time to File Notice of Appeal.

35. Att. MacKnight's Motion of **April 10, 2003**, to Discharge Plaintiff from any Liability to the Persons or Entities who Own or Claim an Interest in the Four Storage Containers….

36. Dr. Cordero's Brief of **April 17, 2003**, in Opposition to Pfuntner's Motion to Discharge, for Summary Judgment, and other Relief.

37. Dr. Cordero's Motion of **June 6, 2003**, for Sanctions on and Compensation from Plaintiff Pfuntner and Att. MacKnight.

Dr. Richard Cordero, Esq.

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, 2002

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

Re: Premier Van Lines, bankruptcy case number 01-20692, Chapter 7

Dear Judge Ninfo,

Kindly find herewith a copy of the letter that the trustee in the above captioned case, Kenneth Gordon, Esq., sent me last September 23. It confirms his refusal to communicate with me in this matter although I have a legitimate and justifiable interest in knowing about the course of the proceedings, and all the more so since they have taken a new turn upon the discovery of other assets of the debtor.

To assist you in understanding the context in which Mr. Gordon wrote that letter, I am sending you my reply to him and supplying a Statement of Facts, which is supported by pertinent documents.

I am submitting this material to you so that you may determine whether in this case Mr. Gordon's performance complies with his duties as trustee and whether he is fit to continue as such.

Looking forward to hearing from you, I remain,

yours sincerely,

Dr. Richard Cordero

United States Bankruptcy Court
Western District of New York
1400 UNITED STATES COURTHOUSE
ROCHESTER, NEW YORK 14614

Hon. John C, Ninfo, II
CHIEF UNITED STATES
BANKRUPTCY JUDGE

October 8, 2002

Dr. Richard Cordero
59 Crescent Street
Brooklyn, New York 11208-1515

Re: Premier Van Lines, Inc.
Case No:. 01-20692

Dr. Cordero:

By copy of this letter the Court acknowledges receipt of your correspondence, dated September 27, 2002, in which you request the Court to make a determination as to whether the Chapter 7 Trustee, Ken Gordon, Esq., is satisfactorily administering the above-referenced bankruptcy estate. Such a determination, however, is not appropriate for the Court to make at this time.

The appointment of a Chapter 7 trustee is a function of the Department of Justice, Office of the United States Trustee, and the supervision of the Chapter 7 trustee remains in the province of that office. Accordingly, any concerns that you may have regarding Mr. Gordon's capacity as the Chapter 7 trustee in this case should first be addressed to Kathleen Dunivin Schmitt, Esq., Assistant United States Trustee, 100 State Street, Room 6090, Rochester, New York 14614.

I am confident that Ms. Schmitt will make thorough inquiry and assist you in reconciling this matter. Thank you for your continued patience.

Very truly yours,

Hon. John C. Ninfo, II
Chief U.S. Bankruptcy Judge

JCN/ams

cc: Kathleen Dunivin Schmitt, Asst. U.S. Trustee
Kenneth W. Gordon, Chapter 7 Trustee

New York State Attorney Directory - Search Detail

as of 02/23/2005

Registration Number: 2269389

RICHARD CORDERO

Year Admitted in NY:	1989
Appellate Division Department of Admission:	2
Law School:	UNIV OF CAMBRIDGE ENGLAND
Registration Status:	Due to reregister within 30 days of birthday
Next Registration:	Apr 2005

Search Again | Cancel

The Detail Report above contains information that has been provided by the attorney listed, with the exception of REGISTRATION STATUS, which is generated from the OCA database. Every effort is made to insure the information in the database is accurate and up-to-date.

The good standing of an attorney and/or any information regarding disciplinary actions must be confirmed with the appropriate Appellate Division Department. Information on how to contact the **Appellate Divisions** of the Supreme Court in New York is available at www.nycourts.gov/courts.

If the name of the attorney you are searching for does not appear, please try again with a different spelling. In addition, please be advised that attorneys listed in this database are listed by the name that corresponds to their name in the Appellate Division Admissions file. There are attorneys who currently use a name that differs from the name under which they were admitted. If you need additional information, please contact the NYS Office of Court Administration, Attorney Registration Unit at 212-428-2800.

New York State Office of Court Administration

Westlaw Attached Printing Summary Report for NINFO/FY2005-B,H 5008280

Your Search:	NA(RICHARD & CORDERO) & LICENSE-NUMBER(2269389) & (STA(NY))
Date/Time of Request:	Monday, February 28, 2005 15:31:00 Central
Client Identifier:	MD
Database:	PROFLICENSE-ALL
Lines:	29
Documents:	1
Images:	0

PROFESSIONAL LICENSE RECORD

Agency Information Current Through:	06-02-2003
Database Last Updated:	03-26-2004
Update Frequency:	ANNUAL
Current Date:	02/28/2005
Source:	NY UNIFIED COURT SYSTEM, ATTORNEY REGISTRATION UNIT

NAME & PROFESSIONAL INFORMATION

Name:	**RICHARD CORDERO**
Date Of Birth:	04/XX/1953
Address:	59 CRESCENT ST BROOKLYN, NY 11208-1515
County:	KINGS

LICENSING INFORMATION

Licensing Agency:	NY STATE OFFICE OF COURT ADMINISTRATION
License/Certification Type:	ATTORNEY
License Number:	**2269389**
Issue Date:	00/00/1989
License Status:	CURRENTLY REGISTERED
License State:	**NY**

ATTORNEY PROFESSIONAL INFORMATION

Judicial Department Number:	2
Last Registration Start Year:	2003
Last Contact Date:	03/25/2003

END OF DOCUMENT

Westlaw Attached Printing Summary Report for NINFO/FY2005-B,H 5008280

Date/Time of Request:	Monday, February 28, 2005 15:38:00 Central
Client Identifier:	MD
Database:	WLD-SUPER
Citation Text:	Cordero, Richard
Lines:	19
Documents:	1
Images:	0

Westlaw.

Cordero, Richard

Richard Cordero
Heller, Jacobs & Kamlet, LLP
6th Floor
261 Madison Ave
New York, New York 10016-2303
New York County
(212) 682-7000
Fax: (212) 682-7401

Admitted:

New York, 1989

Total Firm Size:

11-25

END OF DOCUMENT

NEW YORK STATE
Unified Court System

LAWRENCE K. MARKS, ESQ.
ADMINISTRATIVE DIRECTOR

RONALD P. YOUNKINS, ESQ.
CHIEF OF OPERATIONS

OFFICE OF COURT ADMINISTRATION
ATTORNEY REGISTRATION UNIT

LAURA WEIGLEY ROSS
DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES

April 26, 2005

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Attorney Registration

Dear Dr. Cordero:

This is in response to your letter dated April 11, 2004.

Attached please find copies of biennial registration forms filed by yourself pursuant to Section 468-a of the Judiciary Law and Part 118 of the Rules of the Chief Administrator.

A review of the Official Register of Attorneys and Counsellors-at-law in the State of New York, maintained by this office pursuant to Section 468 of the Judiciary Law has been conducted. This search confirms that there is only one individual listed with the name of Richard Cordero listed as duly admitted to the Bar of the State of New York. This search confirms that you were admitted to the NY Bar in 1989 by the Appellate Division 2nd Department.

Attached please find copies of the following Attorney registration forms you filed with our office:

1989-90	05/08/1989	paid fee of $100.00
1991-92	4/12/1991	paid fee of $300.00
1993-94	02/02/1995	retired - no fee
1995-96	02/02/1995	retired - no fee
1997-98	09/17/1999	retired - no fee
1999-2000	04/25/2001	retired -no fee
2001-02	04/25/2001	retired -no fee
2003-04	03/20/2003	retired - no fee
2005-06	03/25/2005	retired - no fee

The forms include the addresses reported to our office as your home and business address during each registration period. This office has no connection with Martindale-Hubble, Westlaw

25 BEAVER STREET, NEW YORK, NEW YORK 10004 • PHONE: 212-428-2800 • EMAIL:ATTYREG@COURTS.STATE.NY.US
WEBSITE: WWW.NYCOURTS.GOV

or FindLaw.com. I suggest you contact these companies directly to determine the source of the information they published in their listing regarding your name.

If you have any other questions or concerns regarding this matter do not hesitate to contact me.

Very truly yours,

Samuel H. Younger
Chief Management Analyst
Attorney Registration Unit

SHY\TM

U.S. Bankruptcy Court
Southern District of New York (Manhattan)
Bankruptcy Petition #: 04-13127-brl

Assigned to: Judge Burton R. Lifland
Chapter 11
Voluntary
Asset

Date Filed: 05/07/2004

Heller, Jacobs & Kamlet, LLP
Eleven Hanover Square
Second Floor
New York, NY 10005
Tax id: 13-3347565
Debtor In Possession
fka
Thurm & Heller, LLP

represented by **Fox Rothschild, LLP**
Fox Rothschild LLP
13 East 37th Street
Suite 800
New York, NY 10016
(212) 682-7575
Fax : (212) 682-4218
Email: mail@geronlaw.com

United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004
(212) 510-0500
U.S. Trustee

The Official Committee of Unsecured Creditors
Creditor Committee

represented by **Joseph Thomas Moldovan**
Morrison Cohen LLP
909 Third Avenue
New York, NY 10022-4731
(212) 735-8600
Fax : (212) 735-8708
Email:
bankruptcy@morrisoncohen.com

Filing Date	#	Docket Text
05/07/2004	1	Voluntary Petition (Chapter 11). Order for Relief Entered.. Filed by Yann Geron of Geron & Associates, P.C. on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Partnership Resolution# 2 Rule 1007-2 Affidavit# 3 List of 20 Largest Unsecured Creditors# 4 Creditor Matrix) (Geron, Yann) (Entered: 05/07/2004)

05/07/2004		Receipt of Voluntary Petition (Chapter 11)(04-13127) [misc,824] (839.00) Filing Fee. Receipt number 0208B2492409. Fee amount 839.00. (U.S. Treasury) (Entered: 05/07/2004)
05/19/2004	2	Request for 341(a) Notice with 341(a) meeting to be held on 6/10/2004 at 03:00 PM at 80 Broad St., 2nd Floor, USTM. (Tetzlaff, Deanna) (Entered: 05/19/2004)
05/20/2004	3	Application to Employ *Geron & Associates, P.C. as General Bankruptcy Counsel for Chapter 11 Debtor* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Affidavit of Proposed Counsel for the Debtor) (Geron, Yann) (Entered: 05/20/2004)
05/21/2004	4	Notice of 341(a) Meeting of Creditors with Certificate of Mailing. Service Date 05/21/2004. (Related Doc # 2) (Admin.) (Entered: 05/22/2004)
05/26/2004	5	Order signed on 5/24/2004 Scheduling Initial Case Conference. with hearing to be held on 6/30/2004 at 10:00 AM at Courtroom 623 (BRL) (Saenz De Viteri, Monica) (Entered: 05/26/2004)
05/27/2004	6	Schedules *A, B, D, E, F, G, H, Business Income and Expenses Form, Statement of Financial Affairs and Summary of Schedules* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 05/27/2004)
05/27/2004	7	Order signed on 5/27/2004 Authorizing Retention of Geron & Associates, P.C. as General Bankruptcy Counsel for Chapter 11 Debtor (Related Doc # 3). (Saenz De Viteri, Monica) (Entered: 05/27/2004)
05/28/2004	8	Letter *Adjourning 341(a) Meeting from June 10, 2004 to July 15, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Affidavit of Service)(Geron, Yann) (Entered: 05/28/2004)
06/04/2004	9	Affidavit of Service *of Order Scheduling Initial Case Conference* (related document(s)5) filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 06/04/2004)
06/07/2004	10	Motion to Set Last Day to File Proofs of Claim *Against the Debtor and Approving the Form and Manner Thereof* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Exhibit A - Proposed Claims Bar Date Notice) (Geron, Yann) (Entered: 06/07/2004)
06/16/2004	11	Order signed on 6/16/2004 Fixing Last Date for Filing of all Proofs of Claim Against the Debtor and Approving the Form and Manner Thereof

		(related document(s)10). Proof of Claims due by 7/30/2004, (Saenz De Viteri, Monica) (Entered: 06/16/2004)
06/28/2004	12	Affidavit of Service *of Notice of Deadline Requiring Filing Proofs of Claim on or Before July 30, 2004* (related document(s)11) filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Notice)(Geron, Yann) (Entered: 06/28/2004)
07/14/2004	13	Operating Report *for the Period May 7, 2004 Through May 31, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 07/14/2004)
07/14/2004	14	Operating Report *for the Period June 1, 2004 Through June 30, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 07/14/2004)
08/10/2004	15	Appointment of Official Creditors' Committee *of Unsecured Creditors* filed by Greg M. Zipes on behalf of United States Trustee. (Zipes, Greg) (Entered: 08/10/2004)
08/16/2004	16	Monthly Operating Report *for the Period July 1, 2004 Through July 30, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 08/16/2004)
08/23/2004	17	Application to Employ *Morrison Cohen Singer & Weinstein, LLP, as Counsel for the Official Committee of Unsecured Creditors* filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Notice of Hearing) (Moldovan, Joseph) (Entered: 08/23/2004)
08/25/2004	18	Affidavit of Service (related document(s)17) filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. (Moldovan, Joseph) (Entered: 08/25/2004)
08/26/2004	19	Affirmation *Amended Affirmation of Joseph T. Moldovan in Support of the Employment and Retention of Morrison Cohen Singer & Weinstein LLP as Counsel for the Official Committee of Unsecured Creditors* (related document(s)17) filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. with hearing to be held on 9/9/2004 at 10:00 AM at Courtroom 623 (BRL) (Moldovan, Joseph) (Entered: 08/26/2004)
09/02/2004	20	Motion to Approve *a Stipulation Between the Debtor and Citibank, N.A. ("Citibank") (i) Fixing and Allowing the Secured Claim of Citibank, and (ii) Providing for the Payment of Such Claim* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. with hearing to be held on

		9/22/2004 at 10:00 AM at Courtroom 623 (BRL) (Attachments: # 1 Application# 2 Exhibit A# 3 Exhibit B# 4 Exhibit C# 5 Affidavit of Service) (Geron, Yann) (Entered: 09/02/2004)
09/14/2004	21	Order signed on 9/14/2004 Granting Application to Employ and Retain Morrison Cohen Singer & Weinstein, LLP, Nunc Pro Tunc, as Counsel for the Official Committee of Unsecured Creditors, (Related Doc # 17). (Edwards, Latoya) (Entered: 09/14/2004)
09/14/2004	22	Monthly Operating Report *for the Period August 1, 2004 through August 31, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 09/14/2004)
09/21/2004	23	Letter *Adjourning (A) Initial Case Conference and (B) the Hearing to Approve a Stipulation (i) Fixing and Allowing the Secured Claim of Citibank, N.A. and (ii) Providing for Payment of Such Claim, from September 22, 2004 to October 14, 2004 at 10:00 a.m.* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Affidavit of Service)(Geron, Yann) (Entered: 09/21/2004)
10/04/2004	24	Withdrawal of Claim(s): *Dated 6/18/2004 in the Amount of $300.71* filed by State of New York, Department of Labor.(Tetzlaff, Deanna) (Entered: 10/05/2004)
10/04/2004	28	Withdrawal of Claim(s): *Dated 6/18/2004 for $300.71* filed by State of New York, Department of Labor.(Tetzlaff, Deanna) (Entered: 10/20/2004)
10/12/2004	25	Letter *Adjourning (A) the Status Conference and (B) the Hearing to Approve a Stipulation (i) Fixing and Allowing the Secured Claim of Citibank, N.A., and (ii) Providing for Payment of Such Claim, from October 14, 2004 to October 26, 2004 at 10:00 a.m.* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Attachments: # 1 Affidavit of Service)(Geron, Yann) (Entered: 10/12/2004)
10/19/2004	26	Amended Operating Report *for the Period August 1, 2004 Through August 31, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 10/19/2004)
10/19/2004	27	Operating Report *for the Period September 1, 2004 Through September 30, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 10/19/2004)
10/25/2004	29	Letter *Adjourning Status Conference and Hearing to Approve a Stipulation (i) Fixing and Allowing the Secured Claim of Citibank, N.A. and (ii) Providing for Payment of Such Claim, from October 26, 2004 to*

		November 10, 2004 at 10:00 a.m. filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 10/25/2004)
11/01/2004	30	Letter *(Notice of Firm Name and Address Change effective November 12, 2004)* filed by Joseph Thomas Moldovan on behalf of Morrison Cohen Singer & Weinstein, LLP. (Moldovan, Joseph) (Entered: 11/01/2004)
11/10/2004	31	Order signed on 11/10/2004 Approving a Stipulation Between the Debtor and Citibank, N.A. ("Citibank") (i) Fixing and Allowing the Secured Claim of Citibank, and (ii) Providing for the Payment of Such Claim (Related Doc # 20). (Saenz De Viteri, Monica) (Entered: 11/10/2004)
11/12/2004	32	Letter *Adjourning Case Conference* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 11/12/2004)
11/18/2004	33	Monthly Operating Report *For the Period October 1, 2004 Through October 31, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 11/18/2004)
11/30/2004	34	Application to Employ *and Retain the Firm of WithumSmith+Brown, P.C. as Accountants for the Official Committee of Unsecured Creditors* filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. with presentment to be held on 12/13/2004 at 12:00 PM at Courtroom 623 (BRL) (Moldovan, Joseph) (Entered: 11/30/2004)
12/02/2004	35	Affidavit of Service (related document(s)34) filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. (Moldovan, Joseph) (Entered: 12/02/2004)
12/20/2004	36	Order signed on 12/20/2004 Authorizing Employment and Retention of WithumSmith+Brown, P.C. as Accountants for the Official Committee of Unsecured Creditors (Related Doc # 34). (Saenz De Viteri, Monica) (Entered: 12/20/2004)
12/23/2004	37	Letter *Adjourning Case Conference to January 20, 2005 at 10:00 a.m.* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 12/23/2004)
01/05/2005	38	Monthly Operating Report *for the Period November 1, 2004 Through November 30, 2004* filed by Yann Geron on behalf of Heller, Jacobs & Kamlet, LLP. (Geron, Yann) (Entered: 01/05/2005)
01/10/2005	39	Withdrawal of Claim(s): *#22* filed by Imperial A.I. Credit Companies,

		Inc..(Tetzlaff, Deanna) (Entered: 01/13/2005)
03/21/2005	40	Letter *Adjourning Case Conference from March 23, 2005 to April 13, 2005 at 10:00 a.m.* filed by Fox Rothschild, LLP on behalf of Heller, Jacobs & Kamlet, LLP. (Fox Rothschild, LLP,) (Entered: 03/21/2005)
03/23/2005	41	Application to Employ *Fox Rothschild LLP, as Successor to Geron & Associates, P.C., as General Bankruptcy Counsel to Chapter 11 Debtor* filed by Fox Rothschild, LLP on behalf of Heller, Jacobs & Kamlet, LLP. with presentment to be held on 4/5/2005 (check with court for location) (Attachments: # 1 Notice of Presentment# 2 Proposed Order# 3 Retention Affidavit# 4 Affidavit of Service) (Fox Rothschild, LLP,) (Entered: 03/23/2005)
04/05/2005	42	Order signed on 4/5/2005 Authorizing Employment and Retention of Fox Rothschild LLP, as Successor to Geron & Associates, P.C., as General Bankruptcy Counsel to Chapter 11 Debtor, Effective 2/1/05 (Related Doc # 41). (Saenz De Viteri, Monica) (Entered: 04/05/2005)
04/05/2005	43	Application for FRBP 2004 Examination filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. (Attachments: # 1 Proposed Order# 2 Notice of Presentment) (Moldovan, Joseph) (Entered: 04/05/2005)
04/06/2005	44	Affidavit of Service (related document(s)43) filed by Joseph Thomas Moldovan on behalf of The Official Committee of Unsecured Creditors. (Moldovan, Joseph) (Entered: 04/06/2005)
04/15/2005	45	Objection to Motion filed by Gabriel Mignella on behalf of physicians' reciprocal insurers. (Mignella, Gabriel) (Entered: 04/15/2005)

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PACER Login:		**Client Code:**	
Description:	Docket Report	**Search Criteria:**	04-13127-brl Fil or Ent: Fil From: 5/2/2003 To: 5/16/2005 Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
Billable Pages:	4	**Cost:**	0.32

CASE NO. 04-20280
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

----------X

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

Debtors.

AFFIRMATION

LEONARD G. KAMLET
Office and Post Office Address
115 Broadway, 11th Floor
New York, New York 10006
(212) 422-1200

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

----------x

IN RE:

DAVID G. DeLANO and
MARY ANN DeLANO,

CASE NO. 04-20280
Chapter 13
AFFIRMATION

Debtors.

----------x

LEONARD G. KAMLET, an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury:

1. I am presently a member of ABRAMS, GORELICK, FRIEDMAN & JACOBSON, PC.

2. Between October 1, 1998 and December 31, 2003 I was a partner in Heller, Jacobs & Kamlet, LLP formerly known as Thurm & Heller, LLP.

3. An individual named Richard Cordero worked for Heller, Jacobs & Kamlet, LLP as a clerk/paralegal up and through December 31, 2003. However, I do not recall when he started at the firm, although he was employed there as of October 1, 1998. Mr. Cordero was not an attorney.

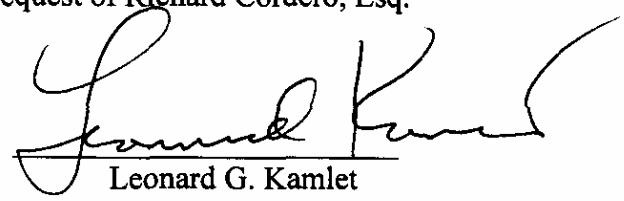
4. Upon information and belief he was born before 1953.

5. The individual, also named Richard Cordero, who is identified in the attached attorney registration print-out and who came to my office to secure this affirmation, showed me photographic identification at that time.

6. This individual was not known to me previously and is not the Richard Cordero I knew to have worked for Heller, Jacobs & Kamlet, LLP in a non-attorney status.

7. This affirmation is submitted at the request of Richard Cordero, Esq.

Dated: New York, New York
April 14, 2005



Leonard G. Kamlet

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

AFFIRMATION

ANTHONY M. HELLER, an attorney duly licensed to practice law in the State of New York, affirms the following to be true:

That I am currently a partner in the firm of GEISLER & GABRIELE. Until December 31, 2003, I was a partner in the firm of Heller, Jacobs & Kamlet, LLP which was located at 261 Madison Avenue in New York City, New York. The firm employed a paralegal named Richard Cordero. Mr. Cordero was never to my knowledge an attorney. He was certainly never an attorney for Heller, Jacobs & Kamlet nor did we ever represent that he was an attorney. Further, Heller, Jacobs & Kamlet never employed Dr. Richard Cordero nor anyone else named Richard Cordero who was an attorney. The paralegal Richard Cordero worked for the firm perhaps from the 1980s but certainly through the 1990s into 2003. I personally have no current professional or residence address or phone number for the Richard Cordero that used to work for Heller, Jacobs & Kamlet. I have no idea why FindLaw, WestLaw or any other legal service would list Richard Cordero as an associate at the firm of Heller, Jacobs & Kamlet. The Heller, Jacobs & Kamlet firm went out of business at the end of 2003 except for the collection of receivables and the payment of

payables which involved the work efforts of only one employee, the former office manager Madeline Gwozd.

DATED: Garden City, New York
April 21, 2005

ANTHONY M. HELLER, ESQ.

I. DISMISSED

U.S. Bankruptcy Court
Western District of New York (Rochester)
Adversary Proceeding #: 2-02-02230-JCN

Assigned to: Hon. John C. Ninfo II
Related BK Case: 01-20692
Related BK Title: Premier Van Lines, Inc., a Corporation
Demand: $20000
Nature of Suit: 456

Date Filed: 09/27/02

Plaintiff

James Pfuntner

represented by **David D. MacKnight**
Lacy, Katzen etal
130 East Main St.
Rochester, NY 14604
(585) 454-5650
Email:
dmacknight@lacykatzen.com
LEAD ATTORNEY

V.

Defendant

Kenneth W. Gordon, *As Trustee*
100 Meridian Centre Blvd.
Suite 120
Rochester, NY 14618
( )

represented by **Kenneth W. Gordon**
Gordon & Schaal
100 Meridian Centre Blvd.
Suite 120
Rochester, NY 14618
(585) 244-1070
Email:
kengor@rochester.rr.com
LEAD ATTORNEY

Richard Cordero

Rochester Americans Hockey Club, Inc.

M & T Bank

represented by **Michael J. Beyma**
Underberg & Kessler
1800 Lincoln First Tower
Rochester, NY 14604
(585) 258-2890
Email: mbeyma@underberg-kessler.com

LEAD ATTORNEY

3rd Party Plaintiff

Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

V.

3rd Pty Defendant

David J. Palmer
SSN: xxx-xx-2753

David Dworkin	represented by	**Karl S. Essler** Fix, Spindelman, Brovitz, Turk, Himelein 500 Crossroads Building 2 State Street Rochester, NY 14614 (585) 232-1660 *LEAD ATTORNEY*
Jefferson Henrietta Associates	represented by	**Karl S. Essler** (See above for address) *LEAD ATTORNEY*
David Delano	represented by	**Michael J. Beyma** (See above for address) *LEAD ATTORNEY*

U.S. Trustee

U.S. Trustee's Office,
100 State St.
Room 6090
Rochester, NY 14614
(585) 263-5812
TERMINATED: 09/30/2004

Filing Date	#	Docket Text

09/27/2002	1	Complaint filed to (AP Dkt. 02-2230) James Pfuntner vs. Kenneth W. Gordon, Trustee; Richard Cordero, Rochester Americans Hockey Club, Inc; and M&T Bank to obtain a declaratory judgment relating to any of foregoing causes of action [1-1]FEE NOT PAID, CALLED D. Macknight's office, and will send check on Monday. (KST) (Entered: 09/27/2002)
10/01/2002	2	Filing fee paid; Receipt No.: 22052838 [2-1] re: adversary proceeding. (KST) (Entered: 10/03/2002)
10/03/2002	3	Summons issued. [3-1] Answer due: 11/4/02 for M & T Bank, for Rochester Americans Hockey Club, Inc., for Richard Cordero, for Kenneth W. Gordon (KST) (Entered: 10/03/2002)
10/08/2002	4	Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [4-1] Clerk's Note: Defendant, M&T Bank was not served, per D. MacKnight's office, will serve and send in an Affidavit of Service. (KST) (Entered: 10/09/2002)
10/09/2002	5	Answer filed on behalf of Kenneth W. Gordon [5-1] by Kenneth W. Gordon, Esq. (KST) (Entered: 10/09/2002)
10/15/2002	6	Affidavit of Mailing re: summons [3-1], complaint to obtain a declaratory judgment relating to any of foregoing causes of action [1-1] [6-1]served on: M & T Bank, attn: David DeLano, Assistant Vice President. (PCF) (Entered: 10/16/2002)
10/17/2002	7	Letter [7-1]from Dr. Richard Cordero, advising that he has not yet been served in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 10/23/2002)
10/25/2002	8	Waiver of Service of Summons and Petition for Clarification of Richard Cordero, Pro Se [8-1] (KST) (Entered: 11/05/2002)
11/01/2002	9	Clerk's Note: Richard Cordero called to inquire when his answer was due; he was advised that the date certain is 11/4/02; he said that he will mail out his answer. Further on 10/31/02, Mr. Cordero was advised that an extension of time for the answer would need to be stipulated to, or a motion may be brought, but an extension of time to answer cannot be done ex-parte. 9-1] (KST) (Entered: 11/05/2002)
11/06/2002	10	Answer filed on behalf of Richard Cordero, Defendant. Filed by R. Cordero, pro se defendant. [10-1] by , Esq. (KST) (Entered:

		11/06/2002)
11/06/2002	11	Answer filed on behalf of M & T Bank [11-1] by Michael J. Beyma, Esq. (KST) (Entered: 11/06/2002)
11/12/2002	12	Plaintiff's Reply to Richard Cordero's Counterclaim, filed by David MacKnight, Atty. [12-1] (KST) (Entered: 11/12/2002)
11/12/2002	13	Affidavit of Mailing re: Reply filed by D. MacKnight, Atty. [12-1] [13-1] (KST) (Entered: 11/12/2002)
11/18/2002		Third Pary Complaint and Crossclaim filed to (AP Dkt. 02-2230)James Pfunter, Plaintiff vs. Kenneth Gordon, Tr., Richard Cordero, Rochester Americans Hockey Club, Inc., M&T Bank, defendants, cross-defendants; Richard Cordero, defendant and third party plaintiff, vs. David Palmer, David Dworkin, Jefferson Henrietta Associates and David Delano. [0-0] (KST) (Entered: 11/21/2002)
11/19/2002	14	Third Party Summons issued. [14-1] Answer due: 12/19/02 for David Delano, for Jefferson Henrietta Associates, for David Dworking, for David J. Palmer (KST) (Entered: 11/21/2002)
11/25/2002	17	Affidavit of Mailing re: [17-1]third party complaint and summons. Served on essential parties. (KST) (Entered: 12/09/2002)
11/25/2002	18	Amended Answerwith cross-claims filed by Richard Cordero, Pro Se Defendant. [18-1] (KST) (Entered: 12/09/2002)
12/02/2002	19	Copy of Appeal filed with the U.S. Trustee's office by Richard Cordero, Pro Se Defendant. [19-1] (KST) (Entered: 12/09/2002)
12/05/2002	15	Notice of Motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] Hearing date and time: 9:30 12/18/02 at Rochester Courtroom Filed by: Kenneth Gordon, Esq. Affidavit of service: filed (PCF) (Entered: 12/06/2002)
12/06/2002	16	Letter [16-1]dated 12/5/02 from David MacKnight, Esq. to the Court that it might be helpful that the Trustee provide a listing from the debtors records of whose property debtor placed in the Henrietta location and whose property debtor placed in the Avon property. SEE LETTER FOR MORE DETAILS. (PCF) (Entered: 12/06/2002)
12/09/2002	20	Letter [20-1] to Plaintiff's attorney to expedite prosecution of AP; matter will be set on trial calendar for 9:00 1/22/03 Deadline to file

		documents: 12/19/02 ; (KST) (Entered: 12/09/2002)
12/10/2002	21	Letter [21-1]from K. Gordon, Tr., re:records of stored property by debtor. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 12/11/2002)
12/12/2002	22	Memorandum of Law in opposition, filed by Dr. Richard Cordero, Defendant, and Third Party Plaintiff(Pro Se) [22-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding [15-1] . (KST) (Entered: 12/12/2002)
12/13/2002	23	Letter [23-1]from Amber Barney, Atty.,advising that Underberg & Kessler will not be representing David Dworkin a party in this action, but are requesting an extension of time to answer from Dr. Cordero. (KST) (Entered: 12/16/2002)
12/17/2002	24	Answer filed on behalf of M&T Bank David Delano, Third Party Defendant [24-1] by Michael J. Beyma, Esq. (KST) (Entered: 12/18/2002)
12/17/2002	26	Letter [26-1]from K. Gordon to Dr. Cordero, advising that he does not consent to an adj. in this matter. (KST) (Entered: 12/18/2002)
12/18/2002	25	Notice of Pre-trial Conference: [25-1] 10:00 1/10/03 at Rochester - Judge's Chambers; sent to David MacKnight, Atty; Kenneth Gordon, Tr.; Michael Beyma, Atty; Richard Cordero, Pro Se; Raymond Stilwell, Atty., and U.S. Trustee. (KST) (Entered: 12/18/2002)
12/18/2002	27	Minutes [27-1] re: motion for dismissal of cross-claim against trustee in an adversary proceeding - granted. The Court finds that Mr. Gordon's letters were not defamatory and that he was not negligent. Order to be submitted. NOTICE OF ENTRY TO BE ISSUED. Appearances: Kenneth Gordon, Trustee/Defendant; and in opposition: Dr. Richard Cordero, Pro Se Third Party Plaintiff (by telephone). (KST) (Entered: 12/19/2002)
12/19/2002	28	Copy of Letter from Dr. Cordero to Underberg and Kessler, conditionaly granting extension of time to file answer to 12/31/02, on behalf of David Dworkin and Jefferson Henrietta Associates, third party defendants, subject to certain conditions required by Dr. Cordero. [28-1] (KST) (Entered: 12/20/2002)
12/23/2002	29	Letter [29-1]from Raymond Stilwell, Atty., advising that he is unable to attend the 1/10/03 pretrial as he has a conflict. Mr. Stilwell further

		advises that his appearance may not be necessary. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 12/24/2002)
12/23/2002	30	Order [30-1] granting motion for dismissal of cross-claim against trustee in an adversary proceeding, and that Dr. Cordero's cross-claims against the Trustee are hereby dismissed. [15-1]Notice of Entry Issued To: Kenneth Gordon, Atty; Dr. Richard Cordero, Defendant/Third Party Plaintiff; and U.S. Trustee. (KST) (Entered: 12/30/2002)
12/26/2002	51	Affidavit of Mailing re: [51-1]Default Judgment in a Non-Core Matter. Filed by Dr. Richard Cordero. (KST) (Entered: 02/04/2003)
12/30/2002	31	Answer filed on behalf of David Dworkin, Jefferson Henrietta Associates [31-1] by Karl S. Essler, Esq. (KST) (Entered: 12/30/2002)
12/30/2002	32	Letter [32-1]from Dr. Cordero, requesting that he appear by telephone for the 1/10/03 pretrial(submitted the pre-trial option form). (KST) (Entered: 12/30/2002)
12/30/2002	33	Letter [33-1] from Michael Beyma, Atty., advising that he does not have an objection to Dr. Cordero appearing by telephone for the 1/10/03 pretrial. (KST) (Entered: 12/30/2002)
01/02/2003	34	Clerk's Note: Advised R. Stilwell, Atty., that his appearance will not be necessary at the 1/10/03 Pretrial. [34-1] (KST) (Entered: 01/02/2003)
01/02/2003	35	Affidavit of Mailing re: [35-1]filed by Dr. Richard Cordero, Defendant/Third Party Plaintiff, re: pt opition form and application to enter a default judgment against David Palmer. (KST) (Entered: 01/03/2003)
01/03/2003	36	Order [36-1], that Dr. Richard Cordero, Defendant and Third Party Plaintiff may appear by telephone for the 1/10/03 pretrial (KST) (Entered: 01/06/2003)
01/06/2003	37	Pre-Trial option form Order of 1/3/03 was mailed to Dr. Richard Cordero, Defendant; Michael Beyma, Esq. Kenneth Gordon, Esq.; David MacKnight, Esq., and delivered to the U.S. Trustee. [37-1] (KST) (Entered: 01/06/2003)
01/06/2003	38	Copy of Letter [38-1]from K. Gordon, Tr., to Dr. Cordero, Defendant/Third Party Defendant, advising that he has no objection to Dr. Cordero appearing by telephone re: the pretrial. (KST) (Entered: 01/06/2003)

01/13/2003	39	Notice of appeal Richard Cordero re: order of 12/23/02. [30-1] . Receipt No.: 22055167 (KST) (Entered: 01/13/2003)
01/13/2003	40	Civil Cover Sheet filed. [40-1] (KST) (Entered: 01/13/2003)
01/14/2003	41	Letter [41-1]to Dr. Richard Corderdo, Defendant/Third Party Plaintiff, advising him that his designation of items on appeal are due on or before 1/27/03. Copy of letter served on essential parties. (KST) (Entered: 01/14/2003)
01/15/2003	42	Notice of Appeal and Certified copy transmitted to District Court. Civil Case #03-cv-6021L [42-1] (KST) (Entered: 01/17/2003)
01/27/2003	43	Apellant's designation by Richard Cordero of Contents for Inclusion in Record on Appeal. (KST) (Entered: 01/29/2003)
01/27/2003	54	Letter [54-1]from Dr. Richard Cordero, re: transcript of hearing of 12/18/02. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/05/2003)
01/29/2003	44	Affidavit of Mailing re: appellant designation [43-1] by Richard Cordero [44-1] (KST) (Entered: 01/29/2003)
01/30/2003	47	Notice of Motion to extend time to of time to file Notice of Appeal [47-1] Hearing date and time: 9:30 2/12/03 at Rochester Courtroom Filed by: Richard Cordero, Defendant Affidavit of service: not filed (KST) (Entered: 02/03/2003)
01/31/2003	45	Letter [45-1]from Dr. Cordero re: his available travel dates to come to Rochester to inspect his property in storage. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 01/31/2003)
02/03/2003	46	Letter [46-1]from Dr. Richard Cordero, Defendant, Third Party Plaintiff, re: entry of a default judgment. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/03/2003)
02/03/2003	48	Letter [48-1]from K. Gordon, Tr., advising that he will not be attending the inspection of Dr. Cordero's personal property in storage in Avon, NY. (KST) (Entered: 02/03/2003)
02/04/2003	49	Clerk's Certificate of Default [49-1] (KST) (Entered: 02/04/2003)
02/04/2003	50	Affidavit of Dr. Richard Cordero [50-1] re:Non-Military Service. (KST) (Entered: 02/04/2003)

02/04/2003	52	Order [52-1], to Transmit Record to District Court, re: non-core default judgment, with attachment to Recomendation of th eBankruptcy Court The Default Judgment Not Be Entered By the District Court (KST) (Entered: 02/04/2003)
02/04/2003	53	Letter [53-1]to District Court enclosing the required Documents re: Non Core Default Application for Default. Clerk's Note: Proposed original order submitted to District Court. (KST) (Entered: 02/04/2003)
02/06/2003	55	Memorandum of Law [55-1] re: motion to extend time to of time to file Notice of Appeal [47-1] . (KST) (Entered: 02/06/2003)
02/12/2003	56	Minutes [56-1] re: motion to extend time to of time to file Notice of Appeal - denied; This motion was not filed timely as required by Rule 8002(a). Appearances: Dr. Richard Cordero, Defendant/Third Party Plantiff(appeared by telephone); in opposition: Kenneth Gordon, Tr., Defendant. Mr. Gordon will submit Order. NOTICE OF ENTRY TO BE ISSUED. (KST) (Entered: 02/14/2003)
02/12/2003	58	Letter [58-1]from Raymond Stilwell, Atty., re: various issues in this matter, and that he does not represent David Palmer in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/19/2003)
02/18/2003	57	Order [57-1] denying motion to extend time to file Notice of Appeal [47-1]that the Notice of Appeal was filed in the Bankuptcy Court Clerk's Office on 1/13/03; and thereby not timely filed; that the provisions of Bankuptcy Rule 9006(e) and 9006(f) do not apply to extend the time limited for filing of the Notice of Appeal under Bankruptcy Rule 8002(a); that the last date for Richard Coredero, Defendant and Third Party Plantiff, to file a motion seeking an extension under Bankuptcy Rule 8002(c) of his time to file his Notice of Appeal was 1/29/03; that the motion to extend was not filed with the Bankruptcy Court Clerk' until 1/30/03; and that a motion to dismiss the appeal is pending in the District Court. NOTICE OF ENTRY ISSUED TO: Dr. Richard Cordero, Third Party Plaintiff; Ken Gordon, Defendant and U.S. Trustee. (KST) (Entered: 02/18/2003)
02/21/2003	59	Letter [59-1]from M. Beyma, Atty., for M&T Bank, advising that M&T Bank has not yet decided whether someone from the bank will attend at the warehouse opening. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 02/24/2003)
02/27/2003	60	Notice of Motion for relief from order denying motion to extend time to file notice of appeal [60-1] Hearing date and time: 9:30 3/12/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Defendant

		Affidavit of service: filed. Clerk's Note: Advised Dr. Cordero that 3/12/03 is not a motion date, he will re-notice the motion for 3/19/03 or 3/26/03, and submit an amended affidavit of mail. (KST) (Entered: 03/04/2003)
03/04/2003	61	Letter of Opposition filed by K. Gordon, Defendant [61-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1] Clerk's Note: Advised Mr. Gordon that the date of 3/12/03 is not a hearing date, and that an amended notice if forthcoming. (KST) (Entered: 03/04/2003)
03/10/2003	62	Amended Notice of Motion, re: the amended date of hearing to 3/26/03 at 9:30 at Rochester Courtroom filed by Dr. Richard Cordero, Defendant [62-1] re: motion for relief from order denying motion to extend time to file notice of appeal [60-1]Affidavit of Service filed. (KST) (Entered: 03/11/2003)
03/10/2003	63	Letter [63-1]of Dr. Richard Cordero, Defendant, re: default of David Palmer. (KST) (Entered: 03/11/2003)
03/11/2003	65	Copy of Letter [65-1]from Dr. Richard Cordero to Hon. David Larimer, re: default judgment against D. Palmer. (KST) (Entered: 03/13/2003)
03/11/2003	66	Copy of Decision and Order by U.S. District Judge David G. Larimer; concuring in the Bankruptcy Judge's determination that judgment is not apprropriate in this case, and that furthermore, it would appear that the Bankruptcy Court is the proper forum for conducting an inquest concerning damages and the matter is referred to the Bankruptcy Court for that purpose. SEE ORDER FOR FURTHER TERMS AND CONDITIONS. [66-1] (KST) (Entered: 03/13/2003)
03/12/2003	64	Letter [64-1]to Dr. Richard Cordero, sent by Paul Warren, Clerk of the Court, re: the application for the entry of default against David Palmer. SEE LETTER FOR FURTHER TERMS AND CONDITIONS. (KST) (Entered: 03/13/2003)
03/13/2003	67	Decision and Order of the Hon. David G. Larimer, U.S. District Judge, re:Notice of Appeal filed on 1/13/03, re: the Decision and Order dated 12/30/02, of the Hon. John C. Ninfo, II, Chief U.S. Bankruptcy Judge. ORDERED THAT the Trustee's motion to dismiss the appeal is granted, and the appeal is dismissed. [67-1] (KST) (Entered: 03/14/2003)
03/26/2003	70	Minutes [70-1] denying motion for relief from order denying motion to extend time to file notice of appeal [60-1]Ms. Schaal to submit order.

		The Court reserves the right to supplement the order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Defendant and Third Party Plalintiff(by telephone); in opposition: Deborah Schaal of counsel to K. Gordon, Trustee, and David MacKnight, Atty. for James Pfunter. (KST) (Entered: 03/28/2003)
03/26/2003	71	Transcript [71-1] of proceedings held 12/18/03. (KST) (Entered: 03/28/2003)
03/27/2003	68	Copy of Letter [68-1]from David Macknight, Atty., to Dr. Richard Cordero, Defendant, advising of the available inspection dates: 4/23/03, 4/24/03, or 4/25/03, or earlier if Dr. Cordero would like. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 03/27/2003)
03/27/2003	69	Copy of Decision and Order [69-1],executed by David G. Larimer, U.S. District Judge re: Richard Coredero moves for a rehearing or reconsideration of this Court's Decision and Order enter 3/11/03. The motion is in all respects denied. (KST) (Entered: 03/28/2003)
04/02/2003	72	Copy of Letter [72-1]from Dr. Richard Cordero to Court Reporter. (KST) (Entered: 04/02/2003)
04/04/2003	73	Order [73-1] denying Defendant, Third Party Plaintiff, Dr. Richard Cordero's motion for relief from order denying motion to extend time to file notice of appeal [69-2], that based on the findisngs of fact and conclusions of law, that Richard Cordero's motion ofr relief from teh order dated 2/18/03 denying his motion for extension of time for filing a notice to appeal is hereby denied. NOTICE OF ENTRY ISSUED TO Debra Schall, of counsel to Kenneth Gordon, Atty.,Dr. Richard Cordero, Defendant, and David MacKnight, Atty. (KST) (Entered: 04/07/2003)
04/07/2003	74	Notice of entry issued to U.S. Trustee [74-1] re:Order of 4/4/03 . (KST) (Entered: 04/07/2003)
04/07/2003	75	Notice of Motion for Measures relating to trip to Rochester and Inspection of Property [75-1] Hearing date and time: 9:30 4/16/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se, Defendant, and Third Party Plaintiff. Affidavit of service: filed. Clerk's Note: Dr. Cordero is advised by letter that 4/16/03 is not a scheduled date, and to please re-notice his motion for 4/23/03, or for one of the Court's motion dates that accommodates his schedule. (KST) (Entered: 04/08/2003)
04/07/2003	76	Letter [76-1]to Dr. Richard Cordero, advising that due to the

		complexity of the legal issues that he has now raised and re: notice of motion for measures relating to trip to Rochester, the Court denies Dr. Cordero's request to appear by telephone in this matter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/08/2003)
04/11/2003	77	Notice of Motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Hearing date and time: 9:30 4/23/03 at Rochester Courtroom Filed by: David MacKnight, Atty. Affidavit of service: not filed (KST) (Entered: 04/14/2003)
04/21/2003	78	Brief of Dr. Richard Cordero, Pro Se [78-1] re: motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1]Affidavit of Mailing filed. (KST) (Entered: 04/21/2003)
04/21/2003	79	Letter [79-1]from Mary Dianetti, Bankruptcy Court Reporter, in response to Dr. Cordero's letter. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 04/22/2003)
04/23/2003	81	Minutes [81-1] motion for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] Adj. to 9:30 5/21/03 at Rochester Courtroom. The court directed Dr. Cordero to inspect the goods by 5/21/03. Appearances: David MacKnight, Atty. for J. Pfunter, Plaintiff; in opposition: Dr. Richard Cordero, Defendant, and Third Party Plaintiff(by telephone). (KST) (Entered: 04/29/2003)
04/29/2003	80	Clerk's Note: Appeal filed transmitted to District Court, for purposes of filing in the Second Circuit. [80-1] (KST) (Entered: 04/29/2003)
05/05/2003	82	Copy of Letter [82-1]from Dr. Cordero to James Pfunter, confirming that Dr. Cordero will be arriving in Rochester on May 21, 2003 at 10:45, to inspect his property in Avon. Affidavit of Service filed. (KST) (Entered: 05/05/2003)
05/07/2003	83	Letter [83-1]from Dr. Richard Cordero, Defendant, re: his travel arrangements for the inspection in Avon, NY., on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/07/2003)

05/13/2003	84	Copy of Letter [84-1]from J. Pfunter to Dr. Cordero, confirming that the inspection of the property at Sackett Road will take place on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/13/2003)
05/15/2003	85	Letter [85-1]from Dr. Richard Cordero, Defendant, advising that he will be in Rochester on 5/19/03. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 05/16/2003)
05/19/2003	86	Letter [86-1]from Underberg & Kessler advising that Ms. Mattle will be picking up Dr. Cordero from the Rochester Airport for the inspection of property at 2140 Sackett Road, Avon, NY, and thereafter Ms. Mattle will take Dr. Cordero back to the Rochester Airport. (KST) (Entered: 05/20/2003)
05/21/2003	87	Copy of Notice of appeal that was received and docketed on 5/2/03 at the United States Court of Appeals. [87-1] (PCF) (Entered: 05/23/2003)
05/21/2003	88	MINUTES [88-1] denying motion without prejudice. for an Order pursuant to FRBP 7056 and Federal Rules of Civil Procedure 56 and Federal Rules of Bankruptcy Procedure 7022 and Federal Rules of Civil Procedure 22 for an Order discharging James Pfunter from any liability to any of the parties to this adversary proceeding [77-1] NOTICE OF ENTRY TO BE ISSUED. Dr. Cordero can make a motion for sanctions and damages and renew his default motion against David Palmer. Appearances by: David MacKnight, atty for James Pfunter. Appearing in Oppostion: Dr. Richard Cordero, defendant and Third Pary Plaintiff (by telephone) (PCF) (Entered: 05/27/2003)
06/03/2003	89	Scheduling Order from the U.S. Court of Appeals, Second Circuit, re: dates certain. SEE ORDER FOR FURTHER DETAILS. [89-1] (KST) (Entered: 06/04/2003)
06/09/2003	90	Letter [90-1]from D. Macknight, re: prospective purchaser of the premises, and Dr. Cordero's items. SEE LETTER FOR FURTHER DETAILS. (KST) (Entered: 06/09/2003)
06/11/2003	91	Notice of Motion for sanctions and compensation for failure to comply with discovery orders. [91-1] Hearing date and time: 9:30 6/25/03 at Rochester Courtroom Filed by: Dr. Richard Cordero, Pro Se Affidavit of service: filed (KST) (Entered: 06/11/2003)
06/11/2003	107	Ex-Parte Motion for Default Against David Palmer Filed by 3rd Party Plaintiff Richard Cordero (Attachments: # 1 Appendix) (Tacy, K.) (Entered: 07/31/2003)

06/18/2003	92	Affidavit Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # 1 Exhibit) (Tacy, K.) (Entered: 06/19/2003)
06/19/2003	93	Notice of Amendment of Brief Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # 1 Exhibit # 2 Proposed Order) (Tacy, K.) (Entered: 06/19/2003)
06/19/2003	94	Notice to Admit. Filed by David MacKnight, Atty.(Attachments: # 1 Exhibit)(Tacy, K.) (Entered: 06/23/2003)
06/23/2003	95	Precautioary Response to the Motion Made by Richard Cordero to Enter a Default Judgment. Filed by D. MacKnight, Atty.Plaintiff James Pfuntner . Clerk's Note: The subject Default motion is an ex-parte motion, however it will be addressed at the Court's 6/25/03 9:30 Motion Calendar. (Tacy, K.) (Entered: 06/23/2003)
06/24/2003	96	Letter Filed by Daniel Delaus, Atty . (Tacy, K.) (Entered: 06/24/2003)
06/25/2003	97	Hearing Continued (RE: related document(s)[91] Motion for sanctions and compensation: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom for [91]. The Court advised the parties of the Court's available trial dates for October and November. On the adjourned date, the parties are to advise the Court which of those date they want as trial dates. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plaintiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants. (Parkhurst, L.) (Entered: 06/26/2003)
06/25/2003	98	Hearing Continued (RE: related document(s)95 Ex parte motion to enter default judgment against David Palmer: Hearing to be held on 7/2/2003 at 09:30 AM Rochester Courtroom. Although an ex parte motion, the Court addressed it at this motion calendar. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third part Plaintiff. Appearing in opposition: David MacKnight, Atty. for James Pfunter, Plaintiff. (Parkhurst, L.) (Entered: 06/26/2003)
06/25/2003	99	Certificate of Service Filed by Plaintiff James Pfuntner (RE: related document(s)94 Notice to Creditors). (Tacy, K.) (Entered: 06/27/2003)
07/02/2003	100	Hearing Continued (RE: related document(s)[91] Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for [91], Trial may

07/02/2003	100	continue into 10/17/03 and 11/14/03 will be held open if any matters still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Pro Se Defendant and Third Party Plantiff (By telephone). Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff; Karl Essler, Atty. for Jefferson Henrietta Associates and David Dworkin, Third Party Defendants; Joseph Decoursey, Law Clerk, appeared on behalf of Michael Beyma, Atty. for M & T Bank, Defendant and David Delano, Third Party Defendant, to provide Mr. Beyma's available Trial dates. (Parkhurst, L.) (Entered: 07/09/2003)
07/02/2003	101	Hearing Continued (RE: related document(s)95 Ex parte motion to enter default judgment against David Palmer. Trial to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 95, Trial may continue into 10/17/03 and 11/14/03 will be held open for any matters that still need to be heard. The Court will issue an order. NOTICE OF ENTRY TO BE ISSUED. Appearances: Dr. Richard Cordero, Third Party Plaintiff (By telephone) Appearing in opposition: David MacKnight, Atty. for James Pfuntner(Parkhurst, L.) (Entered: 07/09/2003)
07/15/2003	102	Order Re:dates certain. Signed on 7/15/2003 (RE: related document(s)[91] Hearing (Bk Motion) Set, [98] Hearing (Bk Other) Continued, Hearing (Bk Other) Continued). (Tacy, K.) (Entered: 07/15/2003)
07/17/2003	103	BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # 102) (Admin.) (Entered: 07/18/2003)
07/17/2003	104	BNC Certificate of Mailing. Service Date 07/17/2003. (Related Doc # 102) (Admin.) (Entered: 07/18/2003)
07/23/2003	105	Motion For Sanctions Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Attachments: # 1 Exhibit) (Tacy, K.) (Entered: 07/23/2003)
07/23/2003	106	Reply to Request for Admissions. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 07/23/2003)
07/31/2003		Clerk's Note: Pursuant to telephone conversation with Dr. Cordero this date: Advised Dr. Cordero that his motion to appear by telephone on August 6, 2003 at 9:30 is denied, but he can appear in person or obtain consent to adj. this matter to 10/16/03 at 9:30 a.m. Dr. Cordero advised that he will withdraw this motion, and make another motion for 10/16/03 at 9:30 a.m. Advised Dr. Cordero to write a letter to the Court and the parties involved confirming his intent. (RE: related document(s)105

		Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) (Tacy, K.) (Entered: 07/31/2003)
08/04/2003	108	ReNotice of Motion and Notice of Withdrawal Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 08/06/2003)
08/04/2003	109	Hearing Set (RE: related document(s)108 Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 108, (Tacy, K.) (Entered: 08/06/2003)
08/06/2003	110	Hearing Continued (RE: related document(s)105 Motion for Sanctions filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero, 108 Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 105 and for 108, Appearing in opposition: David MacKnight, Atty. for James Pfuntner, Plaintiff (Parkhurst, L.) (Entered: 08/07/2003)
08/11/2003	111	Motion to Recuse. Filed by Defendant Richard Cordero , 3rd Party Plaintiff (Attachments: # 1 Exhibit # 2 Exhibit) (Tacy, K.) (Entered: 08/11/2003)
08/11/2003	112	Hearing Set (RE: related document(s)111 Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 8/20/2003 at 09:30 AM Rochester Courtroom for 111, (Tacy, K.) (Entered: 08/11/2003)
08/14/2003	113	Letter to Dr. Richard Cordero, Defendant and Third Party Plaintiff. Copies sent to Kenneth Gordon, Esq., David Palmer, David MacKnight, Atty., Michael Beyma, Atty., Karl Essler, Atty., U.S. Trustee. (RE: related document(s)111 Application). (Tacy, K.) (Entered: 08/14/2003)
08/20/2003	114	Hearing Continued (RE: related document(s)111 Generic Application filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 111, Dr. Cordero will renotice the motion for 10/16/03. No appearances. (Parkhurst, L.) (Entered: 08/20/2003)
08/21/2003	115	Renotice of Motion for Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero (Tacy, K.) (Entered: 08/29/2003)

08/21/2003	116	Hearing Set (RE: related document(s)115 Generic Motion filed by 3rd Party Plaintiff Richard Cordero, Defendant Richard Cordero) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom for 115, (Tacy, K.) (Entered: 08/29/2003)
09/17/2003	117	Copy of Writ of Mandamus. Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 09/18/2003)
09/20/2003	118	BNC Certificate of Mailing. Service Date 09/20/2003. (Related Doc # 117) (Admin.) (Entered: 09/21/2003)
10/07/2003	119	Notice of objections to Hearings and Withdrawal of Motions Except For Recusal and Removal. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	120	Objection Filed by David Dworkin, Jefferson Henrietta Associates , Notice of Objectons to Hearings and Withdrawal of Motions Except for Recusal and Removal. (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	121	Copy of Letter to the Pro Se Unit for Second Circuit. Filed by Karl Essler, Atty., for David Dworkin , and Jefferson Henrietta Associates . (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	122	Notice of Motion and Motion to Determine Matters Admitted. Filed by David MacKnight, Atty. for Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/07/2003)
10/07/2003	123	Hearing Set (RE: related document(s)122 Motion filed by Plaintiff James Pfuntner) Hearing to be held on 11/25/2003 at 09:30 AM Rochester Courtroom. 122, at the time of the Trial. Clerk's Note: D. MacKnight is to amend the motion papers from 9:00 a.m. to 9:30 a.m. (Tacy, K.) Modified on 11/7/2003. Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (Entered: 10/07/2003)
10/08/2003	124	Amended Motion (related document(s): 122to reflect correct time. Motion filed by Plaintiff James Pfuntner) Filed by Plaintiff James Pfuntner (Tacy, K.) (Entered: 10/09/2003)
10/14/2003	125	Reply to Motion to determine Matters Admitted (related document(s): 122 Motion filed by Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Attachments: # 1 Certificate of Service) (Finucane, P.) (Entered: 10/14/2003)

10/15/2003	126	Addendum to the Motion for Sanctions and Compensation for Failure to Comply with Discovery Orders. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Tacy, K.) (Entered: 10/15/2003)
10/15/2003	127	Hearing Set (RE: related document(s)124 Amended Motion filed by Plaintiff James Pfuntner) Hearing to be held on 10/16/2003 at 09:30 AM Rochester Courtroom. This matter will be heard at the Trial. 124, (Tacy, K.) (Entered: 10/15/2003)
10/16/2003	128	Hearing Held. RE: Motion for Recusal and Removal; Complaint to Determine Right of Property; third-party plaintiff's request for jury trial. Notice of Entry be issued. (Finucane, P.) (Entered: 10/17/2003)
10/16/2003	129	Order Denying Recusal and Removal Motions and Objection of Richard Cordero to Proceedng with any Hearings and a Trial on 10/16/03 (Related Doc # 111) Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)
10/16/2003	130	Order Disposing of Causes of Action. Signed on 10/16/2003. (Finucane, P.) (Entered: 10/17/2003)
10/17/2003	131	Reply to Motion to determine Matters Admitted. (related document(s): 122 Motion filed by atty for Plaintiff James Pfuntner) Filed by Defendant Richard Cordero (Finucane, P.) (Entered: 10/17/2003)
10/17/2003	132	Reply to Atty Essler's Motion letter to the Court. Filed by Defendant Richard Cordero . (Finucane, P.) (Entered: 10/17/2003)
10/19/2003	133	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # 129) (Admin.) (Entered: 10/20/2003)
10/19/2003	134	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # 130) (Admin.) (Entered: 10/20/2003)
10/19/2003	135	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # 129) (Admin.) (Entered: 10/20/2003)
10/19/2003	136	BNC Certificate of Mailing. Service Date 10/19/2003. (Related Doc # 130) (Admin.) (Entered: 10/20/2003)
10/22/2003	139	Amended Reply. Filed by Defendant Richard Cordero . (Tacy, K.) (Entered: 10/24/2003)
10/23/2003	137	Order Re:Finding A Waiver of A Trial By Jury. Signed on 10/23/2003.

