



- g) Manufacturers & Traders Trust Bank (hereinafter M&T Bank);
- h) Paul R. Warren, Esq., Clerk of Bankruptcy Court; and
- i) Any other persons or entities referred to herein or the proposed Order.

2. The need for documents for the reasons stated in the caption and summarized in ¶1 above, has become apparent in light of the following entries in the *DeLano* docket:

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s) <a href="#">5</a> CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)
07/25/2005	<a href="#">134</a>	Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to \$635.00 per month in July 2004 and will increase to \$960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of \$6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005)

3. When one clicks on hyperlink [134](#) what downloads is a three-page document entitled "Trustee's Findings of Fact and Summary of 341 Hearing". It is reproduced in the exhibits, pages 1-3, *infra*=E:1-3...what shockingly unprofessional and perfunctory scraps of papers! And so revealing that they warrant close analysis.

# Table of Contents

<b>I. The “Trustee’s Findings of Fact and Summary of 341 Hearing” reveal that the same Trustee Reiber who filed as his “Report” such shockingly unprofessional and perfunctory scraps of papers did not investigate the DeLanos for bankruptcy fraud, contrary to his statement and its acceptance by Judge Ninfo.....</b>	<b>953</b>
A. The third scrap of paper “I/We filed Chapter 13 for one or more of the following reasons:” with its substandard English and lack of any authoritative source for the “reasons” cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted .....	956
<b>II. Judge Ninfo confirmed the DeLanos’ plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation.....</b>	<b>962</b>
A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber approved the DeLanos’ petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos .....	963
B. The sham character of Trustee Reiber’s pro forma request for documents and the DeLanos’ token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages.....	966
C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth.....	970
<b>III. Conclusion and Request for Relief.....</b>	<b>971</b>

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**I. The “Trustee’s Findings of Fact and Summary of 341 Hearing” reveal that the same Trustee Reiber who filed as his “Report” such shockingly unprofessional and perfunctory scraps of papers did not investigate the DeLanos for bankruptcy fraud, contrary to his statement and its acceptance by Judge Ninfo**

4. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

FRBkrP 9004. General Requirements of Form

(a) Legibility; abbreviations

All petitions, pleadings, schedules **and other papers shall** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

5. The handwritten jottings on those scrap papers are certainly not “clearly legible”. The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

**Local Bankruptcy Rule 9004. PAPERS**

9004-1. FORM OF PAPERS [Former Rule 13 A]

All pleadings **and other papers shall** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; **shall** be **without erasures or interlineations materially defacing them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)

9004-2. CAPTION [Former Rule 13 B]

All pleadings **and other papers shall** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., **shall** be **dated, signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. [Former Rule 13 D] (emphasis added)

6. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.

7. What is more, the ‘description’ “Trustee’s Findings of Fact and Summary of 341 Hearing” is ambiguous and confusing. Indeed, there is no such thing as a “341 Hearing”. What is there in 11 U.S.C. is “§341 Meetings of creditors and equity security holders” (all §# references are to 11 U.S.C.

unless otherwise stated). The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

8. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing.

The trustee does not preside such a meeting to hear rather passively as an arbiter what the parties have to say and then determine their controversy, as an administrative judge would do.

Instead, this is how his role is described:

11 U.S.C. §343. Examination of the debtor

The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

9. It follows that the trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is not only active, but also inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works “for the benefit of general unsecured creditors whom the trustee represents”. That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

The purpose of the examination is to enable creditors and **the trustee** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

10. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible “341 Hearing” before Judge Ninfo? And in *DeLano*, when did that “341 Hearing” take place?, for not only is such “Hearing” not dated, but also none of those three scrap papers is dated, in disregard of the

requirement under Local Bankruptcy Rule 9004-2 (§5 above) that they “*shall* be **dated**”. However, if the Trustee’s scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

11. Nor do those scrap papers comply with the requirement that they “*shall* be **signed**”. Merely initializing page 2 (E:2) is no doubt another manifestation of the perfunctory nature of Trustee Reiber’s scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee’s shame about putting his full name on such unprofessional filing with a U.S. court?

