

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: David G. DeLano and Mary Ann DeLano

Chapter 13 case, dkt. no: 04-20280

Notice of Motion
to request that
Judge John C. Ninfo, II
recuse himself under 28 U.S.C. §455(a)
due to his lack of impartiality

Madam or Sir,

PLEASE TAKE NOTICE, that Dr. Richard Cordero, Creditor, will move this Court at the U.S. Courthouse on 100 State Street, Rochester, New York, 14614, at 1:30 p.m. on March 1, 2005, or as soon thereafter as he can be heard, to request that Judge John C. Ninfo, II, recuse himself under 28 U.S.C. §455 from the DeLano case above-captioned and the related case Pfunter v. Gordon et al., docket no. 02-2230, WBNY, due to his lack of impartiality and remove them to another district where fair and impartial process for all parties can be had.

Dated: February 17, 2005

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Brooklyn, NY 11208

Dr. Richard Cordero

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

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

In re: David G. DeLano and Mary Ann DeLano

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**Motion
to request that
Judge John C. Ninfo, II
recuse himself under 28 U.S.C. §455(a)
due to his lack of impartiality**

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

I. THE STANDARD FOR RECUSAL UNDER 28 U.S.C. § 455(a) IS THE APPEARANCE, NOT THE REALITY, OF BIAS AND PREJUDICE

1. Section 455(a) of 28 U.S.C. provides as follows:

Any justice, judge, or magistrate judge of the United States **shall** disqualify himself in any proceeding in which his impartiality **might** reasonably be questioned. (emphasis added)

2. The Supreme Court recently reaffirmed in *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (*REHNQUIST, C. J.*) the standard for interpreting and applying this section thus:

As this Court has stated, what matters under §455(a) “is not the reality of bias or prejudice but its appearance.” *Liteky v. United States*, 510 U. S. 540, 548 (1994). This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. *See ibid.*; *In re Drexel Burnham Lambert Inc.*, 861 F. 2d 1307, 1309 (CA2 1988).

3. Those surrounding facts and circumstances are to be assessed by “the “reasonable person” standard which [§455(a)] embraces”, *Microsoft Corp.* at 1303.

TABLE OF CONTENTS

I. The standard for recusal under 28 U.S.C. § 455(a) is the appearance, not the reality, of bias and prejudice..... 356

II. The facts and circumstances surrounding Judge Ninfo’s handling of the DeLano case have the appearance of bias and prejudice.....	358
A. Judge Ninfo has given precedence to what he calls “local practice” over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero.....	358
1. Frequency of appearance by local parties before Judge Ninfo.....	361
2. Judge Ninfo’s disregard for the law, the rules, and the facts led him to make the ludicrous statement that “local practice” can be found out by making a phone call.....	362
B. Judge Ninfo said in open court that he would issue Dr. Cordero’s written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero’s instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity.....	364
1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero’s proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, “expressed concerns”, thereby protecting the DeLanos from discovery that could show their bankruptcy fraud	367
2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero’s phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in <i>Pfuntner v. Gordon et al.</i> he denied that Dr. Cordero’s motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge’s word has been shattered	369
C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan.....	370

1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity	373
2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!.....	378
3. Judge Ninfo has protected from Dr. Cordero’s discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero’s application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge’s bias or because a 32-year veteran bank loan officer knows too much not to be protected.....	379
III.The totality of circumstances assessed by a reasonable person gives rise to the appearance of bias and prejudice on the part of Judge Ninfo that requires his recusal	381
IV.Relief Requested.....	382
TABLE OF REFERENCES	383

II. THE FACTS AND CIRCUMSTANCES SURROUNDING JUDGE NINFO’S HANDLING OF THE DELANO CASE HAVE THE APPEARANCE OF BIAS AND PREJUDICE

A. Judge Ninfo has given precedence to what he calls “local practice” over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero

4. On January 27, 2004, Mr. David DeLano and Mrs. Mary Ann DeLano filed for bankruptcy under Chapter 13. Mr. DeLano is far from an average debtor: Interestingly enough, he has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, he is a member of a

class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition successfully for bankruptcy relief. Consequently, his petition warranted to be examined with the equivalent of strict scrutiny. But Judge Ninfo would have none of such common sense approach.