		(Attachments: # 1 Appendix # 2 Appendix # 3 Appendix) (Tacy, K.) (Entered: 10/23/2003)
10/23/2003	138	Order Re:Scheduling Order in Connection with the Remaining Claims of the Plaintff, James Pfuntner, and the Cross-Claims, Counterclaims and Third-Party Plaintiff, Richard Cordero. Signed on 10/23/2003. (Attachments: # 1 Appendix # 2 Appendix # 3 Appendix) (Tacy, K.) Modified on 10/23/2003 (Tacy, K.). (Entered: 10/23/2003)
10/23/2003		Clerk's Note : The Orders of 10/23/03 were paper mailed to Raymond Stilwell, Atty.,on behalf of David Palmer, Defendant, with a Notice of Entry re: the 2 Orders. (RE: related document(s)137 Order 138 Order (Tacy, K.) (Entered: 10/24/2003)
10/25/2003	140	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # 137) (Admin.) (Entered: 10/26/2003)
10/25/2003	141	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # 138) (Admin.) (Entered: 10/26/2003)
10/25/2003	142	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # 137) (Admin.) (Entered: 10/26/2003)
10/25/2003	143	BNC Certificate of Mailing. Service Date 10/25/2003. (Related Doc # 138) (Admin.) (Entered: 10/26/2003)
10/27/2003	144	Motion Filed by Defendant Richard Cordero (Tacy, K.) (Entered: 10/27/2003)
10/28/2003	145	Order Signed on 10/28/2003 (RE: related document(s)144 The Motion of Richard Cordero for a More Definite Statement of the Court's Order and Decision, is in all respects denied. (Tacy, K.) (Entered: 10/28/2003)
10/30/2003	146	BNC Certificate of Mailing. Service Date 10/30/2003. (Related Doc # 145) (Admin.) (Entered: 10/31/2003)
11/07/2003	147	Letter filed by Richard Cordero, Defendant Corrective Entry for purpose of correcting docket text as follows: the return date is to read 10/16/03, and not 11/25/03. The wrong date was inadvertently typed in. (Tacy, K.). (RE: related document(s)122 (Tacy, K.) (Entered: 11/07/2003)
11/19/2003	148	Letter to United States Court of Appeals for the Second Circuit, enclosing the Court's 10/23/03 Scheduling Order, together with the 10/16/03 Order Denying Recusal and Removal Motions; the 10/16/03

		Order Disposing of causes of Action; and the 10/23/03 Decision and Order Finding a Waiver of a Trial by Jury: (Attachments: # 1 Appendix # 2 Appendix # 3 Appendix # 4 Appendix) (Tacy, K.) (Entered: 11/19/2003)
11/19/2003		Clerk's Note: (RE: related document(s)148 Letter: mailed letter to Roseann B. MacKechnie Clerk of Court, U.S. Court of Appeals for the Second Circuit, and to Richard Cordero, Defendant. (Tacy, K.) (Entered: 11/19/2003)
01/30/2004	149	Copy of Summary Order from the USCA, for the Second Circuit. Clerk's Note: This order submitted directly to Chambers. (Tacy, K.) (Entered: 03/12/2004)
04/28/2004	150	Letter Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # 1 Certificate of Service # 2 Exhibit # (copy of letter)(3) Exhibit (copy of letter) (Tacy, K.) (Entered: 04/30/2004)
05/04/2004	151	Letter dated 5/4/04 from the Clerk of the Court, Paul R. Warren, Esq. to Dr. Richard Cordero regarding search request. (Finucane, P.) (Entered: 05/05/2004)
05/19/2004	152	Letter dated 5/16/04 Filed by Richard Cordero. (RE: related document(s)151 Letter). (Finucane, P.) (Entered: 05/19/2004)
05/20/2004	153	Letter dated 5/20/04 from the Clerk of the Court, Paul R. Warren, Esq. to Dr. Richard Cordero regarding search fee. (RE: related document(s)152 Letter). (Finucane, P.) (Entered: 05/20/2004)
05/26/2004	154	Letter Filed by Defendant, Richard Cordero in response to (RE: related document(s)153letter of Paul R. Warren, Clerk of the Court. (Tacy, K.) (Entered: 05/26/2004)
10/20/2004	155	Copy of Letter Filed by Defendant Richard Cordero to George Reiber, Trustee. (Tacy, K.) (Entered: 10/20/2004)
02/24/2005	156	Letter Filed by Karl Essler, Atty for David Dworkin , Jefferson Henrietta Associates, Defendants, re: 3/1/05 Motion . CLERK'S NOTE: please see bankruptcy case #04-20280 for further details. (Tacy, K.) (Entered: 02/24/2005)
04/04/2005		Clerk's Note: On April 4, 2005, the Court entered a Decision & Order in Chapter 13 Case No. 04-20280 (DeLano) which attached the October 23, 2003 Scheduling Order docketed to this A.P. (TEXT

		ONLY EVENT) (RE: related document(s)138 Order (Generic)) (Capogreco, C.) (Entered: 04/04/2005)
06/23/2005	157	Statement on the Court's Linkage of this and the DeLano cases. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # 1 Exhibit Copy of Decision and Order# 2 Exhibit Copy of Designation of Items in the Record and Statement of Issues on Appeal) (Tacy, K.) Modified on 6/23/2005 (Tacy, K.).Clerk's Note: File date verified to original document. (Entered: 06/23/2005)

PACER Service Center

Transaction Receipt

06/24/2005 21:15:27

PACER Login:		**Client Code:**	
Description:	Docket Report	**Search Criteria:**	2-02-02230-JCN Fil or Ent: Fil Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
Billable Pages:	10	**Cost:**	0.80

06/23/2005	157	Statement on the Court's Linkage of this and the DeLano cases. Filed by Defendant Richard Cordero , 3rd Party Plaintiff Richard Cordero . (Attachments: # 1 Exhibit Copy of Decision and Order# 2 Exhibit Copy of Designation of Items in the Record and Statement of Issues on Appeal) (Tacy, K.) Modified on 6/23/2005 (Tacy, K.).Clerk's Note: File date verified to original document. (Entered: 06/23/2005)

PACER Service Center

Transaction Receipt

05/10/2006 19:54:08

PACER Login:		**Client Code:**	
Description:	Docket Report	**Search Criteria:**	2-02-02230-JCN Fil or Ent: Fil From: 6/1/2005 To: 5/10/2006 Doc From: 0 Doc To: 99999999 Term: y Links: n Format: HTMLfmt
Billable Pages:	1	**Cost:**	0.08

American Bar Association

Model Code of Professional Responsibility

Canon 6

A Lawyer Should Represent a Client Competently

ETHICAL CONSIDERATION

EC 6-1 Because of his vital role in the legal process, a lawyer should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle.

…

EC 6-4 Having undertaken representation, a lawyer should use proper care to safeguard the interests of his client. If a lawyer has accepted employment in a matter beyond his competence but in which he expected to become competent, he should diligently undertake the work and study necessary to qualify himself. In addition to being qualified to handle a particular matter, his obligation to his client requires him to prepare adequately for and give appropriate attention to his legal work.

Footnote to EC 6-3: **3.**"If the attorney is not competent to skillfully and properly perform the work, he should not undertake the service." Degen v. Steinbrink, 202 App.Div. 477, 481, 195 N.Y.S. 810, 814 (1922), aff'd mem., 236 N.Y. 669, 142 N.E. 328 (1923).

Canon 7

A Lawyer Should Represent a Client Zealously Within the Bounds of the Law

ETHICAL CONSIDERATION

EC 7-23 The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of his client, he should inform the tribunal of its existence unless his adversary has done so; but, having made such disclosure, he may challenge its soundness in whole or in part.

EC 7-24 In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his client. However, a lawyer may argue, on his analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

New York Code of Professional Responsibility:

Canons and Disciplinary Rules

Canon 6

A Lawyer Should Represent a Client Competently

DR 6-101. [22 NYCRR 1200.30] Failing to Act Competently

(a) A lawyer shall not…

(1) Handle a legal matter which the lawyer knows or should know that he or she is not competent to handle, without associating with a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to the lawyer.

LexisNexis™
Martindale-Hubbell®

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208-1515

May 3, 2005

Dear Dr. Cordero,

I am writing in response to our conversation on April 22, 2005 regarding the listing of your biographical information in our Martindale-Hubbell Law Directory.

Pursuant to our conversation, I researched your inquiry and determined that your information was provided to us via a State Bar Roster list in 1989. As a standard practice, each state supplies Martindale-Hubbell with a list of newly admitted attorneys. This information included your date of birth and date of admission to the New York State Bar. It was never used in print or on-line because we did not have a confirmed listing address for you.

In 2004, as the result of a postal return to an inquiry from our office to the firm of Heller, Jacobs & Kamlet, LLP, we were provided with the contact name of Richard Cordero. Through an internal error, an association was made to the record we had on file for you and we inadvertently associated you to this firm. At no time did Richard Cordero or anyone at the Heller firm ask to have that information included in their listing.

As you might imagine, from time to time, errors do unfortunately occur, due not only to the magnitude of the task involved, but also to the ever present human equation. I certainly hope this is the last time that such considerations will have an impact on you.

Please be advised that we have corrected our database and accept our sincerest apologies for this error.

I hope this clarifies matters to your approval. If you require further assistance please feel free to contact me.

Sincerely,

Linda C. Smith
Sr. Account Representative, Editorial Dept.
Martindale-Hubbell
Phone: 800-526-4902 ext. 7697
Fax: 908-665-3550

FindLaw
610 Opperman Drive
C2 N106
Eagan, MN 55123
Tel 651.687.8854 Fax 651.848.7966
b.doyle@thomson.com
http://www.findlaw.com/

THOMSON
FINDLAW

Memo

From	Brian Doyle	**To**	Dr. Richard Cordero
Date	May 4, 2005	**Copies**	Bil Elert
Subject	West Legal Directory Listing		

Dear Dr. Cordero:

My colleague Bil Elert informed me that you contacted him regarding some inaccuracies in your West Legal Directory Listing. You asked him to provide some history on how the information was obtained for listing in the directory.

We use a variety of methods to build and maintain the accuracy of our directory, including state bar rosters. Self-reported updates from attorneys and law firms are also a key part of this process.

Regarding your listing, we can tell that it was added to our directory in 1989 from a new attorney bar list. Unfortunately, we are unable to offer a record of the precise event or request that associated you to Heller, Jacobs & Kamlet, LLP.

To remedy this situation, we are suppressing display of your listing on FindLaw. For your records, we have enclosed a copy of how your listing appeared on FindLaw before we suppressed its display.

On Westlaw, your listing will still appear. However, the information displayed will be limited to your name, and date of admission to practice in New York.

If you prefer, we can reactivate your listing and update the information it contains to make it accurate.

Thank you again for pointing out the inaccuracies regarding your listing.

Sincerely,

Brian Doyle
Manager, FindLaw

Richard Cordero
Current Firm Information Unknown

Admitted:

New York, 1989

This constitutes the most current information West has on record for this listing. If you wish to update this information, please contact FindLaw.

END OF DOCUMENT

case no. 04-8371

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD CORDERO, Petitioner

v.

PREMIER VAN LINES, INC., ET AL., Respondents

On Petition for A Writ of Certiorari to

The United States Court of Appeals
for the Second Circuit

Petition for Writ of Certiorari

of January 20, 2005

by

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

QUESTIONS PRESENTED

1. Whether it constitutes denial of due process to require a litigant, particularly a pro se and non-local one, to try a case –and all the more so two related, mutually confirming cases- to a bankruptcy judge whom the evidence shows to have together with other court officers so repeatedly and consistently deprived the litigant of rights and imposed on him burdens with disregard for the law, the rules, and the facts as to be engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing in furtherance of a bankruptcy fraud scheme.
2. Whether the appeals court should have exercised jurisdiction over an appeal from an order dismissing all negligence and defamation cross-claims against a cross-defendant trustee in a bankruptcy adversary proceeding because **a)** the trustee, having settled with all parties except the appealing cross-defendant, was completely eliminated from the proceeding, yet continued to be, as trustee, a key party to a determination of the respective liabilities of the remaining parties so that the order was final, appealable, and its review necessary; and in any event because **b)** the order was both issued by a judge who together with others was engaged in a pattern of wrongdoing and tainted by bias so that they and the order violated due process and the order was null and void.
3. Whether bankruptcy and district court orders, which denied an application for default judgment although **a)** it applied for a sum certain as required under FRCivP Rule 55, **b)** the defendant had already been defaulted by the clerk of court, **c)** the courts without making reference to any authority imposed on the applicant a Rule 55-extraneous and burdensome obligation to demonstrate loss through an "inquest" as a prerequisite to determining whether the right to damages existed and, if so, the amount to recover, and **d)** the applicant met the obligation, the court acknowledged that there had been loss or damage, but it still denied all recovery, were reviewable orders because **1)** final as to its legal answer to the scope of Rule 55; and in any event because **2)** issued by courts engaged in wrongdoing and tainted by bias so that the courts and their orders violated due process and the orders were null and void.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

A. Parties in the Court of Appeals for the Second Circuit in Premier Van Lines, Inc., docket no. 03- 5023

Kenneth Gordon, Chapter 7 Trustee for the liquidation of Premier Van Lines, Inc.

David Palmer, owner of the bankrupt moving & storage company Premier Van Lines, Inc.

B. Parties in the related case In re David and Mary Ann DeLano., in the U.S. Bankruptcy Court, WBNY, docket no. 04-20280

The parties are David and Mary Ann DeLano, Debtors. Mr. DeLano is a third-party defendant in Premier Van Lines, brought into that bankruptcy adversary proceeding by Dr. Cordero, who is a defendant in the Premier case and a creditor in the DeLano case.

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INDEX OF APPENDICES

collected in a separate bound volume;
references to it in this brief are to its page numbers thus: [SCtA.#]

B. U.S. District Court, WDNY

1) Cordero v. Gordon, docket no. 03-CV-6021L

2) Cordero v. Palmer, docket no. 03-MBK-6001L

II. Other Relevant Opinions, Orders, Findings of fact, and conclusions of Law SCtR Rule 14.1. (i)(ii)

A. Orders of the U.S. Bankruptcy Court, WBNY

1) Pfuntner v. Gordon et al., docket no. 02-2230

B. Court of Appeals for the Second Circuit

III. OTHER material indispensable to understand the petition SCtR Rule 14.1.(i)(vi)

A. In re Premier Van Lines

B. Judicial Misconduct Complaints under 28 U.S.C. §§351 et seq.

1) Bankruptcy Judge John C. Ninfo, II

2) CA2 Chief Judge John M. Walker, Jr.

C. Supreme Court and Judicial Conference statistics

D. In re DeLano bankruptcy petition provides insight into a judicial misconduct and bankruptcy fraud scheme

E. Request to the U.S. Attorneys in Buffalo and Rochester Offices for an investigation

F. Request for a judicial report under 28 U.S.C. §3057(a) to the U.S. Attorney General for an investigation

For reference only; material not included, but available on a CD upon request

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in the

APPENDIX

submitted to

the Court of Appeals for the 2nd Circuit

in support of the Opening Brief, as supplemented for
the Petition for a Writ of Mandamus of September 12, 2003

SUMMARY

[in this vol.] in original

A. Items submitted on January 23, 2003, for the appeal to the District Court from the order of the Bankruptcy Court of December 30, 2002

♦Documents that appear elsewhere but are included again in a list may carry the page number of that other appearance and, if so, are not reprinted.

B. Items added for the Notice of Appeal of April 22, 2003, submitted to the District Court

1) Motion to Dismiss Notice of Appeal in District Court

*As they are produced, documents are added physically to this volume after the last one here; consequently, they begin with the page number that follows the last one. However, their placement on this Table results from the application of first a thematic, then a chronological criterion. Thus, depending on a document's subject matter, it is grouped with similar ones under one or more number-subheadings or a new subheading is created. Within each group, the document is placed chronologically. Hence, page numbers in a subheading group are not necessarily consecutive.

2) Motion to Extend Time to File Notice of Appeal

3) Transcript of Hearing

4) Default judgment against David Palmer

5) Property Search and Trip to Rochester for Inspection

6) Notice of Appeal to CA2 and Dockets

TABLE OF AUTHORITIES CITED

I. CONSTITUTIONAL PROVISIONS

II. CASES

III. STATUTES

IV. RULES

V. Regulations

Other Authorities

Table of Headings of the Petition

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

[docket no. 04-8371]

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

I. OPINIONS BELOW

1. None of the decisions or orders in this case has been published and none has been designated for publication. However, all appear in the separate volume titled In The Supreme Court of the United States APPENDICES. References to the contents in that volume are to their page numbers therein and bear the format [SCtA.#].
2. The Court of Appeals for the Second Circuit dismissed the appeal on jurisdictional grounds on January 26, 2004 [SCtA.1]. It denied Appellant's motion for panel rehearing and hearing en banc on October 26, 2004 [SCtA4].
3. In the U.S. District Court, WDNY, the last "in all respect denied" order forms without opinion were issued on March 27, 2003 [SCtA.5&9]. The previous two orders with opinion were issued on March 11 and 12, 2003 [SCtA.6&10].
4. The decisions and orders and a recommendation of the U.S. Bankruptcy Court, WDNY, appear listed in chronological order in the Index of Appendices [SCtA.13-67] and are discussed below.

II. JURISDICTION

5. The United States Court of Appeals for the Second Circuit dismissed the appeal in Premier Van Lines, docket no. 03-5023, on January 26, 2004 [SCtA.1].
6. A timely petition for rehearing was denied by that Court on October 26, 2004.
7. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Fifth Amendment to the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

B. Federal Rules of Bankruptcy Procedure Rule 9006. Time

…(e) Time of service

Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) Additional time after service by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P.

When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P., three days shall be added to the prescribed period.

C. Federal Rules of Civil Procedure Rule 55. Default

(a) ENTRY. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1) *By the Clerk*. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(2) *By the Court*. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the

action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) SETTING ASIDE DEFAULT. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) PLAINTIFFS, COUNTERCLAIMANTS, CROSS-CLAIMANTS. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

IV. STATEMENT OF THE CASE

A. In the Premier bankruptcy case Judge Ninfo together with other court officers has prevented discovery and tried to wear Dr. Cordero down to keep him from disturbing the Judge's modus operandi developed in *thousands* of cases with Trustee Gordon

8. The bankruptcy case of a moving and storage company, Premier Van Lines, Inc., spawned an adversary proceeding in bankruptcy court, Judge John C. Ninfo, II, presiding. In it Dr. Richard Cordero, who was a client of the company, and Standing Chapter 7 Trustee Kenneth W. Gordon, Esq., as well as others, were named defendant.

9. Trustee Gordon had been appointed in December 2001 to liquidate Premier after Owner David Palmer failed to comply with his bankruptcy obligations and the case was converted to one under Chapter 7. He performed so negligently and recklessly that he failed both to examine Premier's

business records, to which he had access (A-45,46; A-109, ftnts-5-8; 352)[1], and to realize from the docket that Owner Palmer had stored his clients' property, such as Dr. Cordero's (A-433:entry 17; 434:19, 21, 23; 437:52), in a warehouse owned by Mr. James Pfuntner. As a result, the Trustee failed to discover the income-producing storage contracts that belonged to the estate and to act timely (A-442:94,95); just as he failed to notify Dr. Cordero of his liquidation of Premier. Hence, Dr. Cordero cross-claimed the Trustee (A-70, 83, 88) [SCtA.124§B2]

10. Trustee Gordon countered with a motion to dismiss under FRBkrP Rule 7012 (A-135, 143). It was argued on December 18, 2002. That was almost three months after the adversary proceeding had commenced. Nevertheless, Judge Ninfo had disregarded FRBkrP Rules 7016 and 7026, and FRCivP Rules 16 and 26, so that there had been no meeting of the parties or disclosure –except by Dr. Cordero, who disclosed numerous documents (A-11,13,15,34,45,63,68,90)- let alone any discovery. Despite the record's lack of factual development, Judge Ninfo dismissed the cross-claims summarily, thereby disregarding the legal standards applicable to genuine issues of material fact [SCtA.113§B] that Dr. Cordero had raised concerning the Trustee's negligence and recklessness in liquidating Premier (A-148) [SCtA.121§B]. Actually, the Judge even excused the Trustee's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275) thus condoning his use of falsehood, astonishingly acknowledging in open court and for the record his acceptance of unethical behavior, and showing gross indifference to its injurious effect on Dr. Cordero. [SCtA.122§B1]

11. Some official facts shed light on the Judge's motives for so shielding Trustee Gordon from

[1] References with the format (A-#) are to the 578-page Appendix supporting Dr. Cordero's Opening Brief, as supplemented for the Petition for a Writ of Mandamus of September 12, 2003, and submitted by him to the Court of Appeals and the parties; that volume is available from him on demand by this Court. References with the format [SCtA.#] are to the pages of the separate volume accompanying this petition and titled in the Supreme Court of the United States APPENDICES. The (A-#) references can be looked up in their Table of Contents, which is reproduced as Part II of the Index of that APPENDICES volume so that the reader may track through the #=page number the title of the document referred to and in some instances also its own table of contents.

discovery on the cross-claims. A query on PACER (**P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords) run on November 3, 2003, at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>PACER>Query about Kenneth W. Gordon, showed that since April 12, 2000, he was the trustee in 3,092 cases! These are bankruptcy cases in each of which the trustee must "investigate the financial affairs of the debtor", 11 U.S.C. §704(4), by reviewing the bankruptcy petition and, among other things, seeking and cross-checking documents, assets, and persons; "furnish such information concerning the estate and the estate's administration as is requested by a party in interest", §704(7), which entails a lot of correspondence and face-to-face meetings with such parties as well as number crunching; "convene and preside at a meeting of creditors", §341(a), and do so personally, C.F.R. §58.6(a)(10); "ensure that the debtor shall perform his intentions as specified in…[his] schedule of assets and liabilities", §704(3) and §521(2)(B); "file…period reports and summaries of the operation of such business" "authorized to be operated", §704(8),…with respect to thousands of cases that may take years to liquidate!! And one trustee!!!? With such overwhelming workload, would you like Trustee Gordon to represent your interests as a creditor?

12. But there is more. By June 26, 2004, another PACER query about Trustee Gordon returned "This person is a party in 3383 cases". He had added 291 cases since November 3, 2003, at the rate of 1.23 per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days. But there is still more. To that number must be added, as PACER did, the 142 cases prosecuted or defended by the Trustee as attorney and 76 cases in which he appeared as a named party. By comparison, this Court has 9 members and while the average of case filings since 1998 has been 7,814, on average it has heard only 87, disposed of 83, and written 74 signed opinions, or fewer than 10 in each category by each member. [SCtA.289]
13. But there is still even more, for PACER indicated that out of those 3,383 cases in which the

trustee was Trustee Gordon, the judge in 3,382 cases was none other than Judge Ninfo. Now one starts to understand why Judge Ninfo so protects Trustee Gordon: These two have worked together for years on thousands of cases and have developed a modus operandi. If Dr. Cordero had been allowed to engage in discovery, he could have established how the Judge failed to realize or knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. This assertion finds support in the Trustee's comment in his memorandum opposing Dr. Cordero's motion to extend time to appeal (A-238), that, "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00." That's it! Trustee Gordon had no financial incentive to do his job! Hence, it is reasonable to deduct therefrom that he cherry-picked from his 3,382 cases and growing to concentrate his attention on those that were plump with financial juice, while chaff cases were piled up just for volume and because as standing chapter 7 trustee he had little choice, cf. 28 U.S.C. §586(b). Was the Judge "aware" of this? Of what else? It is quite suspicious that Trustee Gordon disclosed in writing his expectation that Judge Ninfo would excuse his hack job on Premier if only he reminded the Judge of how little money there was in it for him. What does that tell about Judge Ninfo and their relation?

14. Just $60, really?, for Trustee Gordon himself had qualified Premier as an asset case. This is significant in light of §2-2.1. of the Trustee Manual, which provides that "the trustee should 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). In turn, 11 U.S.C. §326 provides that "the court may allow reasonable compensation…[as a percent] upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor…". This furnishes the incentive for the trustee to find the most assets. Trustee Gordon did find them, which follows from his qualification of the case as well as from Warehouser Pfuntner's allegation in the complaint that:

> 17. 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 to be held by the Trustee on September 26, 2002. (A-24)

15. While the Trustee denied this allegation, the fact is that he had the appointment of an auctioneer approved by a court order entered on August 29, 2002, only to end up issuing a No Distribution Report entered on December 18, 2002. (A-553 et seq., docket entries 70;71;95; 98;107) So, where did the assets go? Dr. Cordero could not find out because Judge Ninfo dismissed his cross-claims despite the genuine issues of material fact that he had raised. Such dismissal protected Trustee Gordon, for if he had been found to have handled Premier's assets in a way requiring his removal as its trustee, then under 11 U.S.C. §324 he could have been removed from all other cases. That would have been risky for the Judge too because partners in work are not supposed to turn on each other, and certainly not for a one-off litigant, much less for one pro se and non-local expected to be easily worn down. Of what else was Judge Ninfo "aware" that he did not want discovered, whether by Dr. Cordero or anybody else?

16. Thus, Dr. Cordero timely mailed under FRBkrP Rule 8002(a) his notice of appeal (A-153) from the dismissal (A-151) of his cross-claims against Trustee Gordon. But Judge Ninfo alleged that the notice was untimely filed, thereby disregarding the complete-upon-mailing provision of Rule 9006(e) and the three-additional-days provision of subsection (f). [SCtA.114§A] Thereupon Dr. Cordero moved under Rule 8002(c)(2) (A-214, 246) to extend time to file notice to appeal. Although Trustee Gordon himself had admitted in his brief in opposition that it had been timely *filed* on January 29, 2004 (A-235), Judge Ninfo likewise denied it by going as far as to allege that it had been untimely filed on January 30! (A-240, 259). At the hearing on February 18, 2003, when the Judge made that astonishing finding, he paid no attention to the discrepancy between those dates despite Dr. Cordero's objections.

B. Judge Ninfo disregarded the law applicable to default judgments and protected Mr. Palmer even after Dr. Cordero complied with the requirement to inspect his property to establish loss or damage

17. Mr. Palmer easily got away without his debts by just not fulfilling his obligations under his own voluntary bankruptcy petition under 11 U.S.C. Ch. 11 that he had filed just a few months earlier on March 5, 2001, for his company Premier. He even stopped coming to court, but Judge Ninfo would not compel him to appear. Far from it, despite the fact that he also abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's summons and complaint of November 21, 2002 (A-70), so that Dr. Cordero applied for default judgment on December 26, 2002 [SCtA.15], Judge Ninfo protected Mr. Palmer by failing to take action for over a month. After Dr. Cordero inquired about it [SCtA.16], the Judge recommended to the District Court that the application be denied [SCtA.17 and 19] because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.'

18. Dr. Cordero moved the district court to enter default judgment upon recognizing such statement as a prejudgment of the case contrary to the only evidence available, namely, that Dr. Cordero's property had been abandoned in a warehouse closed for over a year where nobody monitored proper storage conditions such as humidity, temperature, pests, and theft. Dr. Cordero also argued that to require to demonstrate damages although the application was for a sum certain (A-294) violated FRCivP Rule 55.However, once more Judge Larimer went along with his colleague's recommendation and not only did he fail to even acknowledge Dr. Cordero's legal arguments (A-314), but also provided no legal justification whatsoever for either his assertion that Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain" or his requirement that an "inquest" be conducted to determine damages. [SCtA.10] But it did involve a sum certain! Dr. Cordero moved Judge Larimer to correct such

outcome-determinative mistake and apply the law (A-342). As in the Gordon case, Judge Larimer responded with a mere "in all respects denied" order form. [SCtA.9 and 5]

19. Dr. Cordero participated in the required inspection of the property, for which he had to travel at his expense and to his detriment from New York City to Rochester and then to the suburb of Avon. (A-365; 378) After his report to Judge Ninfo, the latter agreed that there had been loss or damage of his property. Nevertheless, he refused to enter default judgment, now alleging for the first time that he was not convinced that Mr. Palmer had been served properly! Yet, it was for Mr. Palmer to contest such judgment under FRCivP Rule 55(c) and 60(b)?, not for the Judge to become his advocate, particularly for a defendant with dirty hands since the Clerk of Court, although belatedly, had already defaulted Mr. Palmer on February 4, 2003. [SCtA.15] Was Judge Ninfo also "aware" of what Mr. Palmer could disclose if forced to come to court, let alone if made to face the financial consequences of a default judgment?

20. By that time Judge Ninfo had been joined by other officers of the court as well as court staff (hereinafter collectively referred to as court officers) in a series of acts of disregard of the law, the rules, and the facts so consistently to the detriment of Dr. Cordero, the only pro se and non-local party and to the benefit of the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias with the effect of preventing discovery and wearing down Dr. Cordero. (A-500 and 510) [SCtA.105§C and 137] Judge Ninfo denied Dr. Cordero due process and made a mockery of the judicial system. Dr. Cordero appealed. What a fool for thinking that circuit judges would care! Do you?