**A. The third scrap of paper “I/We filed Chapter 13 for one or more of the following reasons:” with its substandard English and lack of any authoritative source for the “reasons” cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted**

12. The third scrap paper (E:3) bears the typewritten statement “I/We filed Chapter 13 for one or more of the following reasons:” Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own “341 Hearing”, did he simply hear the DeLanos’ “reasons” for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those “reasons” raise a host of critical questions. Let’s examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment (*Wife*) Age 59

13. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of \$67,118 in 2003, according to the Statement of Financial Affairs in their petition.

14. Likewise, what is the relevance of her losing her employment at age 59, or was that her age

whenever that undated scrap paper was jotted? Given that the last jotting connects a “reason” for filing their petition on January 27, 2004, to a “*pre-1990*” event, it is fair to ask when she lost her employment and what impact it had on their filing now.

√ Hours or pay reduced (*Husband 62*) *To delay retirement to complete plan*

15. Does the inconsistency between writing “62” inside the parenthesis in this “reason” and writing “*Age 59*” outside the parenthesis in the “reason” above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the \$67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will “*delay retirement*” until he turns 62 so as “*to complete plan*”?
16. Otherwise, what conceivable logical relation is there between “Hours or pay reduced” and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a “reason” for debtors not having to pay their debts to their creditors?
17. Given that 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-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the “I/We...” who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the “I/We...” meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

18. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but

rather the longer period of five years...or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have planned to pay more than just \$635.

\$4,886.50	projected monthly income (Schedule I)
<u>-1,129.00</u>	presumably after Mrs. DeLano's unemployment benefits ran out in 6/04 (Sch. I)
\$3,757.50	net monthly income
<u>-2,946.50</u>	for the very comfortable current expenditures (Sch. J) of a couple with no dependents
\$811.00	actual disposable income

19. Yet, the DeLanos plan to pay creditors only \$635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of \$176 per month = \$811 – 635, they withhold from creditors an extra \$4,400 = \$176 x 25. No explanation is given for this ...although these objections were raised by Dr. Cordero in his written objections of March 4, 2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

20. What is the total of those secured liens and in what way do they provide a “reason” for filing a bankruptcy petition?

√ Children's college expenses *pre-1990 when wages reduced \$50,000 → 19-000*

21. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check “Student loans”. So, what “college expenses” are being considered here? Moreover, according to that jotting, whatever those “college expenses” are, they were incurred “*pre-1990*”. Given that such listed “reasons” as, “Medical problems”, “To stop creditor harassment”, “Overspending” and “Protect debtor's property” were

not checked, how can those “college expenses” have caused the DeLanos to go bankrupt *15 years later*? This is one of the most untenable and ridiculous “reasons” for explaining a bankruptcy...

22. until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of “reasons” was extracted; no reference to any document where the “reasons” checked were quantified in dollar terms and their impact on the DeLanos’ income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos’ plan “meets the best interest test”?
23. Nor is there any reference to a document explaining in what imaginable way, for example, “Matrimonial” is a “reason” for anything, let alone for filing for bankruptcy; or how “Reconstruct credit rating” is such an intuitive “reason” for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby “Student loans” are such a “reason” despite the fact that 11 U.S.C. provides thus:

§523. Exceptions to discharge

(a) A discharge under section...1328(b) of this title does not discharge an individual debtor from any debt...(8) for an education benefit overpayment or loan made...

24. The lack of grammatical parallelism among the entries on that list is most striking. So the first “reason” appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every “reason” and thereby give the list semantic as well as syntactic consistency: “I/We filed...” because: (I/We omitted but implicit) “Lost employment”. However, the second “reason” does not fit this pattern: “I/We filed...” because: “Hours or pay reduced”. The next reason is expressed by an adjective, “Matrimonial”, while the following one is a noun “Garnishments”, and in addition it is missing the dash for the check mark, which points to a

poorly revised form; perhaps one introduced recently. Was this form made specifically for the DeLanos?; otherwise, how many plans have been confirmed based on that bungled form? A “reason” is set forth with a gerund, “Overspending”, but others are stated with the bare infinitive, “Protect debtor’s property”, whereas others use *to*-infinitive, “To receive a Chapter 13 discharge” (which by the way, is a particularly *enlightening* “reason”, for is that not the result aimed at when invoking any other “reason”?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult.