5. On the contrary, Judge Ninfo excused the Standing Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., who unlawfully prevented any examination of the DeLanos even by the only creditor, Dr. Cordero, who showed up at the meeting of creditors held on March 8, 2004. Convened under 11 U.S.C. §341, that meeting had the purpose, as provided under §343, of enabling the creditors to meet the “debtor [who] shall appear and submit to examination under oath...”. What is more, FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of “any other matter relevant to the case”. Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until “the final meeting of creditors”.
6. It should be noted that none of the other 20 creditors of the DeLanos, all institutional, attended the meeting, of which notice is officially given by the court. This is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition. This imputed intention is reasonably supported by the fact that he distributed his unsecured credit card debt of \$98,092 over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine the DeLanos.
7. Their examination was not conducted by Trustee Reiber because contrary to the Code -11 U.S.C. §341(a)- the rules –FRBkrP Rule 2003(b)(1)- and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos’ debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. 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. Mr. Weidman alleged that there was no time for such questions and put an end to the examination despite the fact that there was more than ample time to continue it since Dr. Cordero was only at his second question! In so doing, he violated Dr. Cordero’s statutory right to examine the DeLanos. 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?

8. 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.
9. For his part, Judge Ninfo started off his response in open court and for the record by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he 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 until 8 in the evening, particularly when he had a room full of people.
10. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Mr. Weidman's conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied the law too strictly and ignored the local practice...

13. That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers engages in "local practice", which consists in the disregard of the law, the rules, and the facts and the systematic application of the law of the locals. That law is based on both personal relationships among people that work in the same small federal building and with people who appear before Judge Ninfo frequently and who must fear antagonizing him by challenging his rulings, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and the available facts . Such local practice of disregard of legality has resulted in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias in which Judge Ninfo together with others have participated to the benefit of local parties and the detriment of Dr. Cordero. (Cf. §II.C-E of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals for the Second Circuit, herein incorporated by reference.)

1. Frequency of appearance by local parties before Judge Ninfo

14. The evidence that such personal relationships has developed is indisputable. 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; cf. Chapter 7 Trustee Kenneth 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 in the other case to which both Mr. DeLano and Dr. Cordero are parties, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230, which is of course also before Judge Ninfo, Plaintiff James Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times. Similarly, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times; he is the attorney for another party, David Palmer, the owner of Premier Van Lines, the company to which M&T Loan Officer DeLano lent money and which went bankrupt.
15. If those local parties know what is good for them, they take what they are given by Judge Ninfo and hope for something as good or better next time, which can be fifteen minutes later when they appear in their next case before him. In so doing, they make the Judge's life so much easier. A non-local party like Dr. Cordero, who comes into his court with no other relation than that to the law, the rules, and the facts, and who tries to confine the Judge's rulings to the provisions of such relation and even dare appeal from his rulings, can only upset the Judge's relationship to the local parties and the modus operandi that they have developed. That Judge

Ninfo will not tolerate.

16. Hardly did the Judge have to tolerate it, for Dr. Cordero not only was a non-local appearing merely through the written word or over the phone in only one case, that is, the Pfuntner one, but he was also a pro se litigant, as he still is in the DeLano case. Thus, Dr. Cordero neither stood nor stands any chance of making Judge Ninfo apply the law and the rules or respect the constraint of the facts. He was and is supposed merely to take whatever is left that the Judge throws at him. As a result of such disregard for legality and of bias, Judge Ninfo has for the last three years caused this non-local pro se party the loss of an enormous amount of effort, time, and money and inflicted upon him tremendous emotional distress. It should not continue any longer.