C. The Court of Appeals showed indifference to judicial wrongdoing and its injury on a litigant as well as the public, thereby condoning denial of due process and denying it itself by remanding Dr. Cordero into the hands of Judge Ninfo

21. Dr. Cordero's appeal to the Court of Appeals from the two district court's orders of March 27,

2003 [SCtA.5&9], was founded on 28 U.S.C. §§158(d) and 1291 (SPA-84), both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).* He also specifically included in his notice the underlying decisions of Judge Ninfo. [SCtA.429]

22. His appeal brief also specifically presented for review the issue of judicial wrongdoing and bias [SCtA.102§C and 130§D] as well as [SCtA.102§A] the legal aspects of the dismissal of his notice of appeal [SCtA.114§A] and cross-claims [SCtA.121§B] and the denial of his application for default judgment [SCtA.102§B and 127§C]. Concurrently with the appeal, the case continued in Judge Ninfo's court with the remaining parties and so did the disregard for legality that caused Dr. Cordero an enormous waste of effort, time, and money as well as tremendous aggravation. He kept the Appeals Court informed of such wrongdoing and bias [SCtA.175]. He also filed a judicial misconduct complaint under 28 U.S.C. §§351 et seq. against Judge Ninfo [SCtA.251] and a petition for a writ of mandamus under FRAP Rule 21 to require him to recuse himself - which he refused to do when requested by Dr. Cordero [SCtA.137 and 31], never mind that under *28 U.S.C. § 455*(a) (1988), a judge **must** disqualify herself if her impartiality "might reasonably be questioned,"- remove the case to an impartial court in another district, and open an investigation into the wrongdoing and motives therefor of the Judge and the other court officers.
23. The mandamus petition was denied [SCtA.72] and the complaint was already in its six month without response when the appeal was denied [SCtA.1] by a panel including Chief Judge John M. Walker, Jr. Without addressing the issue of wrongdoing and bias at all, the appeal was dismissed on the claim that the orders appealed from were not final so that the court lacked jurisdiction. [cf. SCtA.191] Dr. Cordero raised a motion of panel rehearing and hearing en banc. [SCtA.207]

D. The DeLano bankruptcy petition provides insight into a judicial misconduct and bankruptcy fraud scheme that undermines the integrity of the judicial system to the detriment of the public

24. "Coincidentally", the denial of the appeal was entered on January 26, 2004, the same date as that of a most extraordinary event: Mr. DeLano, the M&T Bank officer that lent money to run Premier to Mr. Palmer, who then went bankrupt, filed himself a Chapter 13 bankruptcy petition together with his wife [SCtA.381]. How suspicious, for Mr. DeLano has been for 15 years and still is a loan bank officer and as such an expert in determining creditworthiness and insuring borrowers' ability to repay their loans. In the petition, the DeLanos listed Dr. Cordero as a creditor because of his claim against Mr. DeLano on grounds of his negligent handling of the storage containers in which the Bank had a security interest and Dr. Cordero had his property.
25. The suspicion is strengthened by even a layman's reading of their petition. To begin with, Mr. DeLano and his wife owe an unsecured debt of $98,092, [id., Schedule F] smartly distributed over 18 credit card issuers so that none has a stake high enough to make it cost-effective to participate in the bankruptcy proceedings. They took out simultaneously two loans of $59,000 each for a total of $118,000 that they repaid by 1999 as agreed without their Equifax credit reports noting a single payment late, although otherwise Equifax notes their having been late in their other repayments over 230 times! It must have been money that they invested in something so important that they dare not risk losing it through foreclosure. Interestingly, they declared in their petition a mortgage of $77,084 in a home in which, toward the end of their working lives, they claimed their equity is only $21,415. [id., Schedule A] Likewise, they declared that, after two lifetimes of work, they have only $2,910 worth of household goods! The rest of their tangible personal property is just two cars worth a total of $6,500. [id., Schedule B] That's it?!
26. More surprisingly, they made a $10,000 loan to their son, declared it uncollectible and stated it undated, which means that it could be a voidable preferential transfer, 11 U.S.C. §547(b)(4)(B)

to a relative §101(31)(A)(i). Nonetheless, they declared only $535 in cash and on account [SCtA.381, Schedule B], but their IRS 1040 forms reveal that their household income for 2001-2003 was $291,471! Although those numbers are a series of red flags pointing in the direction of bankruptcy fraud through concealment of assets, neither Judge Ninfo nor Trustee Reiber would require the DeLanos to account for the whereabouts of that money. Yet, it could go a long way toward covering their declared liabilities of $185,462 [id., Summary of Schedules]. On the contrary, they have refused to require the DeLanos to produce their statements of bank and debit card accounts. [SCtA.301, 305, and 57]

27. Thus, Dr. Cordero attended the meeting of creditors [SCtA.375] required under 11 U.S.C. §341 and whose business includes "the examination of the debtor under oath…", FRBkrP Rule 2003(b)(1). Actually, none of the other 20 creditors attended, which is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition.

28. The meeting was not conducted by Trustee Reiber because contrary to regulations, C.F.R. §58.6(a)(10), he had his attorney, James Weidman, Esq., do so. Dr. Cordero submitted his written objections [SCtA.291] to the DeLanos' debt repayment plan [SCtA.379]. But no sooner had he asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail because Mr. Weidman alleged that there was no time for such questions and put an end to the examination without regard for Dr. Cordero's objection that he had a statutory right to examine the DeLanos and the fact that there was more than ample time to do so since Dr. Cordero was only at his second question! Why could Att. Weidman not risk exposing the DeLanos to have to answer under oath Dr. Cordero's question before finding out how much Dr. Cordero already knew about fraud committed by them?

29. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition. For his part, Judge Ninfo said in open court and for the record that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, but had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions.

30. MINDBOGGLING! Section 341 is titled "Meeting of creditors"; its purpose under §343 is for them "to examine the debtor"; and FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for them to examine the debtor, even one worded in the catchall terms of "any other matter relevant to the case".

31. But all that is just the law and what really matters for Judge Ninfo is what he called "the local practice". That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers disregards the law, the rules, and the facts systematically and instead applies the law of the locals. [SCtA.181] It is based on personal relationships and the fear of the local parties that must appear before him frequently to antagonize him, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence . Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo. As stated (¶13, supra), Trustee Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that Warehouser Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times and the attorney for Premier Owner Palmer, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times. If they know what is good for them, they take what they are given by the Lords of the

Fiefdom of Rochester [SCtA.181] and are thankful.

32. Lord Ninfo and Lord Larimer have carved their Fiefdom out of the land of the law of Congress as interpreted by this Court, to whose decisions they make no reference, whether it be in written orders [SCtA.5-71] or from the bench (A-265). Judge Ninfo does not even discuss the law and rules that Dr. Cordero has painstakingly researched and argued in his briefs and motions and at hearings. Instead, they defend their Fiefdom by engaging in non-coincidental, intentional, and coordinated acts of disregard for legality and bias. (A-776.C, A-780.E; A-804.IV) Why should they bother with the law to provide due process when they can receive due respect by exercising uncontrolled judicial power? [§V, infra] To one like Dr. Cordero, a 'citizen' of a diverse, far away city, who dared challenge Judge Ninfo's dismissal of his cross-claims against Trustee Gordon and his denial of the application for default judgment against Owner Palmer by appealing to Judge Larimer, these Lords dispense not justice, but rather punishment: deprivation of personal and property interests and imposition of unjustified, wearing down burdens.

33. The Lords' contempt for due process and the injury in fact that they have inflicted on Dr. Cordero should have so offended the Court of Appeals as to cause it to investigate the matter and take corrective action to restore to judicial process respect for the law and impartiality. Instead and though fully informed of the situation [SCtA.188], the Court reacted with indifference in a perfunctory decision [SCtA.1; cf 193] and the couldn't-care-less response of denial order forms. *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979)* (Marshall, J., dissenting) ("[A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary.") By dismissing the appeal and remanding Dr. Cordero to the abusive hands of Judge Ninfo, who at the hearing on June 25, 2003, warned him that any appeal from his decisions would go to Judge Larimer, the Court condoned the judges' past, current, and future wrongdoing [cf. SCtA.465; 467] and authorized their injuring him. Thereby, the Court shared in

the judges' contempt for due process and itself denied Dr. Cordero due process.

V. REASONS FOR GRANTING THE PETITION

34. However, this case is about much more than its injury to one litigant. What is at stake is the integrity of the judicial system that guarantees due process to the public at large and the role of this Court in ensuring it as the body with the highest responsibility for the proper functioning of the Third Branch of Government. If intent to play that role conscientiously even at the cost of upsetting many within its own ranks, then the Court can use this case as a means to gain insight into, and correct, the way of thinking that has set in among judges due to their unwillingness to investigate and censure their peers so that they operate in an environment free of any effective system of control and discipline.

A. The Court of Appeals by its injudicious application of a jurisdictional rule dismissed Dr. Cordero's case, thus requiring him to litigate under conditions that it could foresee would wear down a pro se, non-local party before reaching a final determination, whereby it denied him due process and raised the issue of the attainability of justice, which is of critical importance for all poor and middle class litigants

35. The Court's dismissal by applying the rule on finality of orders without regard for the circumstances of the case at bar and the consequences for the litigant raises fundamental issues about the functioning of our system of justice that implicate the large number of people similarly situated to Dr. Cordero (¶81, below). Indeed, the Court's dismissal means that Pfuntner v. Gordon et al. will continue to be tried without Trustee Gordon. A future final decision therein that were appealed all the way to the Appeals Court and reversed by the latter thus reinstating Dr. Cordero's claims of negligence and defamation against the Trustee would significantly affect the whole case because the trustee in general in a bankruptcy case and Trustee Gordon in this particular bankruptcy case is a key player that alters the dynamics of liability among all the

parties. As a result, the case would have to be relitigated all over again.

1) The Appeals Court had a duty to decide the appeal so as to meet its obligation both to the justice system to use judicial resources efficiently and to the litigants to "ensure the just, speedy, and inexpensive resolution of civil disputes"

36. Having to relitigate the case would amount to a foreseeable and unnecessary waste of judicial resources contrary to the requirements of justice and the policy for its administration by the courts. Thus, the law requires district courts to develop a civil justice expense and delay reduction plan to "ensure the just, speedy, and inexpensive resolution of civil disputes", 28 U.S.C. §471. Similarly, the rules of practice and procedure that this Court prescribes for the other courts, are intended to "promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay", 28 U.S.C. §331, 5th para.; cf. FRCivP Rule 1; FRBkrP Rule 1001. Likewise, the law prescribes the duty, rather than just affords the option, that "Each judicial council *shall* make all necessary and appropriate orders for the effective and expeditious administration of justice", 28 U.S.C. §332(d)(1) (emphasis added), which the appeals courts must apply since "All judicial officers and employees of the circuit *shall promptly* carry into effect all orders of the judicial council", §332(d)(2) (emphasis added). In the same vein, the rules of procedure allow the appeal courts to suspend, and therefore apply, them with a view to attaining expeditious action and to take into account the circumstances of the case, even those brought to their attention by a party, so that:

> On its own or a party's motion, a court of appeals may –to expedite its decision or for other good cause- suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b). FRAP Rule 2

37. Moreover, FRAP requires the courts of appeals to recognize the priority of a party's right over the application of a rule by providing that:

> A local rule imposing a requirement of form must not be enforced in a manner

> that causes a party to lose rights because of a nonwillful failure to comply with the requirement. FRAP Rule 47(a)(2)

2) The Court of Appeals, by dismissing on jurisdictional grounds, failed to give priority to its substantive mission to achieve justice over its mechanical rules for choosing cases

38. Courts with supervisory responsibility over lower ones, such as appeals courts, have as their mission to be agents for dispensing justice rather than have only the chores of operators of a well-oiled set of rules. They are allowed to apply equitable considerations, in other words, use common sense to assess the circumstances of litigants and the effect on them of their decisions so as to ensure that justice is done.

39. The Appeals Court knew what would defeat Dr. Cordero's appeal, namely, that he is a pro se and non-local party that had already spent three years litigating the case and would likely not have the financial resources or emotional strength to litigate it for years without end. By dismissing and remanding the Court denied Dr. Cordero due process of law. 'Who cares! That's his problem.'

40. This Court should care. It set the rationale for pursuing the objective of justice ahead of manning a procedural machine when it stated that:

> There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing; *Republic Natural Gas Co. v. Oklahoma, 68 U.S. 972, 976, 334 S.Ct. 62, 68, 92 L.Ed.2d 1212, 1219 (1948.)*

41. Allowing lower court judges to wear down a pro se, non-local party, and permitting an appeals court to contribute to his being worn down cannot possibly be a standard for the administration of justice acceptable to the body at the top of the Judicial Branch of Government. Such wearing down cannot be justified by summarily prioritizing the procedural rule on finality of orders over the substantive right of a litigant to have his day in court to engage in proceedings that satisfy due process.

42. The principle of achieving justice that should guide the courts' action and the requirement that such action be expeditious and inexpensive, for "justice delayed [and beyond one's means] is justice denied", cf. aphorism attributed to William Ewart Gladstone, 1809-1898, are not applicable only to procedural rules, which in any event provide for due process too. They apply also to a jurisdictional rule such as that of the finality of orders. The Court has recognized this by stating that it would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all," *Cobbledick v. United States, 60 S.Ct. 540, 540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940).*

43. It is a travesty of justice if courts in practice deny litigants process, never mind due process, so long as they safeguard the rules. Without losing sight of the fact that the orderly dispensation of justice requires rules, their application is not an end in itself, but must serve to "promote the interest of justice", 28 U.S.C. §2073(a)(b). Hence, this Court does not require the application of new rules of procedure when it "would work injustice, in which event the former rule applies", §2074(a). Actually, it does not interpret even the Constitution rigidly, insensitively, the people notwithstanding, but rather recognizing that the people were not made to serve the Cons-titution and that instead the Constitution was written for "WE THE PEOPLE…to establish Justice", Const., Preamble, this Court adapts its provisions to the changing needs of people over time even if that requires overturning earlier decisions. The Court should also require appeals courts to apply rules in light of the stage of the litigants along the course of litigation so that instead of forcing them on a 'long march' of legal exhaustion, they ensure that the litigants are advancing in due process toward a just and fair final resolution of their controversies.

3) The orders appealed to the Court of Appeals were final because they concern points of law that the lower courts can no longer modify and have a final effect on the legal relation between Dr. Cordero and the opposing parties

44. The injudiciousness of the Court of Appeals in dismissing the case on jurisdictional grounds was

all the more patent because if it had only paid more attention to this case than its perfunctory "not to be published…not to be cited as precedential authority" decision [SCtA.1] shows it did, it would have realized that it did have jurisdiction because the orders were final and appealable.

a) The decisions on the untimeliness of Dr. Cordero's notice of appeal are final because they rendered final the dismissal of the cross-claims against Trustee Gordon

45. After Dr. Cordero gave notice of appeal (A-153) to the District Court from Judge Ninfo's dismissal (A-151) of his cross-claims against Trustee Gordon, the latter moved to dismiss alleging that the notice was untimely (A-156). Twice Dr. Cordero moved the district court to uphold its timeliness (A-158, 205) under **(a)** the FRBkrP Rule 9006(e) complete-on-mailing rule; **(b)** Rule 9006(f) three-additional-days rule [SCtA.25]; **(c)** Rule 8001(a) on the manner of appealing from a bankruptcy order; and **(d)** Rule 8002 on the timing for perfecting the appeal. Twice District Judge Larimer denied his motions. (A-200, 211) Then Dr. Cordero moved to extend the time to file notice of appeal under Rule 8002(c) (A-214), which Judge Ninfo denied on the surprising allegation that it was untimely (A-240), so that Dr. Cordero raised a motion arguing the same point of time computation under Rule 9006 (A-246), but Judge Ninfo denied it (A-259) by stating that 'the district court order establishing that Dr. Cordero's appeal was untimely' "is the law of the case" (A-260).

46. This means that res judicata prevents any further appeal from causing those lower courts to upset their ruling concerning that strictly legal point of timeliness of filing or the resulting findings and determination that the notice of appeal and the motion to extend the time to file it were untimely. Consequently, the order dismissing Dr. Cordero's cross-claims against Trustee Gordon put the latter beyond Dr. Cordero's reach in Pfuntner v. Gordon et al., and since the Trustee settled with the other parties, he is no longer a litigating party. No pending proceedings in the courts below could ever change the legal relation between them. [SCtA.198§A] Therefore, each order is final

because it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment", *Catlin v. United States, 65 S.Ct. 631, 633, 324 U.S. 229, 233, 89 L.Ed. 911 (1945).*

47. Their legal relation could only change if the Appeals Court reviewed those orders and determined that they were in error as a matter of law because both Judge Ninfo and Judge Larimer disregarded **1)** the Bankruptcy Rules on timely filing [SCtA.25§A; and because Judge Ninfo disregarded the law applicable to **2)** a motion to dismiss [SCtA.10§C2, 38§B]; **3)** a claim for defamation [SCtA.39§B1]; and **4)** a negligence and recklessness claim [SCtA.42§B2] These are legal questions to which the District Court already gave an answer [SCtA.208§II] and those answers cannot be affected by any subsequent findings made or further developments in the case. [SCtA.199§A1] Therefore, as a matter of law and fact, the appealed orders were final and the Court of Appeals did have jurisdiction to decide the appeal.

B. The orders denying Dr. Cordero's application for default judgment against Mr. Palmer show that Judge Larimer did not read his motions, whereby the Judge denied Dr. Cordero an opportunity to be heard in violation of due process

48. After Judge Ninfo recommended to the District Court that the application for default judgment against Mr. Palmer be denied [SCtA.17 and 19], Dr. Cordero wrote to District Judge Larimer (A-311) and moved his court to grant the application pursuant to FRBkrP Rule 55 (A-314). The Judge not only denied the application, but also required "an inquest concerning damages" which "the Bankruptcy Court is the proper forum for conducting" [SCtA.10]. Such a denial and all the more so that requirement for an "inquest" contradict not only the provisions of Rule 55, but also defeat the capitalized bold-lettered warning to the defendant contained in the summons and the reasonable expectations [SCtA.§11] that it raises in the plaintiff that:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, *YOUR FAILURE WILL BE* DEEMED TO BE *YOUR CONSENT TO* ENTRY OF A *JUDGMENT* BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT (emphasis added)

49. Defendant Palmer failed to respond. That is a fact that cannot be altered; it was established by the Clerk of Court [SCtA.15]. The court had a legal obligation to enter default judgment for the sum certain demanded (A-294). That is a point of law that no further development in the case could alter. [SCtA.199§B] It was confirmed after Dr. Cordero moved the district court to reconsider its denial and grant the application [SCtA.10] and Judge Larimer "in all respects denied" it [SCtA.9]. From that moment on there was nothing else to do concerning the application for default judgment but to appeal to the Court of Appeals or conduct the "inquest" [SCtA.§C13]…and it was conducted, on May 19, 2003, and at the hearing on May 21, Dr. Cordero reported on the loss or damage of his property and the Judge accepted the report and Judge Ninfo asked him to resubmit his application and Dr. Cordero submitted it on June 16, 2003 (A-472) and Judge Ninfo once more denied it at the hearing on June 25, 2003, and what else was necessary for the order denying the application for default judgment to become final and appealable?! [SCtA.209§III] When will all this disregard for legality and bias and the sheer arbitrariness to wear down Dr. Cordero stop? When does a court get the opportunity to say on legal and equitable grounds "Enough is enough! Let's do justice now!"? (It is the collective responsibility of the members of this Court to safeguard the integrity of judicial process in this circuit and ensure that justice is not only done, but is also seen to be done. The threshold for their intervention has been met more than enough since there is so much more than "the appearance of impropriety" *Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, at 859-60, 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988))*

50. In those orders Judge Larimer not only denied that application, he also denied Dr. Cordero due

process. Indeed, as a judge, he has the duty to hear all the parties to a case and then adjudicate it on the basis of law, rules, and facts. However, his four decisions [SCtA.5-11], the last two of which were merely lazy "in all respects denied" order forms, do not even acknowledge, let alone discuss any of Dr. Cordero's legal or factual contentions. On the contrary, they make egregious mistakes of fact on outcome determinative issues (§18, supra) [SCtA109§C7]:

a) As to the default judgment application, Judge Larimer wrote that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain" [SCtA.10] Had he only cared to read "the matter" or at least the application itself if only out of intellectual integrity so that he knew what he was talking about, Judge Larimer would have realized that "the matter" did involve a sum certain. (A-294)

b) As to the notice of appeal and the motion to extend time to file it, Judge Larimer handled this matter so perfunctorily as to make four mistakes on precisely the key issue of time computation. So he wrote "Here, the ten-day period of Rule 8002(a) expired on Tuesday, January 10, which was not a holiday." [SCtA.7] But the ten-day period ended on January 9; the period ended on a Thursday; Tuesday was January 7; and holidays were irrelevant since New Year's Day was never claimed to render the notice timely. The issue was whether the notice was timely 14 days after the entry of Judge Ninfo's order of December 30, 2002 [SCtA.13], not 13 days as Judge Larimer miscounted [SCtA.8]. Nor did he even cite, much less discuss, this Court's landmark case in the area of timely filing under the Bankruptcy Code, that is, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993)*, which by contrast Dr. Cordero discussed in his briefs. [SCtA.178§E; 206]

51. What sloppy, quick job decisions! They are not only unworthy of a United States district judge, but they also show that Judge Larimer did not even read any of Dr. Cordero's four motions and a

letter to him. Yet, his reading them was required under 28 U.S.C. §157(c)(1), which Dr. Cordero invoked and discussed (A-328, 348), as was the Judge's "reviewing de novo those matters to which any party has timely and specifically objected…in the bankruptcy judge's proposed findings and conclusions". However, Judge Larimer failed to review Dr. Cordero's objections and based his orders only on ex parte communications with his colleague from downstairs in the same small federal building, that is, Judge Ninfo. Consequently, he denied Dr. Cordero an opportunity to be heard before depriving him of personal and property interests either in his property or arising out of events before and during the proceedings. Judge Larimer denied Dr. Cordero due process of law. ("The [requirement of] notice embodies a basic principle of justice -- that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights"; J. Black, *City of New York v. New York, N.H. & H. R.R., 344 U.S. 293, 297 (1953).)*

52. Such denial was final and appealable. Indeed, the issues of disregard for legality and bias on Judge Ninfo's part were squarely presented to the District Court. [SCtA.347¶15.b)4] What is more, Dr. Cordero requested that the District Court certify specific questions on those issues for appeal to the Court of Appeals. [SCtA.347¶15.d] Judge Larimer failed to do so or even to acknowledge the request because he failed to do what a responsible person is held to do when presented with a formal request that falls within the scope of his official functions: READ THE REQUEST! He simply dashed off a denied order form for which he need not have read anything.
53. Yet, in its summary order, the Court of Appeals claimed that these issues had not been reviewed by the district court. [SCtA.3] In his motion for rehearing, Dr. Cordero discussed how the district court had implicitly reviewed the issues of disregard for legality and bias and how its orders had become final. [SCtA.212§III] He asked how many more times after the first five the Court expected Dr. Cordero to engage in the exercise in futility of submitting issues and requests to Judge Larimer that he did not even acknowledge before those issues could become appealable.

But the Court only replied with its own denied order form, whereby it need not have read anything either.[SCtA.4] What kind of system of justice is this where judges need not give even the appearance that they heard the litigants, let alone listened to them? ("to perform its high function in the best way "justice must satisfy the appearance of justice.""; *In re Murchison , 349 U.S. 133, 136 (1955).)* How many times can judicial process be denied by contemptuous silence before a litigant can assert a due process right to appeal to a higher court and the latter must take jurisdiction over the issue and decide it? (On the right to hear why as part of due process, see *In re Wildman, 793 F.2d 157, 160 (7th Cir. 1986).)*

C. The Court of Appeals has a supervisory responsibility for the integrity of the courts in its circuit, which required that it investigate substantial evidence of ongoing violation of due process, but it failed to do so

54. Due process requires that before a person is deprived of a property or liberty interest, he or she be given notice and an opportunity to be heard. The purpose of those requirements is to prevent the government from engaging in arbitrary action. The result that such process pursues is fairness. As members of a branch of government, "judges are expected to administer the law fairly", *The Chief Justice's 2004 Year-End Report On The Federal Judiciary, at 4*, http://www.supremecourtus.gov/publicinfo/year-end/2004year-endreport.pdf So when a judge disregards the law, the rules, and the facts in conducting a hearing or reaching a decision, he turns the hearing into a meaningless and wasteful pro forma act that is inherently unfair because it frustrates the reasonable expectation that legal considerations applied to factual findings will provide the operational standard for the in-court event and its outcome. The judge has abused his power by removing unilaterally the process of adjudication from its commonly accepted legal framework and inserting it into his own set of undisclosed views driven by his personal or collusive interests. When this occurs repeatedly and consistently to the detriment of one party and the

benefit of another, the abuse constitutes an intentional denial of due process motivated by bias. *Mayberry v. Pennsylvania, 400 U.S. 455, 469 (1971)* (Harlan, J., concurring) ("[T]he appearance of evenhanded justice . . . is at the core of due process.")

55. Courts of appeals too have a duty to meet the constitutional requirements of due process. Moreover, as the courts with supervisory responsibility for the other courts in their circuits, they also have a duty to exercise due diligence to ensure that judges abide by their oath to "faithfully and impartially discharge and perform all the duties incumbent upon [them] as judge[s] under the Constitution and laws of the United States", 28 U.S.C. §453. When they fail to supervise and instead allow judges to deny due process, they themselves deny due process by dereliction of duty.

56. Both types of denial of due process have occurred in this case and have rendered infirm the disposition of every issue by the courts below. They have caused Dr. Cordero to lose substantive rights and have inflicted on him substantial material loss and emotional distress. More importantly as far as this petition goes, they have undermined the integrity of judicial process for the public at large. Enforcing on the judiciary members in question respect for legality warrants the exercise of supervisory power by this Court.

1) The Appeals Court denied Dr. Cordero due process by ignoring the properly raised question of the lower judge's past and current pattern of disregard for legality and bias and by remanding him to suffer further abuse at the hands of the same judge

57. Dr. Cordero presented the Appeals Court with an issue based on evidence gathered over years:

> Does the participation of bankruptcy and district court officers in a series of events of disregard of facts, procedural rules, and the law that consistently affect Dr. Cordero to his detriment and cannot be explained away as mere coincidences, but instead form a pattern of intentional and coordinated activity, create in the mind of a reasonable person the appearance of bias and prejudice sufficient to raise the justified expectation that Dr. Cordero will likewise not get an impartial and fair trial by those officers in those courts so as to warrant the removal of the case to a neutral court, such as the District Court for the Northern District of New York? [SCtA.105§C; 130§D]

58. For the Appeals Court to discharge its supervisory responsibility, it had to investigate the claim of such judicial wrongdoing and the resulting harm to Dr. Cordero to ascertain its veracity and, if confirmed, take corrective action to enforce on Judge Ninfo and other court officers respect for legality and ensure due process for Dr. Cordero. The duty to investigate and correct was all the more pressing because the Court knew, not only that such judicial wrongdoing had inflicted concrete legal and personal harm on Dr. Cordero in the past, but also that the same wrongdoing and harm was continuing in the present in the intimately related case of the DeLanos. What is more, Dr. Cordero had described in detail how the contents of the DeLanos' bankruptcy petition, its handling by Judge Ninfo and the trustees involved, and the link between that case and the case on appeal showed that the judicial wrongdoing was occurring in the context of a bankruptcy fraud scheme that involved substantial amounts of money and benefited the schemers. All this would have alerted reasonably competent and prudent supervisors to the possibility that they were dealing with a very grave case that required investigation, one involving official corruption.
59. Hence, even assuming arguendo that jurisdiction over Dr. Cordero's other appeal issues was lacking, the Appeals Court remained both dutybound to combat judicial wrongdoing within the Second Circuit and possessed of inherent power to investigate the claim and correct the situation. Its supervisory responsibility gave the Court jurisdiction born of an institutional duty: to ensure the integrity of judicial process in its circuit for the public good. By default too it necessarily had jurisdiction because no other entity had that specific duty and none had assumed it.
60. Nevertheless, the circuit judges on the panel that heard Dr. Cordero's appeal and the judges to whom his petition for hearing en banc was circulated, ignored the denial of due process resulting from disregard of legality and bias as well as the material and emotional harm that had been and was being inflicted on Dr. Cordero and remanded him to the Bankruptcy Court. As they did so, they had evidence supporting the reasonable expectation that Judge Ninfo together with other

court officers would continue engaged in his wrongdoing that would further harm Dr. Cordero' personal and property interests. Since a person is deemed to intend the normal consequences of his actions, when the circuit judges remanded the case under those circumstances, they intended to have Dr. Cordero suffer yet more such denial and harm. Thereby they condoned the denial of due process to Dr. Cordero by Judge Ninfo and the others and engaged themselves in denying him due process.

61. Actually, the Appeals Court should reasonably have expected that by dismissing the appeal without investigating the issue of disregard for legality and bias as well as their harm on Dr. Cordero or even mentioning it in its summary order [SCtA.1], the Court's indifference to the issue would be interpreted as a tacit condonation of the complained-about conduct that would only embolden Judge Ninfo and the others to engage even more blatantly in such conduct. Hence, the Court caused the Judge and the others to inflict on Dr. Cordero as a litigant not only more, but also graver harm, cf. 28 U.S.C. §48(d)j. In so doing, the Court intended to aggravate and did aggravate the normal consequences of its denial of due process.