25. There is no need to read the whole list to be disturbed by this bungled form. To begin with, it lacks a caption. Then the sentence that introduces the “reasons” is written in broken English: “I/We filed Chapter 13 for one or more of the following reasons.” What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: ‘You filed Chapter 13....’
26. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your hierarchical superiors, that is, all the circuit judges as well as the justices of the Supreme Court, and even be made publicly available for close scrutiny, would you fill out another order form thus?: “The respondents filed Chapter 13 and win ‘cause they *ain’t have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with’em after cookin’ a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*” (Completing the order form in handwriting would give it a touch of flair...in pencil, for that would show...no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of the appellate peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys –the out-of-towners, who do not know yet– how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for

the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

27. What is more, or rather, less, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions;  
Verification and Copies of Papers

(a) Signing of papers

Every petition, pleading, written motion, **and other paper**, except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address and telephone number**, if any. An **unsigned paper shall be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

28. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to that Rule, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All...lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that "the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)".

29. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under this Court's Local Rules, which provides thus:

DISTRICT COURT LOCAL RULE 10  
FORM OF PAPERS

(a) All text and footnotes in pleadings, motions, legal memoranda **and other papers shall be** plainly and legibly written, **typewritten** in a font size at least 12-point type, printed or reproduced, **without erasures or interlineations materially defacing them**, in ink...

(b) **All papers shall** be endorsed with the name of the Court...**All papers shall be signed by an attorney** or by the litigant if appearing *pro se*, and the **name, address and telephone number** of each attorney or litigant so appearing **shall be** typed or printed **thereon. All papers shall be**

**dated and paginated.** (emphasis added)

30. Covering for a peer's mistakes, the law, the rules, and the facts notwithstanding, constitutes a denial of due process. But publicly associating oneself with officers that can file and accept such unprofessional and perfunctory scrap papers to discharge Mr. DeLano, a 32-year veteran of the banking industry, of well over \$145,000, that would be suspicious, particularly after those officers avoided and prevented an investigation that would have proved a bankruptcy fraud scheme.

## **II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation**

31. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:5). Therein he stated that he "has considered...the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

The Court found that the...Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.

32. However, what page 2 of Trustee Reiber's scrap papers (E:2) states is this:

7. Objections to Confirmation: **Trustee - disposable income**

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- 1) I.R.A. available; 2) loan payment available;
- 3) pension loan ends 10/05.

33. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough "~~1) Best Interest~~ ~~\$1255,~~" "**Attorney fees**". At the bottom of the page is written: "ATTORNEY'S FEES"

\$ 1350 and, below that, "Additional fees Yes" **\$16,655**. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:9) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:12).

**A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos**

34. However, Trustee Reiber has been presumably occupied even longer than Att. Werner with Dr. Cordero's written objections of March 4, 2004. Although the Trustee was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor.
35. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶9 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their Schedule B, where they declared having only \$535 in cash and account despite having earned \$291,470 in just the immediately preceding three years yet declaring nothing but \$2,910 in

household goods, while stating in Schedule F a whopping credit card debt of \$98,092! Where did the money go or is, which could go a long way toward covering their liabilities of \$185,462?

36. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' petition, filed on January 27, 2004, without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004...in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

37. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interest that the Trustee faced due to the request that he:

investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

38. And so it turned out to be. At Dr. Cordero's insistence, the DeLanos produced documents,

including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in Schedule F 18 credit card accounts on which they had piled up that staggering debt of \$98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

39. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!...insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.

40. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner...but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.

41. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee...any

recorded information...”, an obligation so strong that it remains in force “whether or not immunity is granted under section 344 of this title”. Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were part of the same sham!

**B. The sham character of Trustee Reiber’s pro forma request for documents and the DeLanos’ token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages**

42. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at \$98,500. However, they still owe on it \$77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of \$21,415 in the very same home that they bought 30 years ago! Yet, they earned \$291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano’s rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding bankrupts, trustees, and judicial officers?

43. The fact is that despite Dr. Cordero’s protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero,

who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶37 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

44. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Trustees Schmitt and Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:13), he backed down from that limit.

45. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.

46. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production...and still they failed to produce them by the end of that period.

47. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:15-27) once more (§38 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:14). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for \$26,000 in 1975;	E:15 (D:342)	\$26,000
2) another for \$7,467 in 1977;	E:16(D:343)	7,467
3) still another for \$59,000 in 1988; as well as	E:19 (D:346)	59,000
4) an overdraft from ONONDAGA Bank for \$59,000 and	E:28 (D:176)	59,000
5) owed \$59,000 to M&T in 1988;	E:28(D:176)	59,000
6) another mortgage for \$29,800 in 1990,	E:21 (D:348)	29,800
7) even another one for \$46,920 in 1993, and	E:22 (D:349)	46,920
8) yet another for \$95,000 in 1999.	E:23(350-54)	95,000
Total		\$382,187.00

48. The whereabouts of that \$382,187 are unknown. On the contrary, Att. Werner's letter of

February 16, 2005 (E:14), accompanying those incomplete documents adds more unknowns:

It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of \$18,746.69 to Mr. and Mrs. DeLano. Of this cash, \$11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

49. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed \$77,084.49 on their home, \$98,092.91 on credit cards, and \$10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the \$291,470 earned in 2001-03 that is nowhere to be seen...and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!
50. Although Dr. Cordero identified these incongruous elements (E:30-32) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner on February 24 than "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?" (E:36)
51. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:37), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:38). When Att. Werner made a belated service (E:39), it became apparent why he had tried to withhold the documents (E:40-53) from Dr. Cordero: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:54) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:57-60).

52. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the \$291,470 earned in the 2001-03 period, over \$670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16 Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! But she created nothing and simply produced work for hire.

53. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at the confirmation hearing nor made any reference to them in the scrap papers of his "Report". How futile to ask them again for information!

**C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth**

54. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, that is, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it

was that an investigation that the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, Judge Ninfo was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thereby requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Bankruptcy Court Reporter Mary Dianetti, who has already refused to certify the reliability of the transcript of her own recording of the evidentiary hearing on March 1, 2005 (E:61-63).

55. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Under those circumstances, common sense and good judgment required that the Trustee's investigation be reviewed as to his method, products, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".

### **III. Conclusion and Request for Relief**

56. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. In fact, they confirmed the plan without investigating the DeLanos as the surest way of fore-

stalling a finding of their having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would disclose his knowledge of systemic wrongdoing: a bankruptcy fraud scheme.

57. It follows that insofar as Trustee Reiber made the untrue statement that “The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none.” to justify the Bankruptcy Court in confirming the DeLanos’ plan and to escape his own conflict of interests (§37 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Bankruptcy Court as an institution even if Judge Ninfo may have known that the Trustee’s statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos and the loss of an enormous amount of effort, time, and money and the infliction of tremendous emotional distress.

58. It also follows that insofar as Judge Ninfo knew or through the exercise with due diligence and impartiality of his judicial functions would have known, that Trustee Reiber had conducted no investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee’s statement to the contrary and stated that “The Court found that the Plan was proposed in good faith” in order to confirm the DeLanos’ plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process and caused substantial material loss and emotional distress.

59. The conduct of Judge Ninfo and Trustee Reiber together with others calls for this Court’s intervention. Indeed, the District Court has supervisory duties with respect to the Bankruptcy Court because the latter is an adjunct to it to which it refers bankruptcy cases under 28 U.S.C. §157(a) pursuant to the system set up in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, (cf. District Court Local Rule 5.1.(g)); and because as an appellate court with respect to the Bankruptcy Court this Court has an inherent

duty to safeguard the integrity of the judicial process as well as of the bankruptcy system. Such integrity has been compromised by these officers with others taking decisions contrary to the available evidence and in the absence of alleged evidence to further a bankruptcy fraud scheme.

60. Hence, the documents that have not been produced are necessary for this Court to exercise its supervisory duties as well as for Dr. Cordero to exercise his right of appeal and for this Court to determine it. However, the close institutional and personal relationship between the Bankruptcy Court and this Court can impair the latter's objectivity and already led it to rush on April 22 to schedule Dr. Cordero's appellate brief in disregard of the rules and the facts, only to take no action on his motions to enable him to file that brief. Hence, for sake of the appearance and reality of impartiality, this Court should transfer this appeal and related cases and defer to law enforcement investigators. Therefore, Dr. Cordero respectfully requests that this District Court:

- 1) Order the production without delay of a copy for each of the Court, Dr. Cordero, and the successor trustee when appointed, of the following documents, each accompanied by an affidavit or a certificate pursuant to 28 U.S.C. §1746 stating that the respective document has not been the subject of any addition, omission, modification, or correction of any type:
  - a) The audio tape of the meeting of creditors held on March 8, 2004, conducted by Att. Weidman and that it be transcribed and its transcript made available in paper and on a floppy disc or CD; and the video tape in which Trustee Reiber was seen providing its introduction;
  - b) The transcript of the meeting of creditors held on February 1, 2005, in paper and on a floppy disc or CD, which transcript has already been made and is in Trustee Reiber's possession;
  - c) The transcript of the evidentiary hearing on March 1, 2005, in DeLano, prepared by a reporter other than Reporter Dianetti pursuant to Dr. Cordero's motion of July 18, 2005, to this Court to have Reporter Mary Dianetti referred to the Judicial Conference for investigation of her refusal to certify the reliability of that transcript, incorporated herein by reference;

- d) The documents that Trustee Reiber obtained prior to the confirmation hearing on July 25, 2005, in connection with both the DeLanos' bankruptcy petition of January 27, 2004, and the documents that they produced since filing it and before the July 25 hearing;
  - e) The statement that, as reported in the *DeLano* docket, entry 134, Trustee Reiber read into the record at the July 25 confirmation hearing regarding his investigation of "allegations of bankruptcy fraud", exactly as read;
  - f) The monthly and any other statements since 1975 of each and all financial accounts of the DeLanos and the unbroken series of documents relating to their purchase or rental of real property, vehicle, or mobile home, or right to its use, including all mortgage documents;
- 2) Order that the originals of these documents be held in a secure place and their chain of custody insured;
  - 3) Order that Bankruptcy Court Reported Mary Dianetti have not participation whatsoever in making any such transcript other than producing to the designated person the full set of stenographic paper in her possession of any recording of the proceedings in question;
  - 4) Remove Trustee Reiber from *DeLano*, as requested in Dr. Cordero's motion of July 13, 2005, in this Court to stay the confirmation hearing and order, withdraw *DeLano* pending appeal, remove Trustee Reiber and give notice of addition to appeal, accompanied by Dr. Cordero's affidavit of July 11, 2005, in support thereof, both incorporated herein by reference;
  - 5) Recommend the appointment of a successor trustee based in Albany, NY, unfamiliar with the case; and unrelated and unknown to any of the parties or officers in WDNY and WBNY;
  - 6) Recommend that the successor trustee employ under §327 a reputable, independent, and certified accounting and title firm based in Albany to investigate the DeLanos' financial affairs and produce a comprehensive report of their assets from 1975 to date;
  - 7) Stay Judge Ninfo's order of August 9, 2005, confirming the DeLanos' plan, as requested in the motion of July 13, while allowing continued payments by M&T Bank to the trustee (E:4);
  - 8) Withdraw *DeLano* to this Court under 28 U.S.C. §157(d) pending the appeal;

- 9) Refer *DeLano* and this appeal as well as *Pfuntner* for the reasons stated in Dr. Cordero's motion of June 20, 2005, to this Court for a stay in *Pfuntner* and to join the parties there to the *DeLano* appeal, accompanied by Dr. Cordero's statement of June 18, 2005, on Judge Ninfo's linkage of *Pfuntner* and *DeLano*, both incorporated herein by reference, under 18 U.S.C. §3057(a) to U.S. A.G. Alberto Gonzales for investigation by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with these cases and unacquainted with any of the parties or officers that may be investigated and thus expressly excluding from participation any staff from such offices in either Rochester (where the DoJ office is literally the next-door neighbor of the Office of the U.S. Trustee) or Buffalo, NY;
- 10) Transfer in the interest of justice and judicial economy under 28 U.S.C. §1412 *DeLano* and *Pfuntner* and this appeal to the U.S. District Court for the Northern District in Albany, NY, for a trial by jury before a judge unfamiliar with any of those proceedings and unrelated and unacquainted with any of the parties and officers;
- 11) Order that any and all proceedings concerning this matter be recorded by the Court by using, in addition to stenographic means, electronic sound recording and that Dr. Cordero be allowed to make his own electronic sound recording;
- 12) Issue the proposed order;
- 13) By September 12, 2005, or as soon thereafter as possible, decide the three motions by Dr. Cordero still pending in this Court (¶¶60.1)c); 60.4); and 60.9) above) or state in writing the reasons why it will not decide them, and in the latter case certify the case for appeal to the Court of Appeals for the Second Circuit.