2. Judge Ninfo's disregard for the law, the rules, and the facts led him to make the ludicrous statement that "local practice" can be found out by making a phone call

17. The facts demonstrate Judge Ninfo's disregard for legality. In his orders in the Pfuntner and the DeLano cases, whether they be written or issued from the bench, he makes no mention of, let alone discusses, the law of Congress or the procedural rules approved by it, much less any court decision, not even decisions of the Supreme Court, and that in spite of Dr. Cordero's numerous citations, after painstaking research, of both statutory and case law as well as the rules and the facts, in support of the arguments in his briefs and motions, and at hearings. Judge Ninfo's decisions have no more basis than 'because-I-say-so-and-what-I-say-goes-here'. Why should he bother with the law to provide for the impartiality required by due process when he is accustomed to receiving the whole of due respect that comes with exercising unchallenged judicial power?
18. Only a person used to making rulings with the expectation that they be accepted uncritically by those depending on his good will rather than be examined under the criteria of the law and logic could make in the presence of a stenographer who is supposed to be keeping a record of his every word Judge Ninfo's comment on March 8, 2004, that Dr. Cordero should have called to find out what the local practice for the meeting of creditors was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. In addition to being flatly contradicted by the law (para. 5, supra), that comment is ludicrous!
19. A person reflexively expecting to be challenged by the participants in truly adversary proceedings would hardly even think that a non-local who lives hundreds of miles from

Rochester can phone somebody there to find out what the “local practice” is and such somebody would have the time, selfless motivation, and capacity to explain accurately and comprehensively the details of the “local practice” and its divergencies from the law and rules of the land of Congress. How could the details of such somebody place the non-local at arms length with his local adversaries, let alone with the judges and other court officers? By contrast, the details of how to implement such comment will readily reveal how impracticable it is and how impaired by bias and prejudice the judgment of he who made it is:

- a) Whom was Dr. Cordero supposed to call to obtain all the details of “local practice”? Had he called a clerk of court and asked that she tell him all there is about “local practice”, would she not have jumped and said, “Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m...” “No! no! I mean “local practice”, you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law.” Would the baffled clerk not think that Dr. Cordero was being facetious or conspiratorial and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by “local practice”?
- b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with him the winning secrets of “local practice”?
- c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether “local practice” would allow him to ask more than two questions at the officially convened meeting of creditors if he was the only creditor present?
- d) Should so much futile effort have justified Dr. Cordero in calling Tony Soprocal, the notorious Rochester attorney, whom the media calls “the master of local practice”? Dr. Cordero would come clean –Tony requires that from those he deals with- and admit that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten “local practice”. Tony would smirk, for in his line of work a euphemism is more expressive than any long speech. “Sure! You can retain me for the unwritable dirty secrets of how things get done in our local court. You can’t get more ‘local’ than through a chat with me...unless you also want ‘practice’, but that will cost them an arm and a leg...you too, but you pay me in money.”

“For...forgeta’bout it, Tony,” would babble a shaky Dr. Cordero, “the chat will be enough.”

- e) Then what? Could it be reasonable for Dr. Cordero to state at the next meeting or hearing what he expects Judge Ninfo to do because Tony said that’s the way it is done in “local practice”? Will Judge Ninfo say, “Now you are talking, Dr. Cordero! If Tony told you what the “local practice” is and you relied on it, then that’s the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance on the basis of my conduct as a judge.”

20. What nonsense! But the description of such scenes is not meaningless at all, for it shows starkly how uneven the field is when Judge Ninfo gives precedence to whatever it is that he calls “local practice” over both the written and published laws of Congress and official notices of the court, such as the notice of the meeting of creditors (para. 6, supra). The practical consequences of such abrogation by him of the law are very serious, for in addition to frustrating Dr. Cordero’s reasonable expectations that the proceedings will be held according to law, it renders for naught all his enormous effort to educate himself about the Bankruptcy Code, procedural rules, and case law as well as the time and money that he spends whenever he travels all the way to Rochester to appear in person in his court. By unfairly surprising him with his trump card of “local practice”, Judge Ninfo has created an untenable situation of legal uncertainty and arbitrariness. That is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice of the law given in advance and opportunity to be heard without bias or prejudice, not tidbits about “local practice” that one must ferret out on a hit and miss basis and rely on at one’s own risk.

21. That risk is all the more real and constant because Judge Ninfo’s bias and prejudice lead him to break faith even with his own statement of that “local practice”, whether stated orally or in a written order.