62. The Appeals Court's dereliction of its duty to investigate and correct judicial wrongdoing, not to mention stamp out any corruption, in its circuit and its denial of due process have harmed every person in the circuit as well as Dr. Cordero personally. Indeed, as a result of those failures, the Appeals Court has left the public at large -whether current or potential, local or non-local litigants, particularly if pro se or otherwise unable to engage in a protracted legal war of material and emotional attrition- unprotected from past and current wrongdoing by Judge Ninfo and the others in furtherance of his personal or their collusive interests. By showing such crass indifference for the integrity of judges and the judicial process that they conduct, that Court "has so far departed from the accepted and usual course of judicial proceedings [and] sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power",

SupCtR Rule 10(a). Because both the public at large and Dr. Cordero are entitled to a judicial system that guarantees due process, their general and individual interests call for this Court to take action to safeguard their common good and his constitutional right.

D. Judicial wrongdoing that denies due process is the result of the unwillingness of judges to apply any system to investigate and discipline themselves, whether the Misconduct Act or impeachment

63. The system for the judiciary to police itself was set up by Congress in the Judicial Conduct and Disability Act of 1980 (hereinafter the Misconduct Act), codified to 28 U.S.C. §§351 et seq. It has proved to be useless to correct misconduct because the circuit chief judges and judicial councils have misapplied the Act by systematically dismissing complaints and denying petitions for review without any investigation. That this self-policing system does not work was recognized by Chief Justice William Rehnquist when on May 25, 2004, he appointed Justice Stephen Breyer to chair the Judicial Conduct and Disability Act Study Committee. His appointment was applauded by the Chairman of the Judiciary Committee of the House of Representative, F. James Sensenbrenner, Jr., who stated that:

> Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation. *News Advisory released on May 26, 2004; contact: Jeff Lungren/Terry Shawn, (202)225-2492;* at http://judiciary.house.gov/newscenter.aspx?A=294.

64. Consequently, the Judicial Conference, presided over by the Chief Justice, has not enforced any discipline on judges because its own members, among whom are the circuit chief judges, have not allowed for years in a row a single petition for review to reach the Conference [cf. SCtA.277], as follows from five issues of the *Report of the Proceedings of the Judicial Conference of the United States*, of March 2004 and March and September 2003 and 2002, at http://www.uscourts.gov /judconfindex.html.

65. In a society as litigious as ours, it is not possible that among the numberless judicial misconduct complaints filed with the chief judges and dismissed by them, and the numerous petitions for review to the judicial councils there was not a single one that required or deserved, not an automatic DENIED order form, but rather submission to the Conference. Only judges taking care not to investigate, and all the more so not to let outsiders investigate, any of their peers can account for **0** complaints submitted to the Judicial Conference since the last, single petition was reported to have been filed in April 2001; *Report of the Proceedings of the Judicial Conference of the United States, September 2001, at 68,* at http://www.uscourts.gov/judconfindex.html.

66. By contrast, the number of this Court's case filings has been growing for years, as shown by the Court's *Chief Justice's Year-End Report On The Federal Judiciary* for the years 2000-03, at http://www.supremecourtus.gov/publicinfo/year-end/year-endreports.html: **7,109** in the 1998 Term; **7,377** in the 1999 Term; **7,852** in the 2000 Term; **7,924** the 2001 Term; and **8,255** in the 2002 Term. In each of the six years since 1998, the Court has on average handed down 74 signed opinions. [SCtA.289]

67. Compare those numbers with that of the memoranda and orders issued by the Judicial Conference, or rather by its Committee to Review Circuit Council Conduct and Disability Orders: For the whole of the 25 years since the enactment of the Misconduct Act in 1980, they total the grand number of 15! [SCtA.288] Not only are they few, but also very difficult to find, which is so illustrative of the judges' efforts not to investigate themselves or appear that they need to be investigated. Dr. Cordero obtained hardcopies of them only after his repeated requests to the Administrative Office of the U.S. Courts [SCtA.287], which maintains the Judicial Conference's webpage and makes its *Report* available therein, but not so those memoranda and orders.

68. Nor is the impeachment of judges before the House of Representatives a deterrent to misconduct.

Indeed, Chief Justice Rehnquist has stated that

> In the years since the [Justice Samuel] Chase trial [in 1805], eleven federal judges have been impeached. Of those, three were acquitted, two resigned rather than face trial, and six were convicted. One conviction -- that of Judge West H. Humphreys in 1862 -- was by default since he had accepted appointment as a Confederate judge in Tennessee. The other five convictions were for offenses involving financial improprieties, income tax evasion, and perjury -- misconduct far removed from judicial acts. *Remarks of the Chief Justice at the Federal Judges Association Board of Directors Meeting, May 5, 2003*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html.

69. For the sake of the meaningfulness of the principles of penal responsibility and equality before the law, one can only hope that judges are not able to rely also on resignation as the easy way out of their impending impeachment. Nevertheless, judges are very aware, no doubt, that they have life tenure and are shielded from adverse consequences for what they do and their motives by the established principle that "a judge's judicial acts may not serve as a basis for impeachment", id (emphasis in original). Since in over 200 years of the judiciary's history the average is one single judge convicted after impeachment in more than every 40 years, judges stand a higher statistical chance of becoming Chief Justice of the Supreme Court than of being found guilty. Why would they ever fear the consequences of what they do? What greater incentive can there be for wrongdoing than the empirical proof of immunity?

70. Power! Uncontrolled judicial power!, for "power corrupts, and absolute power corrupts absolutely", *Lord Acton, Letter to Bishop Mandell Creighton, April 3, 1887*. Judges need not be concerned about becoming subject to the oddity of impeachment or the dead letter of the Misconduct Act, and there is nothing left as a constraint for them to abide by their legal and ethical obligations. The risk of being overturned?…big deal!, dividends can be much bigger. So why would they respect due process for the benefit of litigants, and of all litigants those pro se and non-local defendants that can be expected to be worn down easily? Hence, judges' capacity to exercise judicial power as they please in the absence of any effective control and discipline

becomes absolute power with the capacity to absolutely corrupt their judgment and conduct.

71. The fact is that after the President nominates a person to a judgeship, the Senate does not confirm the nominee's incorruptibility, just her suitability to be a federal judge in light of her qualifications and viewpoints and the Senators' personal views and political affiliations. Confirmed nominees know that they are in practice insulated from investigation and the consequences that could derive therefrom. They have in effect only all the freedom and the inhibitions to do and not to do that their conscience and human nature accord them, from fairly dispensing justice for the benefit of those pleading for it, to making a name for themselves as excellent jurists, to just taking it easy, to taking in as much as possible…while the going is good, particularly for bankruptcy judges, who are appointed for only 14 years. After all, nobody is there in the Judicial Branch watching over them. Outside it, they are also immune to the wrath of citizens, who may vote politicians out of office and can even recall governors, but are impotent to cause even an investigation of a federal judge's performance, let alone his financial affairs. Consequently, the unjustifiable situation has set in that judges that are appointed to dispense justice under the law can dish out whatever they want because as a matter of fact they can behave irresponsibly insofar as they do not respond to anybody: Once on the bench, they are above the law. How ironic: A judgeship as a safe haven for wrongdoing. Is that acceptable to you?

72. Stating that the absence of an effective system of control and discipline allows judges to pursue their personal or collusive interest through the power of their office at the expense of due process is not by any means the same as impugning every judge or even the majority of them. Such impugnation is absolutely **not** been made here by Dr. Cordero, who strives for principled conduct guided by a sense of proportion based on facts and aimed at fairness. But it cannot be disputed that there is a problem in the judiciary's exercise of self-discipline that allows judges to engage in such conduct.

1) 'The judges' eroded morale over stagnant compensation' is aggravated by the corruptive power of the lots of money available in bankruptcy and both lay the basis for a bankruptcy fraud scheme

73. Precisely because the Misconduct Act has been misapplied for decades, the Court has had no regular indication of the nature and extent of judicial misconduct and its impact on the integrity of the judiciary or the kind of justice that litigants receive and their current perception of "the appearance of justice". However, the Court is aware of a situation in the judiciary that is a potent cause for misconduct: money, "the root of all evils", the Bible at 1 Timothy 6:10. Thus, for years the Court has known that judges are discontent because of inadequate pay and Congress' failure to provide the promised regular COLAs (Cost of Living Adjustments). This problem has "serious effects", as Chief Justice Rehnquist put it:

> Although we cannot say that the judges who are leaving the bench are leaving only because of inadequate pay, many of them have noted that financial considerations are a big factor.[4] The fact that judges are leaving because of inadequate pay is underscored by the fact that most of the judges who have left the bench in the last ten years have entered private practice.[5] It is no wonder that judges are leaving when law clerks who join big law firms in large cities can earn more in their first year than district judges earn in a year. Inadequate pay has other serious effects on the judiciary. [Administrative Office of the U.S. Courts] Director Mecham's June 14 letter to you makes clear that judges who have been leaving the bench in the last several years believe they were treated unfairly…[due to] Congress's failure to provide regular COLAs…That sense of inequity erodes the morale of our judges. *Statement on Judicial Compensation by William H. Rehnquist, Chief Justice of the United States, Before the National Commission on the Public Service, July 15, 2002*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_07-15-02.html.

74. It cannot come as a surprise if such erosion of morale has stripped some judges of the moral standards that should prevent every person from resorting to illegal means of self-help to increase his income. Should one reasonably expect judges to have remained unaffected by the lure of money in the midst of a society that values material success above anything else and pursues it with unbound greed and conspicuous disregard for legal and ethical constraints?

75. In the bankruptcy context, the lure of money is extremely powerful because there is not just money, but rather lots of money. Indeed, an approved debt repayment plan followed by debt

discharge can spare the debtor an enormous amount of money. For instance, the DeLano's plan [SCtA.379] contemplates the repayment of only 22¢ on the dollar, which means its approval would spare the DeLanos 78% of their total liabilities of $185,462 [SCtA.381 Summary of Schedules] or over $144,462…and that does not take into account all the money saved on their total credit card debt of $98,092 [SCtA.381 Schedule F] that given their over 230 late payments would otherwise be charged annual compound interest at the delinquent rate of over 23%.

76. Others too can make lots of money. A standing trustee is appointed under 28 U.S.C. §586(b) for cases under Chapter 13 and is a federal agent inasmuch as her performance is dictated and supervised by a U.S. trustee, who in turn is under the general supervision of the Attorney General, §586(c). However, the standing trustee earns part of her compensation from 'a percentage fee of the payments made under the repayment plan of each debtor', §586(e)(1)(B) and (2).

77. After receiving a petition, the trustee is supposed to investigate the debtor's financial affairs to determine the veracity of his statements, 11 U.S.C. §1302(b)(1) and §704(4) and (7). If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves the repayment plan of the debtor, who can count with the trustee's support when the plan is submitted to the court for confirmation, §1325(b)(1). A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, §1326(a).

78. If the plan is not confirmed, which is most likely if the trustee opposes its confirmation, the trustee must return the money paid, less certain deductions, to the debtor, §1326(a)(2). 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 secure the

confirmation of its plan by any judge or any other officer or entity that can derail confirmation, §1325(b)(1)(A).

79. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", 28 U.S.C. §586(e)(2)(B)(ii); cf. 11 U.S.C. §330(a) and (c). Now, an investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases, §586(e)(1)(B)(i)). Such a system creates a perverse incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get also other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not necessarily as if he were broke and had no money.

80. Add the corruptive power of money to the corruptive power of judicial power that escapes any effective control and discipline system, let alone any investigation, and the end product is a morally corrosive mix. It can dissolve the will to abide by the oath of office already weakened by a "sense of inequity [over unadjusted judicial compensation that] erodes the morale of our judges", para. 73 above. In contact with such mix, due process ends up severely deteriorated.

2) Judicial wrongdoing significantly increases the material and emotional cost of litigation and further reduces the already limited access of the public to the courts in civil matters

81. Given the lack of an effective system of control and discipline to ensure that judges "hold their Offices [only] during good Behaviour", Const., Art. III, Sec. 1, as a matter of fact judges stay in office regardless of their behavior. When they misbehave, whether it be by failing to keep their

oath ‘to be impartial and discharge their duties of adjudicating under the Constitution and laws’, 28 U.S.C. §453, rather than with disregard for those sources of legality, or misbehave by failing to be honest and instead abusing their power for their personal or collusive interest, they significantly increase the cost of litigation in terms of money, effort, and time and cause tremendous anxiety. In so doing, they worsen an already grave problem for the public, namely, affordable and sustainable access to legal representation. Its gravity was recognized by Justice Breyer when he cited statistics on the overwhelming percentage of people that cannot gain access to such representation to protect their rights and interests:

> A 1994 ABA Report says that between 70% and 80% of those with low incomes who needed a lawyer in a civil case failed to find one.[2] A more recent article says that the United States government spends about $2 per citizen on legal aid, compared to France, which spends $5, and Britain, which spends $15.[3] *Opening Keynote Address "Our Civic Commitment", by Stephen Breyer, Associate Justice, Supreme Court of the United States, at the Annual Meeting of the American Bar Association, Chicago, Illinois, August 4, 2001*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_08-04-01.html.

82. However, of what benefit is it to that small 30% to 20% of people who are lucky enough to be able to afford a lawyer if they run into judges who together with other court officers disregard the law, the rules, and the facts while pursuing their own interest? Even if low income people found pro bono representation, could any reasonable person ask a pro bono lawyer to work for years at his own expense or that of his law firm battling judges that have freed themselves of the constraints of due process to disregard legality and indulge their bias? Of course not! Such judges force even wealthy litigants to choose between relinquishing their rights by dropping their cases and struggling up the appellate system at a cost that defies any cost-benefit analysis.

83. Hence, the public at large is done a grave disservice when judges do not consider themselves “in the public service” but rather are simply making a living –or worse, making money- and have no higher objective than to clear their dockets while remaining insensitive to the enormous material cost and tremendous emotional turmoil caused by being engulfed by a case. No doubt then that

such judges severely aggravate the injury caused by litigation when they add the insult of their own disregard for legality and their bias.

84. That is what the judges and other court officers have done in the case of Dr. Cordero, who in this regard represents the millions of people in that 70% to 80% of the public who cannot afford an attorney but who rather than accept that he and his rights should be abused, has had 1) to research and write applications, motions, and briefs at enormous material and emotional cost to appeal from the bankruptcy court to the district court to the appeals court to this Court; not to mention 2) his two judicial misconduct complaints filed under 28 U.S.C. §351 et seq. [SCtA.251; 265], 3) followed by petitions for review to the Circuit's Judicial Council [SCtA.260; 272] and 4) to the Judicial Conference on November 18, 2004 [cf. SCtA.277]; 5) his repeated requests to the members of both bodies to review the dismissals and denials; as well as 6) the numberless letters that he has had to send to so many other public "servants", including to the U.S. Attorneys in Buffalo and Rochester [SCtA.451 et seq.; particularly 465] in his search for one who will be triggered into corrective action after being offended by judges with 'bad Behaviour while holding Office' and by officers holding hands with fraudsters to the detriment of the public that they are supposed to serve.

85. To all this work must be added 7) his request to 11 federal judges to fulfill their unambiguous but light obligation under 18 U.S.C. §3057(a) that they "***shall*** report to the appropriate United States attorney…[not hard evidence of a bankruptcy crime, but simply their] "having reasonable grounds for believing that any violation…relating to insolvent debtors…has been committed, *or* that an investigation should be had in connection therewith" (emphasis added). It is hard to accept that all the evidence in this case does not support the belief that an investigation should be had, if only to be on the safe side because at stake is nothing less than the integrity of the

bankruptcy and judicial systems. Yet none of these judges of the Judicial Conference or the Judicial Council or the Court of Appeals has written back to Dr. Cordero to let him know that he or she made the report. By contrast, several circuit judges returned the whole bound volume of the request and its numerous supporting documents alleging that the mandate had issued from the Court of Appeals and that the latter had no jurisdiction over the case anymore. What a cop out! Even the most cursory reading of that provision by the legally illiterate would result in the understanding that §3057(a) has absolutely nothing to do with any ongoing case, let alone any court having jurisdiction of any case, but rather with an obligation imposed by Congress on "Any judge, receiver, or trustee" to help to eliminate bankruptcy fraud. The need to enlist their help becomes evident given that fraud accounts to some extent for the fact that filings in the bankruptcy courts "have soared 83 percent over the last 10 years and remain at close to peak levels…at 1,618,987 in 2004", The Chief Justice's *2004 Year-End Report on the Federal Judiciary*, at 11 and fn. 4.

86. If U.S. circuit judges and chief district judges do not comply with obligations specifically imposed on them by black letter law, is it a sense of high mission that motivates them to perform the duties of their office or are they just doing a job to earn a living and move ahead in life? If they do not feel the need to set the example of respect for the law, do they dispense justice or exercise the arrogance of power beyond the reach of any effective control or discipline?

E. What is at stake in deciding this petition

87. If pro bono lawyers cannot reasonably be expected to take care of low income people for years against so many 'opposing judges and court officers', and the government only takes token care of them, and judges take care of each other rather than investigate complaints against another member of their self-immunized 'class of judges', who takes care of the weak and the needy

when they ask for justice in the Judicial Branch? This Court? If the Court does not review this case, where a pro se litigant, Dr. Cordero, stands for millions of other Americans who can neither afford a lawyer, let alone representation by a large law firm, nor represent themselves by crafting and writing their own arguments, how and when will this Court give them notice that if they ever gain access to process at all it will also be due process? (*Goldberg v. Kelly, 397 U.S. 254, 264-65 (1970)* (noting that full attention to due process concerns helps ensure "the Nation's basic commitment…to foster the dignity and well-being of all persons within its borders.")

88. To guarantee due process the Court needs to step in and take vigorous measures to set up and run an effective system of control and discipline of judges and other court officers. If it only sits back and hopes that judges will on their own constrain themselves to apply the law and refrain themselves from taking advantage of the opportunity to abuse their power at no risk to themselves to advance personal and collusive interests, then it indulges an expectation contrary to human nature. Why would judges do so when they can dispense with justice to engage in riskless misconduct, wrongdoing, or even corruption from the bench?

89. By reviewing this case the Court can also gain in turn something of great value, namely, insight into the state of integrity of a judiciary with a broken self-policing system and into the extent to which the abundance of money through bankruptcy fraud has exacerbated the judges' eroded morale over stagnant compensation and further put that integrity in jeopardy. These are issues that undoubtedly concern directly and substantially the public at large, including Dr. Cordero. Indeed, they are so vast in scope that their resolution calls for cooperative work between this Court and the Judicial Conference, the Department of Justice, the FBI, and Congress. But this Court, as the highest authority of the Third Branch of Government, must take the leadership to set in motion the process of investigation and correction by exercising its supervisory power in a decisive manner that sends the unmistakable message that it means business with its words about

safeguarding the integrity of the courts and due process for all litigants.

90. In launching that process, the Court can hit the ground running by taking advantage of the considerable amount of evidence already gathered during years of litigation in this two related cases and through all the other initiatives undertaken by Dr. Cordero. If the Court considered in *Brown v. Board of Education, 347 US 483 (1954),* that it had the power to cause a societal change by ordering desegregation in schools, then it must certainly be able to reach a consensus and muster the power necessary to adopt far-reaching and effective measures to put its own Branch of Government in order. Ensuring that the judiciary functions properly in our three-branch system of government is an issue of indisputable importance to the nation, and all the more so in light of Chief Justice Rehnquist's statement that "Criticism of judges has dramatically increased in recent years, exacerbating in some respects the strained relationship between the Congress and the federal Judiciary", *2004 Year-End Report On The Federal Judiciary, at 4.*

91. Hence, the stake in this case is the Supreme Court's willingness and capacity to show that it cares not just for "the appearance of justice", but also and foremost for the substance of justice that judges respectful of due process are expected to dispense fairly and impartially to those seeking it before them. (""[D]ue process,"…express[es]…in its ultimate analysis respect enforced by law for that feeling of just treatment. [It r]epresent[s] a profound attitude of fairness between man and man, and more particularly between the individual and government"; *Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 162-63 (1951))* (Frankfurter, J., concurring) In that spirit, it should review this case to do what only it can do, namely, answer a constitutional question of public importance and capable of leading the way for the required cooperative work: Does it constitute a denial of due process to require litigants, particularly pro se and non-local ones, to try a case, let alone two mutually confirming cases, before a judge together with other

court officers whom the evidence shows to have affected rights and imposed burdens by disregarding the law, the rules, and the facts so repeatedly and consistently to the detriment of the only such pro se and non-local party, and in favor of the local parties as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme?

92. In deciding whether to grant this petition, one can only hope that the Court will proceed with the sense of duty of those who, like Justice Ruth Bader Ginsburg, believe in…

> the command from Deuteronomy displayed in artworks, in Hebrew letters, on three walls and a table in my chambers. "Zedek, Zedek, tirdof" "Justice, Justice shalt thou pursue," these art works proclaim; they are ever present reminders of what judges must do "that they may thrive**."** *Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States, Remarks for Touro Synagogue (Newport, Rhode Island), Celebration of the 350th Anniversary of Jews in America, August 22, 2004*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_08-22-04.html.

VI. Conclusion

93. a) This petition for certiorari should be granted; or

b) otherwise, the Premier case, including all aspects of the Pfuntner v. Gordon et al, as well as the DeLano case should be remanded with instructions that it be removed to an impartial and roughly equidistant court, such as the U.S. District Court in Albany, NY, to be tried to a jury.

94. In either event, the Court should refer these cases under 18 U.S.C. §3057(a) to the U.S. Attorney General for investigation on grounds such as those set out in Dr. Cordero's Request for a Judicial Report [SCtA.511] and, for the reasons therein stated and supported by the documents at [SCtA.451 et seq.], with the recommendation that the investigation be conducted by officers not related to the offices of the Department of Justice or the FBI in Rochester or Buffalo, NY.

Respectfully submitted on,

January 20, 2005

Dr. Richard Cordero

tel. (718) 827-9521

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

18 U.S.C. §3057(a)

Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title [18 U.S.C. §§152-157 on bankruptcy crimes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans [e.g. 18 U.S.C. §1519 on destruction of bankruptcy records; §3284 on concealment of bankrupt's assets] 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]

28 USCS §158 (2005)

§ 158. Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[--]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b) (1) The judicial council of a circuit shall establish a bankruptcy appellate panel service com-posed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that--

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2) (A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the con-sent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title [28 USCS § 152].

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c) (1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless--

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal, to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules [USCS Court Rules, Bankruptcy Rules, Rule 8002].

(d) (1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2) (A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that--

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel--

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

HISTORY:

(July 10, 1984, P.L. 98-353, Title I, § 104(a), 98 Stat. 341; Dec. 1, 1990, P.L. 101-650, Title III, § 305, 104 Stat. 5105; Oct. 22, 1994, P.L. 103-394, Title I, § § 102, 104(c), (d), 108 Stat. 4108-4110.)

(As amended April 20, 2005, P.L. 109-8, Title XII, § 1233(a), 119 Stat. 202.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

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(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., shall file and serve a "RICO Case Statement" under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party's RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party's failure to file a statement may result in dismissal of the party's RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).

(2) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a "pattern of racketeering activity"; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

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United States Bankruptcy Court

Western District of New York
Honorable John C. Ninfo, II - *Chief Judge*
Paul R. Warren - *Clerk of Court*
Buffalo Court Directory
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About Judge Ninfo

John C. Ninfo, II, is Chief Judge of the United States Bankruptcy Court for the Western District of New York. At the time of his appointment to the bench in 1992 he was a partner in the law firm of Underberg and Kessler in Rochester, New York. He became Chief Judge in 2000.

Chief Judge Ninfo earned his B.S. degree from Georgetown University in 1968, and his J.D. degree from Boston University Law School in 1973.

From 1968 until 1970 he served in the United States Marine Corps, becoming Chief Legal Clerk to the Judge Advocate General of the 4th Marine Air Wing. From 1970 until 1992 he engaged in private law practice with the Rochester firm of Underberg and Kessler, specializing in creditors' rights and bankruptcy law.

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Judge Ninfo's citations to authority in his decision on appeal of April 4, 2005

II. The Claim Objection Proceeding

Section 502(a)[3] provides that once a proof a claim is filed, it is deemed allowed unless a party in interest objects, and Rule 3001(f) provides that a correctly filed proof of claim is *prima facie* evidence of the validity and amount of the claim.[4] Case law

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[3] Section 502(a) provides that:

> (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

11 U.S.C. § 502 (2005).

[4] Rule 3001(f) provides that:

> 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.

Federal Rules of Bankruptcy Procedure, Rule 3001 (2005).

in the United States Court of Appeals for the Second Circuit (the "Second Circuit") makes it clear that the ultimate burden to prove a valid and allowable claim rests with the creditor.[5]

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[5] *In re Youroveta Home & Foreign Trade Co. Inc.*, 2 Cir., 297 F. 723 (1924); *In re George R. Burrows, Inc.* 156 F.2d 640 (2d Cir. 1946). The Second Circuit has clearly ruled that once the objecting party introduces substantial evidence in opposition, the burden shifts to the claimant to establish by a preponderance of the evidence that their claims are allowed under the law. Furthermore, it is well established by case law in a host of jurisdictions that after the objecting party introduces evidence sufficient to rebut the presumption of validity, the burden of proof shifts to the claimant. See Alan N. Resnick and Henry J. Sommer, 9 Collier on Bankruptcy § 3001.09[2] at 3001-27 - 3001-28; Joseph M. Bassano, et al, 9C Am.Jur 2d Bankruptcy § 2368; and William L. Norton, Jr., 2 Norton Bankr. L & Prac. 2d § 41:7. Most significantly, the Supreme Court has held in *Raleigh v. Illinois Dept. Of Revenue*, 530 U.S. 15 (2000), that the burden of proof in bankruptcy cases should be applied in the same manner as in non-bankruptcy law in a non-bankruptcy forum, since the burden is a substantive aspect of the claim.

has not objected to allowance of a filed proof of claim or interest.[10] 11 USCA § 1111(a) permitting a proof of claim or interest to be deemed filed is applicable only to cases under Chapter 11.[11] Thus § 1111(a) cannot be relied upon by a Chapter 13 debtor to avoid the requirement that a proof of claim must be filed under 11 USCA § 501 in order for a secured claim to be allowed in Chapter 13 case. Further, secured creditors must comply with the proper time-for-filing requirements under Fed R Bankr P 3002(c)(3) imposed on unsecured creditors in order to participate in distributions from a Chapter 13 trustee, and a late-filed claim may be barred and disallowed for purposes of Chapter 13 plan distribution. Since a secured creditor has a lien which may survive bankruptcy, it only makes sense that a secured creditor who seeks to participate in the receipt of disbursements from the Chapter 13 trustee must comply with the same time-for-filing requirements imposed on unsecured creditors.[12]

§ 2366. —Chapter 9 cases

In a Chapter 9 case, a proof of claim is deemed filed under 11 USCA § 501[13] for any claim that appears in the list of creditors which a municipality filing a Chapter 9 case is required to file,[14] except a claim that is listed as disputed, contingent, or unliquidated.[15] The list of creditors filed by the debtor is given weight as prima facie evidence of the claims listed (except claims that are listed as disputed, contingent, or unliquidated), which are deemed filed under § 501, obviating the need for listed creditors to file proofs of claim.[16]

The provisions of a confirmed Chapter 9 plan bind the debtor and any creditor, whether or not a proof of such creditor's claim is filed or deemed filed under 11 USCA § 501.[17] This has been held to bar creditors who did not receive notice of the bar date for filing a proof of claim but who had knowledge of the bankruptcy case from participating in distribution where they failed to file a formal proof of claim prior to confirmation of the plan.[18]

§ 2367. Proof of claim as prima facie evidence

A properly filed proof of claim constitutes prima facie evidence of the validity and amount of the claim under the Federal Rules of Bankruptcy Procedure,[19]

10. For discussion of "deemed allowance," see § 2457.

11. 11 USCA § 103(f).

12. In re Schaffer, 173 B.R. 393 (Bankr. N.D. Ill. 1994).

13. Section 501 is made applicable in Chapter 9 cases by 11 USCA § 901(a).

14. 11 USCA § 924.

15. 11 USCA § 925.

16. H. Rept. No. 95-595, p. 399.

Forms: List—Of creditors holding 20 largest unsecured claims (Official Form No. 4). Bankruptcy Service, L Ed § 72:4.

List of creditors. Bankruptcy Service, L Ed § 72:5.

17. 11 USCA § 944(a)(1).