Dated: August 23, 2005  
59 Crescent Street  
Brooklyn, NY 11208

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

## CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served by U.S.P.S. a copy of my notice of motion and motion to compel the production of documents and take other actions necessary for the exercise of the Court's supervision over the Bankruptcy Court and of Appellant's right of appeal, and for the proper determination of this appeal, on the following parties:

### I. DeLano Parties

Ms. Mary Dianetti  
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East Rochester, NY 14445  
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Boylan, Brown, Code, Vigdor & Wilson, LLP  
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Trustee George M. Reiber  
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3136 S. Winton Road  
Rochester, NY 14623  
tel. (585) 427-7225; fax (585)427-7804

Kathleen Dunivin Schmitt, Esq.  
Assistant U.S. Trustee  
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Ms. Deirdre A. Martini  
U.S. Trustee for Region 2  
Office of the United States Trustee  
33 Whitehall Street, 21st Floor  
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tel. (212) 510-0500; fax (212) 668-2255

Dated: August 23, 2005  
59 Crescent Street  
Brooklyn, NY 11208

### II. Pfuntner Parties (02-2230, WBNY)

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*Dr. Richard Cordero*

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

**TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING**

1. Debtor(s) **DAVID G DELANO** Bk.# 04-20280  
**MARY ANN DELANO**

2. Attorney **CHRISTOPHER K WERNER, ESQ** Filing Fees: \$ 185 Paid  
 Plan:

A. Summary: \$ 1940 per month by wage order  
 \$ 14145\* annually **R**

Repayment to secured creditors \$ 6900  
 Repayment to priority creditors \$ 16,655  
 Repayment to unsecured creditors \$ 4646 ~5% specific estimated

Classification of unsecured creditors None  
 Class \_\_\_\_\_ % \$ \_\_\_\_\_  
 Class \_\_\_\_\_ % \$ \_\_\_\_\_

Rejection of executory contracts None

Other: \* Payments decrease to \$635/month in July, 2004; then increase to \$1940/month in August, 2006. Plus proceeds of accounts receivable.

B. Feasibility: **why then returned loan paid**  
 Total Indebtedness \$ 185462 including mortgages  
 Monthly Income (net) \$ 4886.50 ~~2946.50~~ (gross) \$ 7501.  
 Less Estimated Expenses \$ 2946.50  
 Excess for Wage Plan \$ 1940.  
 Duration of Plan 3 years

**92,920 TOTAL**

**why End of Sec a Unemployment**

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:  
 Interest rate unless otherwise stated: 8 1/4 %

Name of Creditor	Amount of Security	Security Claimed	Perfectured	341 Valuation	Disputed
Capital One Auto	\$ 10,285	198 Chevy Blazer	Yes	\$ 6900	STIP

3. Best interest of creditors test:

A. All assets were listed.

B. Total market value of assets: \$ 256,562

Less valid liens \$ 83,734

Less exempt property \$ 17,732

Available for judgment liens \$ 2,666

Less priority claims \$ 16,655

(Support \$ )

C. Total available for unsecured creditors in liquidation \$ 1,976 0

D. Amount to be distributed to unsecured creditors \$ 4,646

E. Nature of major non-exempt assets:

4. Debtor(s) states that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) states that to the best of his/her/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income - 1) IRA available; 2) loan payment available; 3) pension loan ends 10/35.

8. Debtor requests no wage order because, (+) 2 concerns (1)

9. Other comments: 1) Best Interest \$ 1255, Attorney fees (OK) AFIS BUT COURT REJECTED CONSENTED CONFIRM ORDER

10. Converted from Chapter 7 because (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: \$ 1350

Additional fees Anticipated? Yes \$ 16,655

GEORGE M. REIBER TRUSTEE

IN RE:

DeSousa David - MaryAnn

BK. #

04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- Lost employment *(Wife) Age 59*
- Hours or pay reduced *(Husband 62) To delay retirement to complete plan*
- Matrimonial
- Garnishments
- Medical problems
- To receive a Chapter 13 discharge
- Filed a previous bankruptcy proceeding within six (6) years
- Owe priority (example: tax) claims
- Reconstruct credit rating
- To pay back creditors as much as possible *w/ 3 yrs prior to retirement*
- To stop creditor harassment
- To stop foreclosure or other legal proceedings
- To cram down secured liens
- To avoid contracts
- Overextension of credit
- Decline in income from business, commissions or business failure
- Overspending
- Student loans
- Children's college expenses *pre-1990 when wages reduced \$30,000 → 19,000*
- Avoid Chapter 7 substantial abuse charge
- Protect debtor's property
- Others: \_\_\_\_\_