B. Judge Ninfo said in open court that he would issue Dr. Cordero’s written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero’s instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity

22. On July 9, 2004, Dr. Cordero submitted to Judge Ninfo a Statement analyzing the DeLanos’

bankruptcy petition and other few documents, which they belatedly produced upon request of Trustee Reiber after Dr. Cordero's repeated demands under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that the Trustee request them. The statement showed, among other things, how the DeLanos had engaged in bankruptcy fraud and how Trustee Reiber had failed to review the initial petition, to request documents for months, to subpoena documents when the DeLanos would not produce any, and how the Trustee had instead moved to dismiss the case due to the DeLanos' "unreasonable delay" in producing documents. Included in that Statement Opposing the Motion to Dismiss was Dr. Cordero's request for an order for the production of a specific list of documents.

23. At the hearing on July 19, 2004, of the Trustee's motion to dismiss, Dr. Cordero asked Judge Ninfo to grant his request for the order described in his July 9 Statement. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo decided that Dr. Cordero could do so and gave him his fax number to make it possible for him to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away.
24. Dr. Cordero reformatted into a proposed order the same text of the requested order, with the changes necessary to take into account what had occurred at the hearing, and faxed it to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was incorrect; he was then given the correct one.
25. But Judge Ninfo did not issue it. Instead, he gave precedence to the untimely objections of a local party, the DeLanos' attorney, Christopher Werner, Esq. In a letter addressed to Judge Ninfo delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." That was it. But that was enough for the Judge to take the hint. Att. Werner's letter was docketed immediately and made available through PACER. By contrast, Judge Ninfo not only failed to issue the proposed order; but he also did not even have it docketed forthwith, whereby he violated FRBkrP Rule 7005 and FRCivP Rule 5(e) and showed bias toward Att. Werner and the DeLanos.
26. In so doing, Judge Ninfo disregarded Dr. Cordero's statement in his letter accompanying the

proposed order that Att. Werner had had ten days since Dr. Cordero faxed his July 9 Statement to him to learn the breath of his requested order, yet he had failed to object to the Judge's decision at the hearing that Dr. Cordero should convert it into a proposed order and fax it to him. If, as the Attorney stated at the July 19 hearing, he has been in this business for 28 years, then he had to know his obligation to raise timely objections, particularly since:

- a) Att. Werner and the Judge knew what documents had been requested, many for months since Dr. Cordero's written Objections of March 4, 2004!;
- b) the Judge agreed to its production; and
- c) FRCivP Rule 26(b)(1) favors broad discovery (made applicable by FRBkrP Rule 7026).

27. It was simply too late for Att. Werner to object for the first time after the hearing was over; cf. FRCivP Rule 26(a)(1)(E) last paragraph, providing for disclosure "unless the party objects during the conference"; and FRCivP Rule 46, requiring exceptions to be made "at the time the ruling or order of the court is made or sought". Att. Werner's objection was untimely and constituted an unfair surprise. Dr Cordero protested. To no avail. Judge Ninfo, showing bias once more, did not even acknowledge Dr. Cordero's objection.

28. Nor did Judge Ninfo issue the faxed proposed order as agreed at the July 19 hearing, or for that matter any production order at all. Yet, by July 21 PACER¹ already contained the minutes of that hearing, which included the statement in capital letters:

Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

29. So Judge Ninfo made Dr. Cordero waste his time and effort once more (cf. §III of Dr. Cordero's motion of August 14, 2004, for docketing and other relief, herein incorporated by reference) in preparing and submitting a document that the Judge knew he was not going to act upon at all. Did he ask for it for leverage? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word cannot justifiably be relied on.

30. Even as late as July 26, the Judge had not caused Dr. Cordero's faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order to be docketed.

¹ PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers.

31. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

07/20/2004	<u>53</u>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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When Dr. Cordero clicked on the hyperlink 53, only the letter –page 1 of 5- downloaded as an Adobe PDF (Portable Document Format), but not the order! Why?!

32. By contrast, the entry for Att. Werner’s objection of July 19, 2004, to Dr. Cordero’s claim as creditor of the DeLano Debtors read thus.

07/22/2004	<u>51</u>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <u>1</u> Proposed Order # <u>2</u> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
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33. When Dr. Cordero clicked on the hyperlinks 51>2 an order proposed by Att. Werner to disallow Dr. Cordero’s claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo’s bias (cf. §II of Dr. Cordero’s motion of August 14, 2004, for other instances of a pattern of docket manipulation).