18. Nebraska Sec. Bank v. Sanitary & Imp. Dist. No. 7, 119 B.R. 193, 20 Bankr. Ct. Dec. (CRR) 1748 (D. Neb. 1990).

19. Fed R Bankr P 3001(f) (executed and filed in accordance with the Federal Rules of Bankruptcy Procedure).

Forms: Proofs of claim and related notices. Bankruptcy Service, L Ed §§ 71:252-71:260, 72:110, 72:111.

and under 11 USCA § 502(a).[20] An amended proof of claim is likewise prima facie evidence of the validity and amount of the claim.[21]

To the extent not inconsistent with the U.S. Warehouse Act[22] or applicable state law, a warehouse receipt, scale ticket, or a similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in 11 USCA § 557, is prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.[23]

◆ *Observation:* The Federal Rules of Evidence, made applicable to cases under Bankruptcy Code by Fed R Evid 1101, do not prescribe the evidentiary effect to be accorded particular documents; Fed R Bankr P 3001(f) supplements the Federal Rules of Evidence as they apply to cases under the Bankruptcy Code.[24]

§ 2368. —Rebuttal of prima facie showing; burden of production and burden of proof

The prima facie showing of the validity and amount of a claim, which show-

20. In re Kontaratos, 35 B.R. 135, Bankr. L. Rep. (CCH) ¶ 69360 (Bankr. D. Me. 1983), approved and remanded, 36 B.R. 928, 84-1 U.S. Tax Cas. (CCH) ¶ 9208, 53 A.F.T.R.2d (P-H) ¶ 84-971 (D. Me. 1984); In re Beverages Intern. Ltd., 50 B.R. 273 (Bankr. D. Mass. 1985), related reference, 61 B.R. 966, 14 Bankr. Ct. Dec. (CRR) 676, Bankr. L. Rep. (CCH) ¶ 71206 (Bankr. D. Mass. 1986), related reference, 96 B.R. 407 (Bankr. D. Mass. 1989), judgment aff'd, 105 B.R. 145, Bankr. L. Rep. (CCH) ¶ 73318 (D. Mass. 1989); In re J. Bildner & Sons, Inc., 106 B.R. 8 (Bankr. D. Mass. 1989); In re 150 North Street Associates Ltd. Partnership, 184 B.R. 1 (Bankr. D. Mass. 1995); In re Colonial Bakery, Inc., 108 B.R. 13 (Bankr. D.R.I. 1989); In re Tesmetges, 87 B.R. 263, 17 Bankr. Ct. Dec. (CRR) 976 (Bankr. E.D.N.Y. 1988), decision aff'd, 95 B.R. 19 (E.D.N.Y. 1988); In re Greene, 71 B.R. 104 (Bankr. S.D.N.Y. 1987), related reference, 81 B.R. 829 (Bankr. S.D.N.Y. 1988), aff'd, 103 B.R. 83 (S.D.N.Y. 1989), aff'd, 904 F.2d 34 (2d Cir. 1990), related reference, 138 B.R. 403 (Bankr. S.D.N.Y. 1992) and (abrogation on other grounds recognized by, In re Wolfson, 139 B.R. 279, 26 Collier Bankr. Cas. 2d (MB) 1738 (Bankr. S.D.N.Y. 1992)); In re Allegheny Intern., Inc., 954 F.2d 167, 26 Collier Bankr. Cas. 2d (MB) 663, Bankr. L. Rep. (CCH) ¶ 74447 (3d Cir. 1992); Matter of TIE/Communications, Inc., 163 B.R. 435 (Bankr. D. Del. 1994); In re Rabzak, 79 B.R. 960 (Bankr. E.D. Pa. 1987), related reference, 79 B.R. 966 (Bankr. E.D. Pa. 1987); In re BRI Corp., 88 B.R. 71, 7 U.C.C. Rep. Serv. 2d (CBC) 1441 (Bankr. E.D. Pa. 1988); In re Stallings, 118 B.R. 387, 89-2 U.S. Tax Cas. (CCH) ¶ 9496, 64 A.F.T.R.2d (P-H) ¶ 89-5532 (Bankr. D.S.C. 1989), judgment aff'd, 90-1 U.S. Tax Cas. (CCH) ¶ 50067, 71A A.F.T.R.2d (P-H) ¶ 93-3391, 1989 WL 180888 (D.S.C. 1989), judgment aff'd, 914 F.2d 249 (4th Cir. 1990); In re Hinkley, 58 B.R. 339 (Bankr. S.D. Tex. 1986), judgment aff'd, 89 B.R. 608 (S.D. Tex. 1988), judgment aff'd, 875 F.2d 859 (5th Cir. 1989); In re Ousley, 92 B.R. 278 (Bankr. S.D. Ohio 1988); In re Farmers' Co-op of Arkansas and Oklahoma, Inc., 43 B.R. 619 (Bankr. W.D. Ark. 1984); In re Fullmer, 962 F.2d 1463, 27 Collier Bankr. Cas. 2d (MB) 92, Bankr. L. Rep. (CCH) ¶ 74646, 92-1 U.S. Tax Cas. (CCH) ¶ 50237, 69 A.F.T.R.2d (P-H) ¶ 92-1186 (10th Cir. 1992); In re Hudson Oil Co., Inc., 91 B.R. 932, 88-2 U.S. Tax Cas. (CCH) ¶ 9554, 63 A.F.T.R.2d (P-H) ¶ 89-450 (Bankr. D. Kan. 1988); In re Poleshuk, 115 B.R. 716, 20 Bankr. Ct. Dec. (CRR) 1089, 66 A.F.T.R.2d (P-H) ¶ 90-5856 (Bankr. M.D. Fla. 1990); In re VTN, Inc., 69 B.R. 1005 (Bankr. S.D. Fla. 1987).

11 USCA § 502(a) states that a claim or interest, proof of which is filed under 11 USCA § 501, is deemed allowed unless a party in interest objects; the statute has also been characterized as creating a presumption of a claim's validity. Matter of Sunnybrook Adult Mobile Home Park, Inc., 64 B.R. 365 (Bankr. M.D. Fla. 1986); In re Schaumburg Hotel Owner Ltd. Partnership, 97 B.R. 943 (Bankr. N.D. Ill. 1989).

21. In re Bates, 81 B.R. 63, 88-1 U.S. Tax Cas. (CCH) ¶ 9124, 60 A.F.T.R.2d (P-H) ¶ 87-6102 (Bankr. D. Or. 1987).

22. 7 USCA §§ 241 et seq.

23. Fed R Bankr P 3001(g).

24. Advisory Committee Note to Fed R Bankr P 3001.

ing is made by the filing of a proof of claim, may be rebutted by the presentation of evidence by a party in interest,[25] generally the trustee[26] or the debtor.[27]

At a hearing on an objection to the proof of claim, the initial burden of going forward with the evidence is on the party which objected.[28] Thus, when a claim is objected to, the burden of producing evidence to rebut the prima facie effect of the proof of claim is on the objecting party.[29] If the objecting party produces

25. In re Vermont Toy Works, Inc., 82 B.R. 258 (Bankr. D. Vt. 1987), order rev'd on other grounds, 135 B.R. 762 (D. Vt. 1991); Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, Bankr. L. Rep. (CCH) ¶ 72207 (5th Cir. 1988); In re Kham & Nate's Shoes No. 2, Inc., 97 B.R. 420 (Bankr. N.D. Ill. 1989), related reference, 104 B.R. 909 (N.D. Ill. 1989), decision vacated on other grounds, 908 F.2d 1351, 20 Bankr. Ct. Dec. (CRR) 1305, 23 Collier Bankr. Cas. 2d (MB) 1118, Bankr. L. Rep. (CCH) ¶ 73565 (7th Cir. 1990), reh'g denied, (Sept. 4, 1990) and reh'g withdrawn, (Sept. 6, 1990) and reh'g denied, (Oct. 12, 1990) and appeal dismissed, 1989 WL 157499 (N.D. Ill. 1989); In re Hudson Oil Co., Inc., 91 B.R. 932, 88-2 U.S. Tax Cas. (CCH) ¶ 9554, 63 A.F.T.R.2d (P-H) ¶ 89-450 (Bankr. D. Kan. 1988).

26. In re Vermont Toy Works, Inc., 82 B.R. 258 (Bankr. D. Vt. 1987), order rev'd on other grounds, 135 B.R. 762 (D. Vt. 1991); In re Hudson Oil Co., Inc., 91 B.R. 932, 88-2 U.S. Tax Cas. (CCH) ¶ 9554, 63 A.F.T.R.2d (P-H) ¶ 89-450 (Bankr. D. Kan. 1988).

27. In re Lamica Corp., 65 B.R. 849 (Bankr. S.D.N.Y. 1986); In re Ousley, 92 B.R. 278 (Bankr. S.D. Ohio 1988); In re Hydorn, 94 B.R. 608 (Bankr. W.D. Mo. 1988).

28. In re Kontaratos, 35 B.R. 135, Bankr. L. Rep. (CCH) ¶ 69360 (Bankr. D. Me. 1983), approved and remanded, 36 B.R. 928, 84-1 U.S. Tax Cas. (CCH) ¶ 9208, 53 A.F.T.R.2d (P-H) ¶ 84-971 (D. Me. 1984); In re Beverages Intern. Ltd., 50 B.R. 273 (Bankr. D. Mass. 1985), related reference, 61 B.R. 966, 14 Bankr. Ct. Dec. (CRR) 676, Bankr. L. Rep. (CCH) ¶ 71206 (Bankr. D. Mass. 1986), related reference, 96 B.R. 407 (Bankr. D. Mass. 1989), judgment aff'd, 105 B.R. 145, Bankr. L. Rep. (CCH) ¶ 73318 (D. Mass. 1989); In re J. Bildner & Sons, Inc., 106 B.R. 8 (Bankr. D. Mass. 1989); In re 150 North Street Associates Ltd. Partnership, 184 B.R. 1 (Bankr. D. Mass. 1995); In re Colonial Bakery, Inc., 108 B.R. 13 (Bankr. D.R.I. 1989); In re Stader, 90 B.R. 29 (Bankr. D. Conn. 1988); In re Tesmetges, 87 B.R. 263, 17 Bankr. Ct. Dec. (CRR) 976 (Bankr. E.D.N.Y. 1988), decision aff'd, 95 B.R. 19 (E.D.N.Y. 1988); In re Greene, 71 B.R. 104 (Bankr. S.D.N.Y. 1987), related reference, 81 B.R. 829 (Bankr. S.D.N.Y. 1988), aff'd, 103 B.R. 83 (S.D.N.Y. 1989), aff'd, 904 F.2d 34 (2d Cir. 1990), related reference, 138 B.R. 403 (Bankr. S.D.N.Y. 1992) and (abrogation on other grounds recognized by, In re Wolfson, 139 B.R. 279, 26 Collier Bankr. Cas. 2d (MB) 1738 (Bankr. S.D.N.Y. 1992)); In re Frederes, 98 B.R. 165 (Bankr. W.D.N.Y. 1989), related reference, 108 B.R. 419 (Bankr. W.D.N.Y. 1990); In re Allegheny Intern., Inc., 954 F.2d 167, 26 Collier Bankr. Cas. 2d (MB) 663, Bankr. L. Rep. (CCH) ¶ 74447 (3d Cir. 1992); Matter of TIE/Communications, Inc., 163 B.R. 435 (Bankr. D. Del. 1994); In re Rabzak, 79 B.R. 960 (Bankr. E.D. Pa. 1987), related reference, 79 B.R. 966 (Bankr. E.D. Pa. 1987); In re BRI Corp., 88 B.R. 71, 7 U.C.C. Rep. Serv. 2d (CBC) 1441 (Bankr. E.D. Pa. 1988); In re Stallings, 118 B.R. 387, 89-2 U.S. Tax Cas. (CCH) ¶ 9496, 64 A.F.T.R.2d (P-H) ¶ 89-5532 (Bankr. D.S.C. 1989), judgment aff'd, 90-1 U.S. Tax Cas. (CCH) ¶ 50067, 71A A.F.T.R.2d (P-H) ¶ 93-3391, 1989 WL 180888 (D.S.C. 1989), judgment aff'd, 914 F.2d 249 (4th Cir. 1990); In re Hinkley, 58 B.R. 339 (Bankr. S.D. Tex. 1986), judgment aff'd, 89 B.R. 608 (S.D. Tex. 1988), judgment aff'd, 875 F.2d 859 (5th Cir. 1989); In re Ousley, 92 B.R. 278 (Bankr. S.D. Ohio 1988); In re Schaumburg Hotel Owner Ltd. Partnership, 97 B.R. 943 (Bankr. N.D. Ill. 1989); In re Farmers' Co-op of Arkansas and Oklahoma, Inc., 43 B.R. 619 (Bankr. W.D. Ark. 1984); In re Lipetzky, 66 B.R. 648 (Bankr. D. Mont. 1986); In re Fullmer, 962 F.2d 1463, 27 Collier Bankr. Cas. 2d (MB) 92, Bankr. L. Rep. (CCH) ¶ 74646, 92-1 U.S. Tax Cas. (CCH) ¶ 50237, 69 A.F.T.R.2d (P-H) ¶ 92-1186 (10th Cir. 1992); In re Hudson Oil Co., Inc., 91 B.R. 932, 88-2 U.S. Tax Cas. (CCH) ¶ 9554, 63 A.F.T.R.2d (P-H) ¶ 89-450 (Bankr. D. Kan. 1988); In re Poleshuk, 115 B.R. 716, 20 Bankr. Ct. Dec. (CRR) 1089, 66 A.F.T.R.2d (P-H) ¶ 90-5856 (Bankr. M.D. Fla. 1990); In re VTN, Inc., 69 B.R. 1005 (Bankr. S.D. Fla. 1987).

29. In re J. Bildner & Sons, Inc., 106 B.R. 8 (Bankr. D. Mass. 1989); In re Colonial Bakery, Inc., 108 B.R. 13 (Bankr. D.R.I. 1989); In re Paige, 106 B.R. 346 (Bankr. D. Conn. 1989); In re Frederes, 98 B.R. 165 (Bankr. W.D.N.Y. 1989), related reference, 108 B.R. 419 (Bankr. W.D.N.Y. 1990); In re Gracey, 79 B.R. 597 (Bankr. E.D. Pa. 1987), related reference, 80 B.R. 675 (E.D. Pa. 1987), judgment aff'd, 849 F.2d 601 (3d Cir. 1988) and judgment aff'd, 849

little[30] or no evidence, the claimant will prevail.[31] Although it is said that the objecting party need not establish the invalidity of the claim by a preponderance of the evidence,[32] there is authority that the objecting party must produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of a proof of claim.[33] The burden shifts only when the objecting party has produced facts sufficient to demonstrate that an actual dispute exists; mere denial of the claim's validity or amount will not suffice.[34]

If an objecting party rebuts the prima facie validity of a proof of claim, the claimant bears the burden of persuasion to prove the validity and amount of the claim[35] by a preponderance of the evidence.[36]

F.2d 601 (3d Cir. 1988); In re BRI Corp., 88 B.R. 71, 7 U.C.C. Rep. Serv. 2d (CBC) 1441 (Bankr. E.D. Pa. 1988); In re All-American Auxiliary Ass'n, 95 B.R. 540 (Bankr. S.D. Ohio 1989).

30. In re Celona, 90 B.R. 104 (Bankr. E.D. Pa. 1988), opinion aff'd, 98 B.R. 705 (E.D. Pa. 1989), related reference, 1989 WL 106527 (Bankr. E.D. Pa. 1989).

31. Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, Bankr. L. Rep. (CCH) ¶ 72207 (5th Cir. 1988).

32. In re Celona, 90 B.R. 104 (Bankr. E.D. Pa. 1988), opinion aff'd, 98 B.R. 705 (E.D. Pa. 1989), related reference, 1989 WL 106527 (Bankr. E.D. Pa. 1989).

33. In re VTN, Inc., 69 B.R. 1005 (Bankr. S.D. Fla. 1987); In re Hinkley, 58 B.R. 339 (Bankr. S.D. Tex. 1986), judgment aff'd, 89 B.R. 608 (S.D. Tex. 1988), judgment aff'd, 875 F.2d 859 (5th Cir. 1989).

34. In re Frederes, 98 B.R. 165 (Bankr. W.D.N.Y. 1989), related reference, 108 B.R. 419 (Bankr. W.D.N.Y. 1990).

35. *In re Inter-Island Vessel Co., Inc.*, 98 B.R. 606 (Bankr. D. Mass. 1988); In re Frederes, 98 B.R. 165 (Bankr. W.D.N.Y. 1989), related reference, 108 B.R. 419 (Bankr. W.D.N.Y. 1990); In re Allegheny Intern., Inc., 954 F.2d 167, 26 Collier Bankr. Cas. 2d (MB) 663, Bankr. L. Rep. (CCH) ¶ 74447 (3d Cir. 1992); Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, Bankr. L. Rep. (CCH) ¶ 72207 (5th Cir. 1988); In re Hinkley, 58 B.R. 339 (Bankr. S.D. Tex. 1986), judgment aff'd, 89 B.R. 608 (S.D. Tex. 1988), judgment aff'd, 875 F.2d 859 (5th Cir. 1989); In re Ousley, 92 B.R. 278 (Bankr. S.D. Ohio 1988); In re Vernon Sand & Gravel, Inc., 93 B.R. 580 (Bankr. N.D. Ohio 1988), related reference, 109 B.R. 255, 20 Bankr. Ct. Dec. (CRR) 181 (Bankr. N.D. Ohio 1989); In re All-American Auxiliary Ass'n, 95 B.R. 540 (Bankr. S.D. Ohio 1989); Matter of Fogelberg, 79 B.R. 368, 87-2 U.S. Tax Cas. (CCH) ¶ 9581, 60 A.F.T.R.2d (P-H) ¶ 87-5474 (Bankr. N.D. Ill. 1986); In re Lenz, 110 B.R. 523 (D. Colo. 1990); In re Hudson Oil Co., Inc., *91 B.R. 932, 88-2 U.S. Tax Cas. (CCH)* ¶ 9554, 63 A.F.T.R.2d (P-H) ¶ 89-450 (Bankr. D. Kan. 1988).

36. In re Kontaratos, 35 B.R. 135, Bankr. L. Rep. (CCH) ¶ 69360 (Bankr. D. Me. 1983), approved and remanded, 36 B.R. 928, 84-1 U.S. Tax Cas. (CCH) ¶ 9208, 53 A.F.T.R.2d (P-H) ¶ 84-971 (D. Me. 1984); In re Beverages Intern. Ltd., 50 B.R. 273 (Bankr. D. Mass. 1985), related reference, 61 B.R. 966, 14 Bankr. Ct. Dec. (CRR) 676, Bankr. L. Rep. (CCH) ¶ 71206 (Bankr. D. Mass. 1986), related reference, 96 B.R. 407 (Bankr. D. Mass. 1989), judgment aff'd, 105 B.R. 145, Bankr. L. Rep. (CCH) ¶ 73318 (D. Mass. 1989); In re J. Bildner & Sons, Inc., 106 B.R. 8 (Bankr. D. Mass. 1989); In re 150 North Street Associates Ltd. Partnership, 184 B.R. 1 (Bankr. D. Mass. 1995); In re Colonial Bakery, Inc., 108 B.R. 13 (Bankr. D.R.I. 1989); In re Stader, 90 B.R. 29 (Bankr. D. Conn. 1988); In re Tesmetges, 87 B.R. 263, 17 Bankr. Ct. Dec. (CRR) 976 (Bankr. E.D.N.Y. 1988), decision aff'd, 95 B.R. 19 (E.D.N.Y. 1988); In re Frederes, 98 B.R. 165 (Bankr. W.D.N.Y. 1989), related reference, 108 B.R. 419 (Bankr. W.D.N.Y. 1990); In re Allegheny Intern., Inc., 954 F.2d 167, 26 Collier Bankr. Cas. 2d (MB) 663, Bankr. L. Rep. (CCH) ¶ 74447 (3d Cir. 1992); Matter of TIE/Communications, Inc., 163 B.R. 435 (Bankr. D. Del. 1994); In re Rabzak, 79 B.R. 960 (Bankr. E.D. Pa. 1987), related reference, 79 B.R. 966 (Bankr. E.D. Pa. 1987); In re BRI Corp., 88 B.R. 71, 7 U.C.C. Rep. Serv. 2d (CBC) 1441 (Bankr. E.D. Pa. 1988); In re Wall to Wall Sound & Video, Inc., 151 B.R. 700 (Bankr. E.D. Pa. 1993); Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, Bankr. L. Rep. (CCH) ¶ 72207 (5th Cir. 1988); In re All-American Auxiliary Ass'n, 95 B.R. 540 (Bankr. S.D. Ohio 1989); In re Kham & Nate's Shoes No. 2, Inc., 97 B.R. 420 (Bankr. N.D. Ill. 1989), related reference, 104 B.R. 909 (N.D. Ill. 1989), decision vacated on other grounds, 908 F.2d 1351, 20 Bankr. Ct. Dec. (CRR) 1305, 23 Collier Bankr. Cas. 2d (MB) 1118, Bankr. L.

Although the burden of production shifts between the parties, the burden of persuasion is always on the claimant,[37] who has the ultimate burden of proof.[38] The ultimate burden of proof rests on the claimant even if the claimant is a state or federal tax authority.[39] In other words, while the burden of proof is on the creditor to prove its claim, the party objecting to the claim has the burden of going forward to meet or overcome the prima facie effect given to claims filed.[40]

§ 2369. Effect of lack of objection or insufficiency of proof of claim on creditor's voting rights

In a Chapter 7 liquidation case, a creditor is entitled to vote at a meeting of creditors or equity security holders if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to 11 USCA § 702(a) unless objection is made to the claim or the proof of the claim is insufficient on its face.[41] Since a properly executed and filed proof of claim is prima facie evidence of the validity and amount of the claim,[42] it is necessary in order to uphold an objection to a claim so as to disqualify a Chapter 7 claimant from voting that the objecting party present facts from which the court can reasonably conclude that, after sufficient time for discovery, the objecting party could present evidence of equal probative value to that of the creditor's claim.[43] A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee of a general partner's

Rep. (CCH) ¶ 73565 (7th Cir. 1990), reh'g denied, (Sept. 4, 1990) and reh'g withdrawn, (Sept. 6, 1990) and reh'g denied, (Oct. 12, 1990) and appeal dismissed, 1989 WL 157499 (N.D. Ill. 1989); In re Schaumburg Hotel Owner Ltd. Partnership, 97 B.R. 943 (Bankr. N.D. Ill. 1989); In re Koontz Aviation, Inc., 71 B.R. 608 (Bankr. D. Kan. 1987).

37. In re Frederes, 98 B.R. 165 (Bankr. W.D.N.Y. 1989), related reference, 108 B.R. 419 (Bankr. W.D.N.Y. 1990).

38. In re J. Bildner & Sons, Inc., 106 B.R. 8 (Bankr. D. Mass. 1989); In re Colonial Bakery, Inc., 108 B.R. 13 (Bankr. D.R.I. 1989); In re Stader, 90 B.R. 29 (Bankr. D. Conn. 1988); In re Paige, 106 B.R. 346 (Bankr. D. Conn. 1989); In re Tesmetges, 87 B.R. 263, 17 Bankr. Ct. Dec. (CRR) 976 (Bankr. E.D.N.Y. 1988), decision aff'd, 95 B.R. 19 (E.D.N.Y. 1988); In re Rabzak, 79 B.R. 960 (Bankr. E.D. Pa. 1987), related reference, 79 B.R. 966 (Bankr. E.D. Pa. 1987); In re BRI Corp., 88 B.R. 71, 7 U.C.C. Rep. Serv. 2d (CBC) 1441 (Bankr. E.D. Pa. 1988); In re Wall to Wall Sound & Video, Inc., 151 B.R. 700 (Bankr. E.D. Pa. 1993); Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, Bankr. L. Rep. (CCH) ¶ 72207 (5th Cir. 1988); In re Ousley, 92 B.R. 278 (Bankr. S.D. Ohio 1988); In re Vernon Sand & Gravel, Inc., 93 B.R. 580 (Bankr. N.D. Ohio 1988), related reference, 109 B.R. 255, 20 Bankr. Ct. Dec. (CRR) 181 (Bankr. N.D. Ohio 1989); In re Kham & Nate's Shoes No. 2, Inc., 97 B.R. 420 (Bankr. N.D. Ill. 1989), related reference, 104 B.R. 909 (N.D. Ill. 1989), decision vacated on other grounds, 908 F.2d 1351, 20 Bankr. Ct. Dec. (CRR) 1305, 23 Collier Bankr. Cas. 2d (MB) 1118, Bankr. L. Rep. (CCH) ¶ 73565 (7th Cir. 1990), reh'g denied, (Sept. 4, 1990) and reh'g withdrawn, (Sept. 6, 1990) and reh'g denied, (Oct. 12, 1990) and appeal dismissed, 1989 WL 157499 (N.D. Ill. 1989); In re Farmers' Co-op of Arkansas and Oklahoma, Inc., 43 B.R. 619 (Bankr. W.D. Ark. 1984); In re Fullmer, 962 F.2d 1463, 27 Collier Bankr. Cas. 2d (MB) 92, Bankr. L. Rep. (CCH) ¶ 74646, 92-1 U.S. Tax Cas. (CCH) ¶ 50237, 69 A.F.T.R.2d (P-H) ¶ 92-1186 (10th Cir. 1992); In re VTN, Inc., 69 B.R. 1005 (Bankr. S.D. Fla. 1987); In re Poleshuk, 115 B.R. 716, 20 Bankr. Ct. Dec. (CRR) 1089, 66 A.F.T.R.2d (P-H) ¶ 90-5856 (Bankr. M.D. Fla. 1990); In re Katz, 168 B.R. 781, 94-2 U.S. Tax Cas. (CCH) ¶ 50323, 74 A.F.T.R.2d (P-H) ¶ 94-5287 (Bankr. S.D. Fla. 1994).

39. Matter of Fidelity Holding Co., Ltd., 837 F.2d 696, Bankr. L. Rep. (CCH) ¶ 72207 (5th Cir. 1988).

40. In re Brickell Inv. Corp., 85 B.R. 164 (Bankr. S.D. Fla. 1988).

41. Fed R Bankr P 2003(b)(3).

42. § 2367.

43. In re Poage, 92 B.R. 659 (Bankr. N.D. Tex. 1988).

amendments amended § 726(a)(1) to make it clear that the disallowance of late filed claims under § 502(b)(9) does not affect their treatment under § 726(a).[70]

§ 41:5 Proof of Claim—Form and Contents

West Key No. Digests References: Bankruptcy ⇐ 2891, 2901.1-2903

A proof of claim shall consist of a statement in writing executed by a creditor or an authorized agent.[71] The claim form shall conform substantially to Official Form No. 10.[72]

Appropriate supporting documents must be filed if the claim is based on a writing or a security interest.[73] When a claim or an

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filed prior to the Bankruptcy Reform Act of 1994); rev'd, 81 F.3d 167 (9th Cir. 1996). In re Gullatt, 164 B.R. 279, Bankr. L. Rep. (CCH) ¶ 75790 (Bankr. M.D. Tenn. 1994), judgment rev'd, 169 B.R. 385 (M.D. Tenn. 1994); In re Edwards, 162 B.R. 868 (Bankr. D. Colo. 1993); In re Sullins, 161 B.R. 957 (Bankr. M.D. Tenn.1993); In re Judkins, 151 B.R. 553 (Bankr. D. Colo. 1993); But see In re Chavis, 47 F.3d 818, 26, 26 Bankr. Ct. Dec. (CRR) 985, 32 Collier Bankr. Cas. 2d (MB) 1806, Bankr. L. Rep. (CCH) ¶ 76379, 75 A.F.T.R.2d 95-1168, 1995 FED App. 65P (6th Cir. 1995) (an untimely proof of claim filed by the IRS disallowed in a Chapter 13 case; the court emphasized that in a Chapter 13 case creditor must timely file their claims since debtor had to determine efficacy of its plan in light of its assets and debts); In re Osborne, 76 F.3d 306, Bankr. L. Rep. (CCH) ¶ 76831, 96-1 U.S. Tax Cas. (CCH) ¶ 50185, 77 A.F.T.R.2d 96-965 (9th Cir. 1996) (same)

[70] H.R. 103-834, 103rd Cong. 2nd Sess. 26-27 (October 4, 1994); 140 Cong. R. H10768 (October 4, 1994); see In re Glenwood Medical Group, Ltd., 211 B.R. 282 (Bankr. N.D. Ill. 1997) (late-filed claims are not subject to disallowance in Chapter 7, but rather, simply have a lower priority of distribution than timely filed claims).

[Section 41:5]

[71] Bankr. R. 3001(a) and (b). See also In re Garner, 246 B.R. 617, Bankr. L. Rep. (CCH) ¶ 78171 (Bankr. 9th Cir. 2000) (attorney for claimant may execute proof of claim form).

[72] **Form:** Proof of Claim–Official Form 10. Norton Bankruptcy Law and Practice 2d, Forms § 501:1.

[73] See In re Los Angeles Intern. Airport Hotel Associates, 106 F.3d 1479, 37 Collier Bankr. Cas. 2d (MB) 778 (9th Cir. 1997) (taxing authority's claim for sales and use taxes was not a claim "based on a writing" but arose by operation of state law, and therefore taxing authority did not have to attach any supporting documents to its proof of claim); In re Pan, 209 B.R. 152, Bankr. L. Rep. (CCH) ¶ 77359, 97-2 U.S. Tax Cas. (CCH) ¶ 50581, 79 A.F.T.R.2d 97-1689 (D. Mass. 1997) (same). See also Matter of Stoecker, 5 F.3d 1022, 24 Bankr. Ct. Dec. (CRR) 1143, 29 Collier Bankr. Cas. 2d (MB) 1103, Bankr. L. Rep. (CCH) ¶ 75441 (7th Cir. 1993) (failure to attach loan

interest in property of the debtor securing the claim is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.[74]

Documentation of claims at the time of filing will significantly aid the administration of the case and lessen the burden on the creditor. For example, a claim based on an account receivable due from the debtor but with no supporting documents will likely result in an objection by the trustee to the claim if the debtor's books and records indicate a different amount or if there are no such books and records. Proper supporting documents likely will allow resolution of the matter without objection.