1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero’s proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, “expressed concerns”, thereby protecting the DeLanos from discovery that could show their bankruptcy fraud

34. As late as July 27, there had been no docketing of Dr. Cordero’s letter of July 21 to Judge Ninfo protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him.

35. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004, rather than Dr. Cordero’s proposed order that he had agreed to enter and the minutes of the July 19 hearing recorded its intended entry.

36. In his order, Judge Ninfo stated what it took to deny in effect Dr. Cordero’s proposed order:

WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached;

37. This is an unfortunate hybrid between ‘objections to’ and ‘concerns about’. It is indicative of Judge Ninfo’s awareness that due to untimeliness, Att. Werner could not have raised valid objections for the first time after the hearing was over. Nevertheless, it shows how little it took for the Judge to break faith with his word given in open court: “concerns” expressed untimely by the debtors’ attorney. On such “concerns”, the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud, such as:

- a) the bank account and debit card statements that could show the whereabouts of the DeLanos’ declared earnings of \$291,470 in only the three fiscal years 2001-2003, while they declared having:
- b) only \$535 in cash or in bank accounts...with Mr. DeLano’s bank, M&T, which may have issued a bank officer like him with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare possessing any such M&T Bank card, not to mention ‘sticking’ his employer with a bankruptcy debt, as they did other credit card issuers –most likely those that Veteran Banking Industry Mr. DeLano would know have a higher threshold of loss to trigger their participation in bankruptcy proceedings- on whose 18 credit cards they owe a whopping \$98,092;
- c) two cars worth together merely \$6,500;
- d) equity in their home of only \$21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe \$78,084;
- e) household goods worth only \$2,910...that’s all they have accumulated throughout their work lives!, despite the fact that they have earned over a hundred times that amount in only the last three years...unbelievable! Where did the money go or is?

38. But that common sense question Judge Ninfo would not ask, much less let Dr. Cordero find the answer to, never mind that the Judge has a duty under 11 U.S.C. §1325(a)(3) to ascertain whether “the [debtor’s debt repayment] plan has been proposed in good faith and not by means forbidden by law”. In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

The purpose of the examination [at the meeting of creditors] 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.

39. Far from pursuing this statutory line of inquiry, Judge Ninfo entered his July 26 Order, which was an inexcusably watered down version of Dr. Cordero's proposed order that he had agreed to enter. Despite the evidence of concealment of assets by the DeLanos, the Judge failed to require them to produce bank or *debit* account statements; documents concerning their undated "loan" of \$10,000 to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the mobile home admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents?
40. Consequently, Judge Ninfo's failure even to do his job under the Code, in addition to failing to keep his word, provides the foundation for the question whether he in effect denied Dr. Cordero's proposed order for document production by the DeLanos merely because of the undefined "concerns" expressed by Att. Werner or because of his own concerns and, if the latter, what are his concerns. Is the Judge protecting them because they are local parties and in general he has developed relationships with local parties that make him biased toward them, or because in particular Mr. DeLano is a 32-year veteran of the lending industry and knows too much about how abusive bankruptcies, even those to avoid repayment of loans to his bank, are handled? There is solid basis for the latter part of this question (§C, *infra*).

2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in *Pfuntner v. Gordon et al.* he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered

41. Still by Friday, August 6, neither Dr. Cordero's proposed order of July 19 nor his letter of July 21 had been docketed. On that day, Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
42. On Monday, August 9, Mr. Stickle informed Dr. Cordero that upon asking Judge Ninfo and his Assistant, Ms. Andrea Siderakis, he had been told that Dr. Cordero's July 21 fax never arrived.
43. That explanation for its not being docketed was definitely unacceptable: The fax went through

on July 22 and a copy sent to the Judge of Dr. Cordero's telephone bill showed that he did fax the letters and proposed order on July 20 and 22 to (585)613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: Judge Ninfo's chambers.

44. This was by no means the first time that Judge Ninfo sprung on Dr. Cordero such a surprise: In the *Pfuntner v. Gordon et al.*, docket no. 02-2230, in which both Mr. DeLano and Dr. Cordero are parties, the Judge dismissed Dr. Cordero's claims against Chapter 7 Trustee Kenneth Gordon, a local that so very frequently appears in his court (cf. ¶14, *supra*). Dr. Cordero timely mailed a notice of appeal on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that Dr. Cordero's motion had been timely filed on January 29, Judge Ninfo surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! By such expedient allegation contrary to fact, Judge Ninfo denied Dr. Cordero's motion. Moreover, the Judge would not even look into how that discrepancy could have arisen between his alleged date of January 30 for the filing and Trustee Gordon's admission against legal interest that the filing occurred on January 29. Thereby the Judge insured that Dr. Cordero's appeal against his dismissal was doomed. (cf. §I.A.1. of Dr. Cordero's motion of August 8, 2003, for Judge Ninfo to recuse himself from the *Pfuntner* case, which is herein incorporated by reference).
45. The trust that a party must have in the integrity of a judge and that a judge must earn by his irreproachable conduct was thus shattered; subsequent events have only replaced it with distrust. Under these circumstances, it is not just the appearance of lack of impartiality that warrants the recusal of Judge Ninfo, but also of lack of integrity. Alas, there is even further factual basis for such assertion.

C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan

46. The DeLanos commenced this case by their bankruptcy petition of January 26, 2004. Had they

wanted to object to Dr. Cordero's claim, they could and should have done so at that time. The reasons for this are that:

- a) It was they who in Schedule F therein named Dr. Cordero among their creditors;
- b) Mr. DeLano knew the nature and basis of Dr. Cordero's claim against him since he was served with his complaint of November 21, 2002, in *Pfuntner v. Gordon et al.*;
- c) Att. Werner signed that petition and, therefore, also knew of Dr. Cordero's claim against the DeLanos;
- d) both the DeLanos and Att. Werner knew that Dr. Cordero was determined to pursue his claim as stated in his Objection of March 4, 2004, to the Confirmation of the DeLanos' Plan of Debt Repayment, so determined that he traveled all the way from New York City, and in fact was the only creditor, to attend the meeting of creditors on March 8, 2004, at which, interestingly enough, Mr. DeLano was accompanied also by his attorney in the *Pfuntner* case, Michael Beyma, Esq., of Underberg & Kessler, LLP;
- e) Att. Werner objected to Dr. Cordero's status as creditor in his statement to Judge Ninfo of April 16, 2004, which Dr. Cordero refuted in his timely reply of April 25, after which Att. Werner dropped the issue and went on for months treating Dr. Cordero as a creditor; and
- f) Att. Werner continued to treat Dr. Cordero as a creditor for more than two months even after he filed his proof of claim on May 15, 2004.

47. But then only after Dr. Cordero faxed to Att. Werner his Statement of July 9, 2004 –in which he opposed Trustee Reiber's motion to dismiss and presented the evidence pointing to the DeLanos' having engaged in bankruptcy fraud, particularly concealment of assets- and after the hearing on July 19, 2004, did the DeLanos and Att. Werner come up with the idea of moving to disallow Dr. Cordero's claim.

48. It should be noted that for months Dr. Cordero had repeatedly requested under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate the DeLanos and require them to produce specific types of documents. His requests were met only with Trustee Reiber's avoidance of his duty to investigate, his ineffectiveness in obtaining documents when, at Dr. Cordero's insistence, he appeared to request them, and the DeLanos' effort to produce as few documents and as late as possible. Hence, in his July 9 Statement Dr. Cordero presented Judge Ninfo for the first time with a requested order for specific documents. How the Judge dealt with

that request has been described above (para. 23, supra). In addition, how he dealt in his Orders of August 30 and November 10, 2004, with the DeLanos' motion to disallow is no less revealing of his bias and disregard for the law, the rules, and the facts.