The claim should clearly indicate principal, interest, and service charges and must indicate any postpetition interest or service charge.[75]

§ 41:6 — Evidentiary Effect

West Key No. Digests References: Bankruptcy ⇨2928

Reference to the definition of creditor[76] and claim[77] indicate the philosophy of the Code to deal with all entities having a right of payment, a potential right of payment, or an equitable remedy against the debtor. The breadth of the relief is emphasized by the weight given the filed claim. A proof of claim properly executed and filed is automatically allowed unless a party in interest objects.[78]

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documentation to proof of claim was not fatal since bank's claim did not mislead or harm anyone); In re Vines, 200 B.R. 940, 96-2 U.S. Tax Cas. (CCH) ¶ 50603, 78 A.F.T.R.2d 96-6864 (M.D. Fla. 1996) (same); In re Garner, 246 B.R. 617, Bankr. L. Rep. (CCH) ¶ 78171 (Bankr. 9th Cir. 2000) (describing minimal level of documentation that may be attached to a proof of claim to establish prima facie validity).

[74] Bankr. R. 3001(c).

[75] See discussion regarding disallowance of claims in §§ 41:16 et seq., infra.

[Section 41:6]

[76] 11 USC § 101(10).

[77] 11 USC § 101(5).

[78] 11 USC § 502(a).

In re Simmons, 765 F.2d 547, 13 Bankr. Ct. Dec. (CRR) 510, Bankr. L. Rep. (CCH) ¶ 70674 (5th Cir. 1985) (where proof of secured claim was filed, treatment of claim as unsecured in Chapter 13 plan did not constitute objection and claim was deemed allowed).

Thus, the procedure for the allowance of claims for which there are no objections is an administrative proceeding by operation of Rule 3001(f), requiring no judicial participation.[79] In the language of the Rules, a filed claim shall constitute prima facie evidence of the validity and amount of the claim.

The filed claim is deemed allowed unless an objection is filed by a party in interest. In a Chapter 9 case or a Chapter 11 case, a filed claim supercedes any listing as made by the debtor on the schedules.[80]

Evidence must be offered by the objecting party to overcome the prima facie case. Thereafter, the claimant has the burden to sustain the claim. For example, a claim filed by a creditor in an amount different from the amount shown on debtor's books and records or which is totally denied by the debtor would place the burden on the claimant to sustain the amount of the claim.[81]

Creditors should be cautioned in asserting a position in a proof of claim that may be contrary to their interest. For example, a creditor may be prohibited from attacking the confirmation of a plan when the plan proposes to treat the creditor in a manner consistent with its proof of claim.[82]

§ 41:7 Burden of Proof

West Key No. Digests References: Bankruptcy ⇐2926

A duly executed proof of claim being a prima facie case for the claimant, the burden is on the objecting party to go forward with evidence establishing the basis of the objection. For example, if the objection is that no debt is owed or that the amount of the debt is

[79] See Bankr. R. 3001(f).

[80] See Bankr. R. 3003(c)(4).

[81] In re Rockefeller Center Properties, 241 B.R. 804, 817 (Bankr. S.D.N.Y. 1999) ("Once an objectant offers sufficient evidence to overcome the prima facie validity of the claim, the claimant is required to meet the usual burden of proof to establish the validity of the claim."); Matter of Lampert, 61 B.R. 785 (Bankr. W.D. Wis. 1986); In re Wells, 51 B.R. 563, 2 U.C.C. Rep. Serv. 2d 382 (Bankr. D. Colo. 1985).

[82] In re Harrison, 987 F.2d 677, 23 Bankr. Ct. Dec. (CRR) 1759, Bankr. L. Rep. (CCH) ¶ 75188 (10th Cir. 1993) (creditor could not attack confirmation of a chapter 12 plan by asserting that its unsecured claim was not adequately protected because its proof of claim alleged that it was fully secured, no objections were made, and it failed to move for valuation of its collateral).

different from the claimed amount, proof of the fact must be presented.

The court then determines whether the proof has overcome the prima facie case. If the objecting party succeeds, the claimant has the burden of persuasion to prove the validity of the claim by a preponderance of the evidence.[83]

The Supreme Court has established one exception to the general rule that the burden of persuasion shifts to the claimant once the objecting party has submitted sufficient proof to overcome the prima facie case. In Raleigh v. Illinois Department of Revenue[84] in a unanimous opinion written by Justice Souter, the Court held that when substantive law creating a tax obligation puts the burden of proof on a taxpayer, the burden of proof on the tax claim in the Bankruptcy Court remains the same as it would be in a non-bankruptcy court. This eliminated any proof advantage by litigating the matter in the Bankruptcy Court.

Regarding the reasons for disallowance,[85] the objecting party has the burden of proof to establish the grounds of disallowance.

[Section 41:7]

[83] Whitney v. Dresser, 200 U.S. 532, 26 S. Ct. 316, 50 L. Ed. 584 (1906); Matter of O'Connor, 153 F.3d 258, 33 Bankr. Ct. Dec. (CRR) 271 (5th Cir. 1998) (trustee failed to present sufficient evidence to rebut prima facie effect of proof of claim); In re Brown, 82 F.3d 801, 97-2 U.S. Tax Cas. (CCH) ¶ 50559, 44 Fed. R. Evid. Serv. 471, 77 A.F.T.R.2d 96-2045 (8th Cir. 1996) (objecting party produced sufficient evidence to rebut claimant's prima facie case established by filing its proof of claim); In re King Street Investments, Inc., 219 B.R. 848, 48 Fed. R. Evid. Serv. 1437 (Bankr. 9th Cir. 1998) (objecting party failed to present sufficient evidence to rebut prima facie validity of claim, and therefore burden of proof did not shift to creditor); In re Circle J Dairy, Inc., 92 B.R. 832, 18 Bankr. Ct. Dec. (CRR) 636 (Bankr. W.D. Ark. 1988) (objecting parties did not meet their burden of going forward with sufficient evidence to overcome prima facie effect of claimant's proof of claim).

See also In re Consolidated Pioneer Mortg., 178 B.R. 222 (Bankr. 9th Cir. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (failure to attach writings to a proof of claim, as required by Rule 3001(c), does not compel the bankruptcy court to disallow the claim on that basis alone but the deficient proof of claim is not entitled to be considered prima facie evidence of the claim's validity).

[84] Raleigh v. Illinois Dept. of Revenue, 530 U.S. 15, 120 S. Ct. 1951, 147 L. Ed. 2d 13, 36 Bankr. Ct. Dec. (CRR) 39, 43 Collier Bankr. Cas. 2d (MB) 869, Bankr. L. Rep. (CCH) ¶ 78182, 2000-1 U.S. Tax Cas. (CCH) ¶ 50498 (2000).

[85] See §§ 41:16 et seq., infra.

§ 41:8 Objections

West Key No. Digests References: Bankruptcy ⚯2923

An objection to a claim must be filed in writing with the court. In no assets Chapter 7 cases, some courts have held that the debtor does not have standing to object to a claim since the debtor does not have a pecuniary interest,[86] nor can a creditor object to another claim where a trustee has been appointed unless the trustee has unjustifiably refused to object to such claim.[87] In plan cases, some courts have held that the confirmed plan may preclude the filing of objections to claims.[88] Bankruptcy Rule 3007 provides that a copy of the objection and notice of a hearing on the objection shall be mailed or delivered to the claimant, debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.[89] Objections to claims are not required to be filed prior to confirmation of plan unless plan specifically provides otherwise.[90]

[Section 41:8]

[86] In re Drost, 228 B.R. 208, 41 Collier Bankr. Cas. 2d (MB) 317 (Bankr. N.D. Ind. 1998) (only if estate is solvent will Chapter 7 debtor have standing to object to claim); In re I & F Corp., 219 B.R. 483, 81 A.F.T.R.2d 98-517 (Bankr. S.D. Ohio 1998) (a Chapter 7 debtor with an insolvent estate has no standing to object to proofs of claim, as only the trustee or a party with a pecuniary interest may object to proofs of claim); In re Kieffer-Mickes, Inc., 226 B.R. 204 (Bankr. 8th Cir. 1998) (same). See also In re Manshul Const. Corp., 223 B.R. 428, 32 Bankr. Ct. Dec. (CRR) 1254, 40 Collier Bankr. Cas. 2d (MB) 715 (Bankr. S.D.N.Y. 1998) (sole shareholder of insolvent Chapter 7 debtor did not have standing to object to proofs of claim). But see In re Toms, 229 B.R. 646 (Bankr. E.D. Pa. 1999) (while a Chapter 7 debtor generally has no standing to object to claims, if a claim would be nondischargable in Chapter 7, then debtor would have pecuniary interest sufficient to provide standing to object to claim).

[87] In re Bakke, 243 B.R. 753, 84 A.F.T.R.2d 99-6544 (Bankr. D. Ariz. 1999).

[88] In re Monclova Care Center, Inc., 254 B.R. 167 (Bankr. N.D. Ohio 2000) (where the plan did not allow the trustee to file claims objections after confirmation, interests of finality precluded the trustee from later objecting to a claim after confirmation).

[89] **Forms:** For forms relating to objections to claims, see Norton Bankruptcy Law and Practice 2d, Forms §§ 502:1–502:6, 502:9–502:13.

[90] In re Stephenson Associates, Inc., 206 B.R. 609 (Bankr. N.D. Ga. 1997). See also In re 50-Off Stores, Inc., 231 B.R. 592, 41 Collier Bankr. Cas. 2d (MB) 819 (Bankr. W.D. Tex. 1999) (debtor does not waive objection to timeliness of claim by providing creditor with ballot or by counting creditor's vote in determining acceptance of plan, as objections to claims may be filed after confirmation).

The filing of an objection to a claim initiates a contested matter proceeding under Bankruptcy Rule 9014, requiring judicial resolution. If the trustee joins the objection with a counterclaim seeking relief specified in Bankruptcy Rule 7001, the filing commences an adversary proceeding.[91]

Code § 502 sets forth the substantive grounds on which an objection to a claim[92] may be filed. An objection should state the grounds as to why the claim should be denied by giving facts and citing one of the nine subparagraphs of § 502(b).[93] A general objection without specific reference to a proper ground may be an insufficient objection and is subject to a motion to dismiss at, or prior to, a hearing.[94] The court, after notice and a hearing,[95] shall determine the amount to be allowed as of the date of the filing of the petition.[96] Even though the claim involves specialized legal issues, the Bankruptcy Court may hear the matter.[97]

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[91] Advisory Committee Note to Bankr. R. 3007.

[92] See §§ 41:16 et seq., infra.

[93] See, e.g., Vomhof v. U.S., 207 B.R. 191, 79 A.F.T.R.2d 97-1074 (D. Minn. 1997) (tax protester's legal "exhortations" regarding the authority of the federal government to tax self-employed citizens was not substantial evidence supporting an objection to IRS's proof of claim, as "substantial evidence" must consist of financial information and factual arguments, not legal rhetoric).

[94] Lundell v. Anchor Const. Specialists, Inc., 223 F.3d 1035 (9th Cir. 2000).

[95] See discussion of "after notice and hearing," 11 USC § 102(1).

Thus, it is that an "opportunity" for hearing must be afforded and a formal hearing will not be required. However, considering the evidentiary effect of a claim, it is more likely that a hearing will be required. But see In re Lumsden, 242 B.R. 71 (Bankr. M.D. Fla. 1999) (where the debtor objected to a claim on "negative notice," which required a response to the objection within thirty days and allowed the court to grant the objection without a hearing if no response was filed, the court held that disallowance of the claim without a hearing was proper where the response was filed several days late).

[96] 11 USC § 502(b).

Section 445(b)(2) of the Bankruptcy Amendments Act of 1984 amended this subsection to provide that the amount to be allowed shall be determined "in lawful currency of the United States."

[97] See U.S. v. Wilson, 974 F.2d 514, 23 Bankr. Ct. Dec. (CRR) 697, Bankr. L. Rep. (CCH) ¶ 74823, Bankr. L. Rep. (CCH) ¶ 74945, 92-2 U.S. Tax Cas. (CCH) ¶ 50510, 70 A.F.T.R.2d 92-5736 (4th Cir. 1992) (Bankruptcy Court and Tax Court shared concurrent jurisdiction over amount of debtor's tax liability and Bankruptcy Court could determine amount of tax claim as long as amount of tax has not been fully adjudicated by Tax Court); Matter of

Part III BANKRUPTCY RULES, Claims and Distribution to Creditors and Equity Interest Holders; Plans

Chapter 3001: Proof of Claim

9-3001 Collier on Bankruptcy - 15th Edition Revised P 3001.09

P 3001.09. Evidentiary Effect of a Proof of Claim.

[1] Proof of Claim Prima Facie Evidence of Claim's Validity and Amount.

Rule 3001(f) provides that a proof of claim complying with the rules constitutes *prima facie* evidence of the claim's validity and amount. This rule supplements the Federal Rules of Evidence.n1 Notably, Rule 3001 does not govern proofs of interest and, while that normally is a problem only of form, a proof of interest, unlike a proof of claim, is not *prima facie* valid.n2

In order for a claim to be entitled to the weight afforded by Rule 3001(f), it must comply with the rules, including Rule 3001, and set forth the facts necessary to support the claim.n3 If the claim meets that standard, it is *prima facie* valid notwithstanding suspicions aroused by the claim's face (e.g., filing by an insider).n4

[2] Allocation of Burdens Between Claimant and Objector.

A properly filed proof of claim is *prima facia* evidence of the validity and amount of a claim.n5 The party objecting to the claim has the burden of going forward and of introducing evidence sufficient to rebut the presumption of validity.n5a Such evidence must be sufficient to demonstrate a true dispute and must have probative force equal to the contents of the claim.n6 Upon introduction of sufficient evidence by the objecting party, the burden of proof will fall on whichever party would bear that burden outside of bankruptcy.n7 In most cases, the burden of proof will have to be met by the claimant by a preponderance of the evidence.n8 The burdens of proof in bankruptcy cases should be applied in the same manner as they would be under nonbankruptcy law in a nonbankruptcy forum, since the burdens are a substantive aspect of the claim. Thus, in *Raleigh v. Illinois Department of Revenue (In re Stoecker)* ,n9 the Supreme Court held that the debtor bears the burden of proof in objecting to a proof of claim filed by the United States for federal employment taxes because it is the debtor's his burden under substantive state law. The allocations of the burdens are not altered merely because the taxpayer files a bankruptcy petition. While the *Raleigh* decision dealt only with the burden of proof for an Illinois state tax claim, its reasoning can readily be extended to provide that the ultimate burden of proof always rests on the party who would bear it outside of bankruptcy.n10 Some courts, however, have continued to place the ultimate burden on "claimants," even post-*Raleigh*.n11

FOOTNOTES:

(n1) Footnote 1. Rule 3001(f) restates former Bankruptcy Rule 301(b). *See, e.g., In re Los Gatos Lodge, Inc., 278 F.3d 890, 894 (9th Cir. 2002)* ; *In re Moser, 2002 U.S. App. LEXIS 463,* at *4 (4th Cir. 2002) ; *Adair v. Sherman (In re Adair), 230 F.3d 890, 894 (7th Cir. 2000)* ; *In re Kittel, 2002 Bankr. LEXIS 495,* at *19-20 (B.A.P. 1st Cir. 2002) ; *In re McDaniel, 264 B.R. 531, 533 (B.A.P. 8th Cir. 2001)* ; *In re Fili, 257 B.R. 370, 372 (B.A.P. 1st Cir. 2001)* ; *In re Babcock & Wilcox Co., 2002 U.S. Dist. LEXIS 15742,* at *6-7 (E.D. La. 2002) ; *In re Baxter, 278 B.R. 867, 878 (N.D. La. 2002)* ; *In re Kline, 2001 U.S. Dist. LEXIS 23665,* at *6 (D.N.M. 2001) ; *Carter Enters., Inc. v. Ashland Specialty Co., Inc. (In re Carter Enters., Inc.), 257 B.R. 797, 800 (S.D. W. Va. 2001).*

(n2) Footnote 2. *In re Twinton Properties Partnership, 44 B.R. 426 (Bankr. M.D. Tenn. 1984)* . Interestingly, Rule 3003(b)(2) accords *prima facie* validity to equity security interests listed by the debtor pursuant to Rule 1007(a)(3).

(n3) Footnote 3. P 502.03(1) *supra*; *In re Stoecker, 143 B.R. 879, 883 (N.D. Ill. 1992)* (citing *Treatise*), *aff'd in part, vacated in part, 5 F.3d 1022 (7th Cir. 1993); Matter of Marino, 90 B.R. 25, 28 (Bankr. D. Conn. 1988)* (citing *Treatise*); *In re Svendsen, 34 B.R. 341 (Bankr. D.R.I. 1983).*

(n4) Footnote 4. *In re Eagson Corp., 58 B.R. 395 (Bankr. E.D. Pa. 1986) . But see In re Mid-American Waste Sys., Inc., 283 B.R. 53, 2002 Bankr. LEXIS 1021,* at *37-38 (Bankr. D. Del. 2002) ("[a]lthough there is an initial presumption of validity that attaches to all claims, claims asserted by insiders or fiduciaries demand closer scrutiny").

(n5) Footnote 5. P 502.02 *supra*; *Matter of Fidelity Holding Co., Ltd., 837 F.2d 696 (5th Cir. 1988)* ; *In re Nantucket Aircraft Maintenance Co., 54 B.R. 86 (Bankr. D. Mass. 1985)* (citing *Treatise*); *In re Wells, 51 B.R. 563 (D. Colo. 1985)* (citing *Treatise*). This is so even if the burden of persuasion would be on the debtor outside of bankruptcy. Thus, in *In re Domme, 163 B.R. 363 (D. Kan. 1994)* , the court held that, notwithstanding the effect of an IRS notice of deficiency under the Internal Revenue Code, the IRS had the burden of persuasion with respect to its claim in a bankruptcy case. If this were not so, a trustee could be faced with an insuperable burden in attacking such a claim. *But cf. In re Shabazz, 206 B.R. 116, 120 (Bankr. E.D. Va. 1996 .*

(n6) Footnote 5a. *In re Babcock & Wilcox Co., 2002 U.S. Dist. LEXIS 15742,* at *6 (E.D. La. 2002).

(n7) Footnote 6. *In re Wells, 51 B.R. 563 (D. Colo. 1985)* ; *Matter of Unimet Corp., 74 B.R. 156 (Bankr. N.D. Ohio 1987).*

(n8) Footnote 7. *Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15, 120 S. Ct. 1951, 147 L. Ed. 2d 13, 43 C.B.C.2d 869 (2000).*

(n9) Footnote 8. *Matter of Fidelity Holding Co., Ltd., 837 F.2d 696,* (5th Cir. 1988) ; *In re Domme, 163 B.R. 363 (D. Kan. 1994)* ; *In re Equipment Servs., Ltd., 36 B.R. 241 (Bankr. D. Alaska 1983).*

(n10) Footnote 9. *530 U.S. 15, 120 S. Ct. 1951, 147 L. Ed. 2d 13, 43 C.B.C.2d 869 (2000).*

(n11) Footnote 10. *Cf. In re ProMedCo of Los Cruces, 275 B.R. 499, 503 (Bankr. N.D. Tex. 2002).*

(n12) Footnote 11. *See, e.g., Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000)* ; *Carter Enters., Inc. v. Ashland Specialty Co., Inc. (In re Carter Enters., Inc.), 257 B.R. 797, 800 (S.D. W. Va. 2001).*

In re YOUROVETA HOME & FOREIGN TRADE CO., Inc. No. 216

Circuit Court of Appeals, Second Circuit

297 F. 723; 1924 U.S. App. LEXIS 2882

March 3, 1924

PRIOR HISTORY: [1]**

Appeal from the District Court of the United States for the Southern District of New York.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant company appealed a determination of the District Court of the United States for the Southern District of New York, which allowed a proof of claim filed by appellee creditor as prima facie evidence of its allegations and allowed the amount claimed by appellee.

OVERVIEW: After appellant company experienced commercial difficulty arising out of the Russian Revolution, it was forced to file bankruptcy. Appellee creditor filed a proof of claim alleging conversion by appellant and was awarded one million dollars in damages. On appeal, the court reversed, holding that the claim was not properly allowed because the damages were unliquidated and appellee failed to discharge his duty to affirmatively liquidate his claim, that is, to make a showing that would enable other creditors to investigate the fairness of the amount claimed. Further, the evidence was insufficient to show that the conversion actually took place. The court stated that a proof of claim has some probative force, but was not self-proving, unless relied upon.

OUTCOME: The court reversed and remanded, directing the lower court to expunge appellee creditor's claim against appellant company, because appellee failed to affirmatively liquidate his claim and to prove damages with certainty, as appellee's proof of claim had some probative force but was not self-proving.

CORE TERMS: claimant, proof of claim, bankrupt, sworn, allowance, notice, notice to produce, conversion, burden of proof, overlooked, asserting, remarked, substantiate, tending

LexisNexis(R) Headnotes

Bankruptcy Law > Creditor Claims & Objections > Proofs of Claim > Content & Form

[HN1] It is the duty of claimant affirmatively to liquidate his claim; i.e., to make a showing as to consideration sufficiently full and explicit to enable other creditors to investigate as to the fairness and legality thereof.

Bankruptcy Law > Creditor Claims & Objections > Proofs of Claim > Content & Form

[HN2] Having attempted to establish the allegations in his proof of claim, a creditor cannot be permitted to use those very allegations to supply the deficiencies in his testimony. A proof of claim may have some probative force; but it certainly should not be regarded as self-proving, unless relied upon.

Bankruptcy Law > Creditor Claims & Objections > Proofs of Claim > Content & Form

[HN3] The effect of a notice to produce is to permit the use of secondary evidence in

relation to the matters covered by the notice. Secondary evidence means something which is not original. The serving of a notice to produce does not in the least excuse the introduction or allowance of immaterial, irrelevant, incompetent, or impertinent evidence.

OPINIONBY:

HOUGH

OPINION:

[*725] Before ROGERS, HOUGH, and MAYER, Circuit Judges.

HOUGH, Circuit Judge. The common statement of the rule in matters like this is that, under *Whitney v. Dresser, 200 U.S. 532, 26 Sup. Ct. 316, 50 L. Ed. 584,* a sworn proof of claim puts the "burden of proof" on the objecting trustee. This is not an accurate statement, for, as Holmes, J., remarked in the case cited, the question is --

"whether the sworn proof of claim is prima facie evidence of its allegations in case it is objected to. It is not a question of the burden of proof in a technical sense, a burden which does not change, whatever the state of the evidence, but * * * whether the sworn proof is evidence at all." *Pages 534, 535 (26 Sup. Ct. 317).*

Furthermore, it is always necessary to remember the difference between the proof of a claim and its allowance. *In re Hornstein (D.C.) 122 Fed. 266.* And the question here is whether, upon all the evidence produced, the claim was properly allowed for the sum fixed.

In this instance both parties seem to have overlooked the fact that the claim on its face was **[**2]** unliquidated. *In re Menzin, 238 Fed. 773,* 151 C.C.A. 623. Consequently [HN1] it was the duty of claimant affirmatively to liquidate his claim; i.e., to make a showing as to consideration sufficiently full and explicit to enable other creditors to investigate as to the fairness and legality thereof. *Orr v. Park, 183 Fed. 683,* 106 C.C.A. 33. And the amount for which the claim is allowed is, to say the least, a vital part of it.

We first observe, therefore, that without amendment there was no justification for allowing a claim filed substantially for $1,000,000 at the sum of $2,000,000. It might have been that other creditors, after examining the referee's files, would have agreed to an allowance at $1,000,000. Such allowance might have been made on the claim alone, if it had been liquidated; but it is a sufficient condemnation of the practice here pursued that the claim might thus have been allowed for twice what the claimant originally demanded without notice to any other creditor. It was error to allow the claim in the larger sum.

Again, in this instance, while Friedman rested upon his claim under the doctrine of the Dresser Case in limine, he did not adhere to that position, **[**3]** and, as this court remarked in *Re McIntyre, 174 Fed. 627,* 98 C.C.A. 381:

"[HN2] Having * * * attempted to establish the allegations in his proof of claim, he cannot be permitted to use those very allegations to supply the deficiencies in his testimony. A proof of claim may have some probative force; but it certainly should not be regarded as self-proving, unless relied upon."

Turning, now, to the whole evidence, an officer of the bankrupt categorically denied that Friedman had any goods whatever at any **[*726]** time with the bankrupt company, while claimant himself admitted that all his dealings had been with the Russian company. It appears to us as fairly clear that the relations between the Russian and New York companies were that the former used the latter as a means for marketing its own goods, including, it may be admitted, the goods of Friedman, solely in order to procure for that business the protection of its American origin, in a country

so troubled by insurrections, if not revolutions, that it is uncontradicted on this record that some $400,000 worth of goods were confiscated, commandeered, or otherwise appropriated by representatives of the army operating under General **[**4]** Semenoff -- a point to which this court was introduced before in a previous appeal in this bankruptcy. *In re Youroveta, etc., Co., Semenoff, Petitioner, 288 Fed. 507;* opinion filed January 29, 1923.

In order to establish some connection tending to substantiate the allegations of the proof of claim, reliance seems to have been placed very largely upon the effect of a "notice to produce," served upon the attorney for the trustee, and requiring the trustee to furnish "all books, papers, correspondence, and other records of the bankrupt pertaining to the account and dealings with Mark L. Friedman." This notice was offered in evidence, and thereafter claimant seems to have been permitted to offer under the name of evidence any statement, admission, or paper document which in his judgment, or that of his counsel, tended to substantiate his demand.

Such is not [HN3] the effect of a notice to produce. The only effect of such notice is to permit the use of secondary evidence in relation to the matters covered by the notice. Secondary evidence means something which is not original. Wigmore, § 1202 et seq. The serving of a notice to produce does not in the least excuse the introduction or **[**5]** allowance of immaterial, irrelevant, incompetent, or impertinent evidence. We think this rule was overlooked throughout.

Another error, and a somewhat far-reaching one in bankruptcy, was committed in respect of the examination of the claimant by opposing counsel. The trustee accepted the burden of producing evidence under the Dresser Case, and called as his first witness the claimant himself.

Considering that the transactions out of which this claim arose occurred at divers places between Great Britain and Eastern Siberia, and that none of the officers of the Russian company were apparently available as witnesses, we think counsel for the trustee was entirely within the circumstances of his case when he described Friedman as "the only person that knows of the transaction referred to in his proof of debt." Yet upon the ground that it was incumbent upon the trustee, first, to "cast a doubt upon the validity of his claim," the examination of Friedman was so hampered that he was in the main protected from either producing or admitting that he could not produce documents, which commercially certainly had existed, which he ought to have received and known about, and which were essential **[**6]** for accurately establishing, if not the existence, at least the quantum, of any claim. *Whitney v. Dresser, supra*, lays down no such rule. It was the right of the trustee to call Friedman, like any other witness; **[*727]** he took the risk (whatever it may be nowadays) of making him his own witness, and had the right to elicit from Friedman any relevant matter tending to disprove the sworn proof of claim, in gross or in detail. The rule as applied below would permit a claimant to file a sworn proof, asserting that two and two make five, and would then protect such claimant from arithmetical cross-examination.

In brief, the claim herein (in terms of local law) states a demand against the New York corporation for conversion of certain woolens valued at $750,000, and for the conversion, if not the embezzlement, of the proceeds of certain bags. There is total failure to prove damages with reasonable certainty, and no evidence of conversion.

The foregoing disposes of this matter, but we shall advert briefly to the trustee's plea asserting release. Friedman's whole claim is built upon the assertion that (almost in his own language) the Russian company went out of business and the **[**7]** New York company

carried it on. It is shown by documents of the most formal character that in January, 1920, and thereafter, the Russian company was sufficiently in business to pay Friedman $10,000. This payment Friedman adverted to in his proof of claim, stating that he had received the same in 1921 from Wourgaft, president of the bankrupt corporation herein. This is a statement that he got it from the bankrupt itself. His own receipt and agreement shows that he got it from the Russian company.

Cotemporaneously with making the agreement under which he received $10,000 from the Russian company, Friedman wrote a formal letter to the bankrupt, in which (as we read the document) he expressly agreed that he would have "no claim of any character whatsoever against you (i.e., the bankrupt) as a result of or in connection with the above arrangements" (i.e., any arrangements made between the Russian and New York companies). This is scarcely a formal release, but it is the strongest evidence that, nearly two years after the formation of the New York company, Friedman was still doing business with the Russian company, and did not look upon the New York company as his debtor.

The order **[**8]** appealed from is reversed, and the matter remanded, with directions to expunge the claim.

There will be no costs.

In Re GEORGE R. BURROWS, Inc. HELLIWELL et al. v. GEORGE R. BURROWS, Inc.

No. 276, Docket 20169

UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

156 F.2d 640; 1946 U.S. App. LEXIS 3055; 11 Lab. Cas. (CCH) P63,275

July 11, 1946

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant employees sought review of the order of the District Court for the Southern District of New York, which ruled in favor of appellee bankruptcy trustee, in dispute regarding appellants' claims for overtime hours worked.