49. To begin with, the DeLanos' motion to disallow was untimely and barred by laches, coming as it did almost two years after Mr. DeLano had known of Dr. Cordero's claim and six months after they had acknowledged in their petition his status as a creditor and during which they dealt with him as a creditor. Mr. DeLano, with his career long experience as a bank *loan* officer, had reason to expect that during that time Dr. Cordero, a non-local, non-institutional, and pro se creditor, would be worn down, for he Mr. DeLano knew that even institutional lenders simply stay away from the overwhelming majority of bankruptcies and write off what is owed them. However, Dr. Cordero not only continued pursuing his claim, but also requesting documents that could show the DeLanos' bankruptcy fraud and even pointed to the evidence of their concealment of assets. Then they came up with the subterfuge of moving to disallow Dr. Cordero's claim. And Judge Ninfo played along with them!
50. Thus, the Judge stated in his August 30 Order, without providing any reasons in accordance with law or in light of the facts, as judges are supposed to do, but in another "local practice" this-is-so-because-I-say-so fiat that:

...the Claim Objection [the motion to disallow] was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection;

51. Through such fiat, without any citation of any authority, Judge Ninfo disregarded the Bankruptcy Code, which considers untimeliness such a grave fault that it provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. There can be no doubt that it is prejudicial to Dr. Cordero to have been treated as a creditor by the DeLanos for six months, during which he spent a lot of effort, time, and money researching and writing numerous papers, preparing for hearings, and even traveling to Rochester, only to be challenged, after he presented evidence of their bankruptcy fraud, on the threshold question whether he is a creditor at all.
52. Then Judge Ninfo severed Dr. Cordero's claim against Mr. DeLano from the Pfunter case and required Dr. Cordero to take discovery of Mr. DeLano to prove his claim, the one that the DeLanos themselves had taken the initiative to acknowledge in their petition. In so doing, he

severed that claim from the Pfunter case to try it out of the context of all the other parties and issues in that case, to the benefit of Mr. DeLano and the detriment of Dr. Cordero. Thereby he disregarded his own order entered at the hearing on October 16, 2003, where he suspended all proceedings in the Pfunter case until Dr. Cordero had appealed his decisions all the way to the Court of Appeals for the Second Circuit, where they had been since May 2, 2003, docket no. 03-5023, and from there to the Supreme Court. (Cf. §I of Dr. Cordero's motion of September 9, 2004, in the Court of Appeals, hereby incorporated by reference.) Once more the Judge had sprung another surprise on Dr. Cordero, frustrating his reasonable expectations, and further proving that the Judge's word cannot be relied on.

53. Likewise, in asking Dr. Cordero to prove his claim, the Judge disregarded FRBkrP Rule 3001(f) and the presumption of validity that had attached thereunder since May 15, 2004, to Dr. Cordero's properly filed claim (*id.*, §II).
54. Moreover, Judge Ninfo suspended every other aspect of the case, to the detriment of all the other creditors, and without citing any authority or giving any reason for taking a step that so unnecessarily redounds to the detriment of all the other 20 creditors, whose interest it is to have the case move along so that they can start receiving payment under the plan or see it denied and be free to collect from the DeLanos. Thereby, however, the Judge protected the DeLanos by not having to deal with the issue under 11 U.S.C. §1325(a)(3) whether "the plan has been proposed in good faith and not by means forbidden by law" (cf. ¶38, *supra*). Moreover, by so doing, he provided the DeLanos a subterfuge for not providing to Dr. Cordero the documents that could prove their bankruptcy fraud, so that they claimed in the Statement by Att. Werner of November 9, 2004, "All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtor's finances and have nothing to do with the matter at hand, which is Cordero's claim", targeted by the DeLanos' motion to disallow. Perfect pitcher-catcher coordination, but severely defective by its disregard of the rules (§C.2, *infra*).

1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity

55. To comply with the Order to prove his claim, Dr. Cordero requested the DeLanos on September 29, to produce a specific list of documents very similar to those on his proposed request of July 19, as well as other documents relating specifically to his claim against Mr. DeLano stemming

from the Pfuntner case.