OVERVIEW: Appellee bankruptcy trustee objected to claims for overtime and liquidated damages brought by appellant employees, pursuant to *29 U.S.C.S. § 207*(a). Subsequent to reversal and remand, the lower court ruled in favor of appellee based upon newly entered findings. The court affirmed the decision of the lower court, because appellants failed to carry their burden of proving that the lower court's finding of a prima facie case was required to have been given effect on appeal. The court held that appellee had a direct pecuniary interest, and therefore, had standing to raise objections to appellants' claims. Finally, the court held that its sole mandate to the trial court, to have made the necessary findings and have entered the appropriate order, had been satisfied.

OUTCOME: The court affirmed the order of the district court ruling in favor of appellee bankruptcy trustee in a dispute regarding appellant employees' claims for overtime because appellee had a direct pecuniary interest, and therefore had standing to object to appellants' claims.

CORE TERMS: referee, bankrupt, claimants, composition, overtime, standing to object, appropriate order, prima facie, substituted, confirmed, allowance, objected, objector, burden of proof, wages

COUNSEL: [1]**

Daniel Diamond, of New York City (Thomas Jefferson Ryan, of New York City, of counsel), for appellants.

Samuel N. Haberman, of New York City (Morris Ehrlich, of Brooklyn, N.Y., of counsel), for appellee.

JUDGES:

Before L. HAND, SWAN and CHASE, Circuit Judges.

OPINIONBY:

CHASE

OPINION:

[*641]

An involuntary petition in bankruptcy was filed against the appellee in the District Court for the Southern District of New York on June 12, 1942. The alleged bankrupt thereafter submitted to its creditors an offer of composition which was agreed to and confirmed by an order of the court, jurisdiction being retained while the composition was carried out. Creditors then filed claims to some of which the bankrupt, thereafter called the debtor, objected and the composition was not carried out. The appellee, called the debtor in this record, was then adjudicated a bankrupt and by stipulation its trustee was substituted for it in the proceedings. The trustee objected to claims for overtime compensation and liquidated damages filed by the appellants under Sec. 7(a) of the Fair Labor Standards Act of 1938, *29 U.S.C.A. § 207*(a), and when they were expunged by the referee **[**2]** and his order confirmed appealed from that order to this court. The record being deficient, we reversed and remanded so that the referee might make the necessary findings and an appropriate order be entered. *Helliwell v. Haberman, 2 Cir., 140 F.2d 833.*

The referee then found, inter alia, 'That the so-called payroll books produced by the claimants were manufactured for the occasion and that no concurrent records of overtime were kept by them.' He also found, 'That there is no evidence which I believed, establishing the number of overtime hours worked by claimants and the amount of wages due them.', and that, 'claimants have failed to sustain the burden of proof of establishing by a preponderance of evidence the number of hours and overtime hours each worked and the amount of any of the wages due to them.'

As the record does not contain the testimony before the referee we lack the material from which we might determine whether the findings are clearly erroneous. It does, indeed, contain the proofs of claims and apparently the appellants believe that they alone are sufficient to show that the findings are erroneous. They seem to have confused the prima facie effect **[**3]** of a proof of claim with the burden to prove the claim itself when it is met by opposing evidence. While it is true that the proofs filed established the claims prima facie, *Whitney v. Dresser, 200 U.S. 532, 26 S.Ct. 316, 50 L.Ed. 584,* as soon as the trustee introduced any substantial evidence in opposition the claimants needed to establish by a preponderance of all the evidence that the claims as filed were based on facts which entitled the claimants to their allowance under the law. The burden of overall proof was then on the claimants. *In re Youroveta H. & F. T. Co., Inc., 2 Cir., 297 F. 723; Alexander v. Thelemen, 10 Cir., 69 F.2d 610; Rasmussen v. Gresly, 8 Cir., 77 F.2d 252; George Lawley & Son Corp. v. South, 1*

Cir., 140 F.2d 439, 151 A.L.R. 1081. As the appellants have not brought up a record which shows that they did carry the burden of proof the findings above quoted must be given effect on this appeal.

The appellants have challenged the standing of the trustee to object to the allowance of their claims, and in support of this contention cite cases dealing with situations in which the objector was **[**4]** found to have no standing, e.g. wherein a bankrupt was held to have no interest to secure an increase of a claim, *In re Munsie, 2 Cir., 33 F.2d 79,* or wherein the creditors of a creditor of a bankrupt were held to have no standing to object to other claims, *In re Morris White Handbags Corp., 2 Cir., 77 F.2d 827,* or wherein a creditor who became a stockholder in a reorganized corporation was held thereby to have lost his standing to object to claims, *In re Michigan-Ohio Building Corp., 7 Cir., 117 F.2d 191*. But in the present case, whether we assume that the arrangement is still operative or that the trustee in bankruptcy has been substituted for the debtor, there is a direct pecuniary interest in the objector in the disallowance of the appellants' claims. And 'the trustee or any creditor or the bankrupt or debtor' may raise the objection, General Order 21(6), 11 U.S.C.A. following **[*642]** section 53, and this even after confirmation as long as the estate has not been finally settled. Bankruptcy Act, Sec. 57, sub.k, *11 U.S.C.A. 93* sub.k; *In re Jule Motor Corp., D.C.N.D.N.Y., 34 F.Supp. 742;* see *In re Lewensohn, 2 Cir., 121 F. 538,* **[**5]** certiorari denied *189 U.S. 513, 23 S.Ct. 853, 47 L.Ed. 924.*

The appellants also challenge the authority of the referee, under our first decision in this case, to make such findings as above, rather than to find solely on the issue of whether the appellants were executive or administrative employees. But our former opinion decided only that the referee must follow the procedure prescribed by General Orders 47 and 37, and that it was improper for the district court to affirm an order not grounded on findings of fact and conclusions of law. Our mandate only required the referee 'to make the necessary findings and enter the appropriate order.' That was done.

Order affirmed.

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:
David G. DeLano
Mary Ann DeLano
Debtor(s)

SSN/Tax ID: xxx-xx-3894
xxx-xx-0517

Case No.: 2-04-20280-JCN
Chapter: 13

NOTICE REGARDING PERFECTING THE RECORD ON APPEAL [Bankruptcy Rule 8006]

PLEASE TAKE NOTICE that, pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule(s)"), on or before April 21, 2005 , the Appellant, Richard Cordero ("Appellant"), must serve on the Appellee, David G. and Mary Ann Delano ("Appellee"), and file with the Clerk of Court for the Bankruptcy Court a"Designation of Record on Appeal and Statement of Issues" ("Designation"), together with proof of service in the form of an Affidavit of Service. Appellant must serve on Appellee and file with the Clerk of Court a copy of any document listed in the Designation that is not available electronically through the Court's Docket, together with proof of service in the form of an Affidavit of Service.

PLEASE TAKE FURTHER NOTICE that, pursuant to Bankruptcy Rule 8006, within ten (10) days after service of Appellant's Designation, the Appellee may serve on Appellant and file with the Clerk of Court a "Designation of Additional Items," together with proof of service in the form of an Affidavit of Service. If the Appellee has filed a cross-appeal, the Appellee must serve and file those items specified in Bankruptcy Rule 8006 within the time specified.

PLEASE TAKE FURTHER NOTICE that, any party designating a transcript as part of the Record on Appeal must deliver to the Court Reporter, and file with the Clerk of Court, a written request for the transcript(s) and make satisfactory arrangements for payment of the cost of the transcript(s) with the Court Reporter, except where the transcript has previously been filed with the Court.

PLEASE TAKE FURTHER NOTICE that, in the event that the Appellant fails to serve and file the Designation of Record within the ten (10) day time period specified in Bankruptcy Rule 8006, the Clerk of the Bankruptcy Court will transmit to the Clerk of the District Court an "Incomplete Record" consisting of a copy of the Notice of Appeal, the Order or Judgment that is the subject of the appeal, and an index of the relevant Docket entries. **Appellant is advised that the appeal may be subject to dismissal by District Court, in the event of Appellant's failure to serve and file the Designation within the time required by Bankruptcy Rule 8006, upon a motion by the Appellee or on the Court's own motion.**

Dated: April 11, 2005

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: K. Tacy
Deputy Clerk

[1] This date has been determined by the Clerk's Office to be ten (10) days after the date on which Appellant filed of the "Notice of Appeal," as specified by Bankruptcy Rule 8006.

Form aplntc
Doc 104

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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 docket 05cv6190L, WDNY

April 18, 2005

Ms. Mary Dianetti
612 South Lincoln Road
East Rochester, NY 14445

Dear Ms. Dianetti,

I would like to know the cost of the transcript of your stenographic recording of the evidentiary hearing held on March 1, 2005, in the U.S. Bankruptcy Court in Rochester in the case of David and Mary Ann DeLano, docket no. 04-20280.

Kindly let me know also the number of stenographic packs and the number of folds in each pack that you used to record that hearing and that you will be using to prepare the transcript.

Please indicate whether the transcript can be made available in electronic form, such as a floppy disk or a compact disk and, if so, how much it would cost to have the transcript made:

1. only in electronic form
2. only printed on paper
3. both in electronic form and on paper.

State also the arrangements that can be made so that after the transcript has been completed, I can make a copy of the stenographic packs and folds that you used for your transcription and for a government agency to inspect the original packs and folds that you used.

yours sincerely,

Dr. Richard Cordero

Dr. Richard Cordero

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

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

April 19, 2005

Ms. Deirdre A. Martini
U.S. Trustee for Region 2
Office of the United States Trustee — faxed to (212) 668-2255
55 Whitehall Street, 21st Floor
New York, NY 10004

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Trustee Martini,

Please find herewith a copy of my Designation of Items and a Statement of Issues relating to my appeal to the District Court from Judge Ninfo's decision of 4 instant in the DeLano case. Through the appellate process I will argue the suspicious circumstance that neither Judge Ninfo, Trustee Reiber, nor Trustee Schmitt wants to investigate Mr. David DeLano, a 32 year veteran of the banking industry and currently a loan officer who files for bankruptcy after earning together with his wife in just the 2001-03 fiscal years $291,470, whose whereabouts nobody wants to find out. Must Mr. DeLano be protected lest he talk about compromising bankruptcy goings-on?

Now there is the issue of the DeLanos' mortgages, about which Trustee Reiber appears not to want to learn too much. Indeed, at the examination of the DeLanos, which took place only after overcoming the Trustee's opposition, I raised the following question:

> If the DeLanos obtained a mortgage loan of $32,000 from Monroe Bank in 1976; and another mortgage loan of $59,000 from M&T Bank in 1988 as well as another mortgage loan of $59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for $95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only $21,416 and still owe a mortgage debt of $77,084, as they declared in Schedule A of their petition?

Only at my instigation did Trustee Reiber ask for clarification after the DeLanos' attorney provided incomplete mortgage information. His response was even more unsatisfactory: printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office that have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc.

Despite my request, the Trustee has not commented on such useless documents, which I faxed to you on March 29. I am still entitled to an answer from him for the same reasons that he held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how he, or for that matter you, as an officer of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057(a). Not to do so would aid and abet fraud.

Thus, I respectfully request that you replace Trustee Reiber by a trustee capable of investigating this matter or report it under §3057 to the DoJ in Washington, not Rochester or Buffalo. Please let me know what you intend to do.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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

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

April 21, 2005

Trustee George M. Reiber
South Winton Court
3136 S. Winton Road, Suite 206
Rochester, NY 14623

faxed to 585-427-7804

Re: David and Mary Ann DeLano, Bkr. dkt. no. 04-20280

Dear Trustee Reiber,

Please find herewith a copy of my Designation of Items and a Statement of Issues relating to my appeal to the District Court from Judge Ninfo's decision of 4 instant in the DeLano case.

By contrast, I have not received your response to my letter of March 29, where I requested that you comment on the submission to you at your request by Att. Werner of information about the DeLanos' mortgages. What he submitted with his letter of March 24 consisted of printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office. If you are satisfied with his submission, I would like to know why, for those index pages, as I pointed out, have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc. If, on the contrary, you are not satisfied, I would also like to know why and what you intend to do about securing the information that you requested when in your February 24 letter you asked him thus:

> Thank you for sending me the Abstract information regarding the debtors' property. I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape or form concerning a payoff. What ever happened to that mortgage? According to the Schedules, the only mortgage in existence is the Lyndon mortgage. Thank you for your cooperation and consideration.

I am still entitled to an answer from you for the same reasons that you held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how you, as an officer working on behalf of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057. Not to do so would aid and abet fraud. In the DeLanos' case, there is evidence of their fraud, beginning with the $291,470 that they earned in just the 2001-03 fiscal years and whose whereabouts nobody knows, particularly since you have refused to ask them for documents, such as bank account statements, that could show where that money is.

In addition, you have the question of their mortgages, which remains unanswered and as relevant to the issue of their concealment of assets, on which Judge Ninfo's decision has no bearing whatsoever, as it was when I asked it at the examination last February 1, to wit:

> If the DeLanos obtained a mortgage loan of $32,000 from Monroe Bank in 1976; and another mortgage loan of $59,000 from M&T Bank in 1988 as well as another mortgage loan of $59,000 from ONONDAGA Bank in 1988; and yet another mortgage

loan for $95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only $21,416 and still owe a mortgage debt of $77,084, as they declared in Schedule A of their petition?

The facts contained in that question, which the DeLanos admitted at their February 1 examination or provided in their bankruptcy petition, and the fact that they have obstructed finding its answer by refusing to produce documents, so much so that you moved to dismiss their case, constitute credible evidence for the belief that they have committed bankruptcy fraud. That belief is strengthened by the fact that in the 29 years since their 1976 mortgage they have barely managed to acquire ownership of one fifth of their home appraised at $98,500 in November 2003. So where have they put the hundreds of thousands of dollars that they have earned since?, a most pertinent question because at their examination they stated that they have lived a modest life, have not taken expensive vacations, eaten at fancy restaurants, or made luxury purchases.

Therefore, I respectfully request that you:

1. hire under 11 U.S.C. §327 a highly reputed title search, appraisal, and accounting firm(s) that is unrelated to the parties and with which neither you nor your attorney, James Weidman, Esq., have ever worked, to investigate the DeLanos' mortgages and real and personal property in order to **a)** establish a chronologically unbroken title to **any** such property; **b)** determine the value of their equity and outstanding debts; and **c)** *follow the money!*, from the point of its being earned by each of the DeLanos since "1990 and prior credit card purchases" -the period that they put in play 15 times in Schedule F- to date;

2. request that the DeLanos:

    a) produce a list of their checking, savings, and debit card accounts since '1990 and prior years' to date; and
    b) state the name of the appraiser that appraised their home in November 2003, and his or her address and phone number;

3. use your power of subpoena, cf. F.R.Bkr.P. Rules 9016 and 2004(a) and (c), and F.R.Civ.P. Rule 45, to subpoena from the respective institutions the following documents:

    a) the monthly statements of the DeLano's checking, savings, and debit card accounts, their current balances, and copies of their cancelled checks; and
    b) current reports from each of the three credit reporting bureaus, namely, Equifax, Experian, and TransUnion;

4. if you are not willing or able not just to ask for, but also obtain the necessary documents, including those already requested but still not produced, recuse yourself from this case so that an independent trustee, unrelated to the parties, unfamiliar with the case, unhampered by any conflict of interest, and capable of conducting a zealous, competent, and expeditious investigation of the DeLanos be appointed; and

5. send me copies of documents that Att. Werner may send you, without prejudice to his obligation to send them directly to me.

I look forward to receiving a written response from you at your earliest convenience.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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

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

April 21, 2005

Kathleen Dunivin Schmitt, Esq.
Assistant U.S. Trustee — faxed to (585) 2635862
Federal Office Building
100 State Street, Room 6090
Rochester, NY 14614

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

Dear Trustee Schmitt,

I have not received your answer to my request in my letters to you of March 1, 10, and 21 that you state your position on my letter to Trustee Reiber of February 22. It is quite suspicious that neither you, Trustee Reiber, nor Judge Ninfo want to investigate Mr. David DeLano, a 32 year veteran of the banking industry and currently a bank loan officer who files for bankruptcy after earning together with his wife in just the 2001-03 fiscal years $291,470, whose whereabouts nobody wants to find out. Must Mr. DeLano be protected lest he talk about compromising bankruptcy goings-on?

Now there is the issue of the DeLanos' mortgages, about which Trustee Reiber appears not to want to learn too much. Indeed, at the examination of the DeLanos, which took place only after overcoming Trustee Reiber's opposition, I raised the following question:

> If the DeLanos obtained a mortgage loan of $32,000 from Monroe Bank in 1976; and another mortgage loan of $59,000 from M&T Bank in 1988 as well as another mortgage loan of $59,000 from ONONDAGA Bank in 1988; and yet another mortgage loan for $95,000 from Genesee Regional Bank, and as stated by them, they made all their installment payments, how is it that they end up 29 years later having a home equity of only $21,416 and still owe a mortgage debt of $77,084, as they declared in Schedule A of their petition?

Only at my instigation did Trustee Reiber ask for clarification after the DeLanos' attorney provided incomplete mortgage information. His response was even more unsatisfactory: printouts of 14 screenshots of index pages on the website of the Monroe County Clerk's Office that have neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor an explanation for HUD's involvement in the mortgage, etc.

Despite my request, the Trustee has not commented on such useless documents, which I faxed to you on March 29. I am still entitled to an answer from him for the same reasons that he held the examination of the DeLanos last February although I was the only one to ask for and attend it: because I am a party in interest. Whatever Judge Ninfo determined as to my status as a creditor, which I am contesting on appeal, and as to my future participation in court proceedings, it does not affect how he, or for that matter you, as an officer of the Executive, not the Judicial, Branch, should treat me. Moreover, if a member of the public submitted to you evidence of bankruptcy fraud in a case in which he was not even a party in interest, you would still have to investigate it or have it investigated under 18 U.S.C. §3057(a). Not to do so would aid and abet fraud.

Hence, I respectfully request that you replace Trustee Reiber by a trustee capable of investigating this matter or report it under §3057 to the DoJ in Washington. Please do reply to this letter.

Sincerely, Dr. Richard Cordero

OFFICE OF THE CLERK
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK
1220 U.S. Courthouse, 100 State Street
Rochester, NY 14614 (585) 613-4200
www.nywb.uscourts.gov

Paul R. Warren
Clerk of Court

Todd M. Stickle
Deputy Clerk in Charge

April 22, 2005

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208

Re: Notice of Appeal
Richard Cordero, Appellant vs. David and Mary Ann DeLano, Appellee
BK Number: 04-20280

Dear Dr. Cordero:

Enclosed please find the following items:

1) Transmittal letter to the U.S. District Court dated 4/21/05.

2) Transmittal letter to the U.S. Distrct Court dated 4/22/05.

3) Civil Cover Sheet. This document is required for the Notice of Appeal and has not to date been received by the Court. Please fill out the Civil Cover Sheet and file with the U.S. Bankruptcy Court.

The U.S. District Court Civil Case Number for the Appeal is: 05-cv-6190L(f). Please ensure that this number is on all the documents that you submit to the U.S. District Court.

Thank you for your attention to this matter.

Very truly yours,

Karen S. Tacy
Case Administrator

KST
enclosures

034904

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:
David G. DeLano
Mary Ann DeLano
Debtor(s)

SSN/Tax ID: xxx-xx-3894
xxx-xx-0517

Case No.: 2-04-20280-JCN
Chapter: 13

TO: Rodney C. Early, Clerk, U.S. District Court for the Western District of New York

NOTE: Only Documents not available electronically via the court's electronic filing system are being transmitted in the paper format and are attached.

Transmitted herewith is:

[X] Notice of Appeal filed by Richard Cordero, Pro Se Appellant
Interlocutory [ ] Yes [ ] No

[ ] Motion for Leave to Appeal filed by
Interlocutory [ ] Yes [ ] No

[ ] Cross Appeal filed by
Interlocutory [ ] Yes [ ] No

[ ] Perfected Record consisting of:
[ ] Entire Record
[X] Statement of Issues and Designated items of Appellant(s)
[ ] Statement of Issues and Designated items of Appellee(s)
[ ] Transcript(s)
[ ] Filing Fee Paid
[X] Application to proceed in forma pauperis filed
[X] Other: PLEASE NOTE: A paper copy of the Designation of Items in the Record and Statement of Issued on Appeal will be provided to the U.S. District Court. Such document is voluminous and hence will not be e-filed.

[X] Unperfected Record due to following missing documents:
[ ] Entire Record
[ ] Statement of Issues and/or Designated items of Appellant(s)
[X] Statement of Issues and/or Designated items of Appellee(s)
[ ] Transcript(s)
[ ] Filing Fee Paid
[ ] Application to proceed in forma pauperis filed
[ ] Other: Please Note: Appellee designation due on or before 5/2/05.

[ ] Non-core matter
[ ] Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law
[ ] Responses/Objections filed by:
[ ] Proposed Order
[ ] Proposed Judgment

[ ] Motion for Withdrawal of Reference pursuant to 28 U.S.C. '157(d)
[ ] Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law
[ ] Responses/Objections filed by:

[ ] Report and Recommendations of Bankruptcy Judge and any objections thereto for disposition of the following specified matter:
[ ] Motion for Abstention pursuant to Bankruptcy Rule 5011(b)
[ ] Motion for remand pursuant to Bankruptcy Rule 9027(e)

034904 21310034974024

UNITED STATES BANKRUPTCY COURT
Western District of New York
100 State Street
Rochester, NY 14614
www.nywb.uscourts.gov

In Re:
David G. DeLano
Mary Ann DeLano
Debtor(s)

SSN/Tax ID: xxx-xx-3894
xxx-xx-0517

Case No.: 2-04-20280-JCN
Chapter: 13

TO: Rodney C. Early, Clerk, U.S. District Court for the Western District of New York

NOTE: Only Documents not available electronically via the court's electronic filing system are being transmitted in the paper format and are attached.

Transmitted herewith is:

[ ] Notice of Appeal filed by
Interlocutory [ ] Yes [ ] No

[ ] Motion for Leave to Appeal filed by
Interlocutory [ ] Yes [ ] No

[ ] Cross Appeal filed by
Interlocutory [ ] Yes [ ] No

[ ] Perfected Record consisting of:
[ ] Entire Record
[ ] Statement of Issues and Designated items of Appellant(s)
[ ] Statement of Issues and Designated items of Appellee(s)
[ ] Transcript(s)
[ ] Filing Fee Paid
[ ] Application to proceed in forma pauperis filed
[ ] Other:

[ ] Unperfected Record due to following missing documents:
[ ] Entire Record
[ ] Statement of Issues and/or Designated items of Appellant(s)
[ ] Statement of Issues and/or Designated items of Appellee(s)
[ ] Transcript(s)
[ ] Filing Fee Paid
[ ] Application to proceed in forma pauperis filed
[ ] Other:

[ ] Non-core matter
[ ] Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law
[ ] Responses/Objections filed by:
[ ] Proposed Order
[ ] Proposed Judgment

[ ] Motion for Withdrawal of Reference pursuant to 28 U.S.C. '157(d)
[ ] Bankruptcy Judge's Proposed Findings of Fact and Conclusions of Law
[ ] Responses/Objections filed by:

[ ] Report and Recommendations of Bankruptcy Judge and any objections thereto for disposition of the following specified matter:
[ ] Motion for Abstention pursuant to Bankruptcy Rule 5011(b)
[ ] Motion for remand pursuant to Bankruptcy Rule 9027(e)

[ ] Documents Transmitted in paper format:

034904 21310034974033

[ ] Documents Transmitted in paper format:

1.
2.
3.
4.

[X] Other: Civil Cover Sheet has not yet been submitted by Pro Se Appellant. Such document will be transmitted upon receipt of same from the Appellant.

Please further note that the Application to Proceed In Forma Pauperis is pending in the U.S. District Court.

Please send a confirmatory email to the sender with the civil case number and judge assignment. Thank you!

Dated: April 21, 2005

Paul R. Warren
Clerk, U.S. Bankruptcy Court

By: K. Tacy
Deputy Clerk

Form dctrans
Doc 109

034904

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

Richard Cordero
Appellant

DESIGNATION OF ITEMS IN THE RECORD AND STATEMENT OF ISSUES ON APPEAL

v. _____-CV-_____

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

Submitted by

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

 Bkr. Ct. filing of April 22, 2005, of the cover page of Dr. Cordero's April 18 Designation

ATTENTION

THE ATTACHMENT/EXHIBIT TO THIS DOCUMENT IS VOLUMINOUS AND AVAILABLE IN PAPER FORMAT ONLY. IT MAY BE VIEWED AT THE CLERK'S OFFICE DURING REGULAR BUSINESS HOURS.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

05 APR 22 P.M. 2:43

U.S. DISTRICT COURT
W.D.N.Y. ROCHESTER

RICHARD CORDERO,

Appellant(s),

vs.

DAVID DeLANO and MARY ANN DeLANO,

Appellee(s).

APPEAL FROM BANKRUPTCY COURT
05-CV-6190L

An appeal from the Bankruptcy Court has been docketed in the district court pursuant to Bankruptcy Rule 8007 on APRIL 22, 2005. The case is assigned to District Judge David G. Larimer.

Until further order of the district court, the following schedule shall control the filing of briefs and argument of the appeal:

1. Appellant(s) shall file and serve its brief within twenty (20) days after entry of this order on the docket;

2. Appellee(s) shall serve and file its brief within twenty (20) days after service of appellant's brief;

3. Bankruptcy Rule 8009 and 8010 shall control concerning cross-appeals and reply briefs as well as the form of all briefs;

4. It shall be the responsibility of appellant to

notify Judge Larimer, in writing, when the record is complete and all briefs have been filed, that the case is ready for oral argument, or if no argument is requested, that the case is ready for submission;

5. The Court will schedule argument in accordance with Bankruptcy Rule 8012.

IT SO ORDERED.

DAVID G. LARIMER
United States District Judge

Dated: April 22, 2005
Rochester, New York

Other Orders/Judgments

6:05-cv-06190-DGL Cordero v. DeLano et al

U.S. DISTRICT COURT

WESTERN DISTRICT OF NEW YORK [LIVE]

Notice of Electronic Filing

The following transaction was received from BJB, entered on 4/22/2005 at 3:23 PM EDT and filed on 4/22/2005

Case Name: Cordero v. DeLano et al
Case Number: 6:05-cv-6190
Filer:
Document Number: 2

Docket Text:
ORDER directing thatAppellant shall file and serve its brief within twenty (20) days after entry of this order on the docket and that Appellee(s) shall serve and file its brief within twenty (20) days after service of appellant's brief. Signed by Hon. David G. Larimer on 4/22/05. (BJB,)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1042579058 [Date=4/22/2005] [FileNumber=337946-0]
[da68760304969d7084f212f8b4df00e4069a4be5ad830420a983e7e159066bc0177d
62b7f905e821e4255b8ce28ee5c7c01f4897debe1c6f120dbd1a125dc839]]

6:05-cv-6190 Notice will be electronically mailed to:

Christopher K. Werner cwerner@boylanbrown.com,

6:05-cv-6190 Notice will be delivered by other means to:

Richard Cordero
59 Cresent Street
Brooklyn, NY 11208

Add:694 E-filing of 4/22/05 of J. Larimer's order scheduling Dr. Cordero's brief filing within next 20 days

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Dr. Richard Cordero
Appellant and creditor

OBJECTION TO SCHEDULING ORDER
And REQUEST FOR ITS URGENT RESCISSION

v.

case no. 05-cv-6190L

David DeLano and Mary Ann DeLano
Respondents and debtors in bankruptcy

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

1. Dr. Cordero sent under FRBkrP 8006 his Designation of Items in the Record and Statement of Issues on Appeal to the Bankruptcy Court. The latter filed it last April 21 and on that very same day it transmitted the record to the District Court.
2. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel." It is quite obvious that the record could not possibly have been complete on the very day that it was filed since the 10 days for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal", as provided under FRBkrP 8006, had not even started to run. Likewise, contact with the court reporter for preparation of the transcript had only been initiated so that the transcript has not been even started, let alone delivered for the appellant to take into consideration when writing his brief on appeal.
3. Nevertheless, U.S. District Court Judge David Larimer issued a scheduling order on the following day, April 22, requiring "Appellant to file and serve its brief within 20 days after entry of this order on the docket". Therefore, that order is as premature as was the transmittal of the record.
4. These court acts have forced Dr. Cordero to devote time and effort to research and writing to

comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record.

5. Hence, to reduce further harm, Dr. Cordero respectfully requests that Judge Larimer's scheduling order of April 22, 2005, in the above entitled case be rescinded. Such rescission should be undertaken and communicated to Dr. Cordero immediately. It is only reasonable that if the Designation was transmitted from the Bankruptcy to the District Court the very same day of its receipt in the mail and the scheduling order was written and mailed the following day, then to correct their mistake, which causes Dr. Cordero irreparable waste of time and effort, not to mention considerable aggravation, all officers involved should proceed with the same promptness. To that end and on this occasion only, the order of rescission should be faxed to Dr. Cordero at (718)827-9521.
6. This request has been faxed to the District Court at (585)613-4035 upon agreement between Dr. Cordero and District Court Clerk Peggy Ghysel in consideration of the urgency of the matter.

Dated: May 2, 2005

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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