56. In his Response of October 28, 2004, by Att. Werner, Mr. DeLano declined discovery of every item requested by Dr. Cordero either as irrelevant or not in the DeLanos' possession. However, that statement is irreconcilable with the facts and the legal obligations of the DeLanos.
57. Let's begin with the pretense that the DeLanos did not have in their possessions the requested documents. At of Dr. Cordero's instigation, Trustee Reiber requested on April 20 and May 18, 2004, that the DeLanos produce documents to support their petition. Although his request was unjustifiably insufficient in its scope given the claims and statements that the DeLanos had made in their petition, the Trustee requested the statements for the last three years of each of 8 of the 18 credit cards that they had listed in Schedule F. Even so, what the DeLanos produced on June 14, 2004, was a single statement for each of those 8 cards and they were between 8 and 11 months old! That fell indisputably short of what they had been requested to produce and showed their effort to avoid producing any documents at all, so much so that the Trustee moved to dismiss their case for "unreasonable delay". Nevertheless, by producing them the DeLanos also showed that they did keep such statements for many months and presumably for all their cards, for it is implausible that they just happened to have one single statement of each of the cards that happened to be included in the request.
58. Dr. Cordero brought to Trustee Reiber's attention the gross insufficiency of what they had produced. Eventually, on July 28, 2004, the DeLanos produced some of the statements that Att. Werner had subpoenaed from issuers of those credit cards. Among them was the set produced by Discover Card for Mr. DeLano's account 6011 0020 4000 6645. It included the statements since April 16, 2001, until the one with the payment due date of May 29, 2004. All of them were addressed to him at the DeLanos' home on 1262 Shoecraft Road, Webster, NY 14580-8954. This shows that as late as May 2004, months after filing their petition, the DeLanos kept receiving monthly credit card statements. It is also all but certain that they kept receiving the monthly statements for the other credit card that they had. The evidence for this is found in the credit bureau reports for each of the DeLanos, which show credit cards with activity well into 2004.

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	i: July 2004 p: January 2004
2.			D	Capital One Bank	4862 3621 5719*	i: July 2004 p: February 2004
3.			D	Cbusa sears	3480 0743 0*	i: July 2004
4.			D	Genesee Regional Bank		i: July 2004 p: June 2004
5.			D	MBNA Amer	4313 0229 9975*	i: May 2004
6.			D	Wells Fargo Financial	674-1772	i: February 2004
7.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	p: February 2004
8.	Experian	July 26, 04	D	Bank of America	4024 0807 6136...	b: May 2004
9.			D	Bank of Ohio	4266 86 99 5018	p: May 2004: \$197
10			D	Bk I TX	4712 0207 0151...	p: May 2004: \$205
11			D	Capital One Auto Finance	6206 2156 8765 2	b: June 2004
12			D	Fleet M/C	5487 8900 2018...	p: May 2004: \$172
13			D	HSBC Bank USA	5215 3170 0105...	p: February 04: \$160
14			D	MBGA/JC Penney	80246...	p: July 2004: \$57
15			D	MBNA America Bank NA	7499 0999 89...	b: May 2004
16			D	MBNA America Bank NA	5329 0319 9996...	b: May 2004
17			D	W F Finance	1070 9031 772...	b: June 2004
18			D	First Premier Bank	4610 0780 0310...	p: July 2004: \$48
19			D	Kaufmanns	R25243	b: April 2004
20			D	The Bon Ton	8601...	b: June 2004
21	Experian	July 26, 04	M	Capital One Bank	4862 3622 6671...	b: February 2004
22			M	Fleet M/C	5487 8900 2018...	p: May 2004: \$172
23			M	MBGA/JC Penney	80246...	p: July 2004: \$57
24			M	MBNA America Bank NA	4313 0229 9975...	b: May 2004
25			M	Kaufmanns	R25243	b: April 2004
26			M	The Bon Ton	8601...	b: June 2004
27	TransUnion	July 26, 04	D	Norwest Finance	1070 9031 7720 544	u: June 2004
28			D	First USA Bank.	4712 0207 0151 3292	u: April 2004
29			D	First USA Bank	4266 8699 5018 4134	u: April 2004
30			D	Summit Acceptance Corp	6206 2156 8765 2100 1	u: June 2004

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
31			D	Citi Cards	3480 0743 0593 0	u: July 2004
32			D	MBNA America	4313 0228 5801 9530	u: April 2004
33	TransUnion	July 26, 04	M	Discover Financial Svc	6011 0020 4000 6645	u: June 2004
34			M	Chase NA	4102 0082 4002 1537	u: May 2004
35			M	Citi Cards	3480 0743 0593 0	u: July 2004
36			M	JC Penney/MBGA	1069 9076 5	p: July 2004

59. These 36 accounts are by no means all those that the DeLanos have, just those for which those particular credit bureau reports as of July of last year provide a date under any of the categories of the last column of the table above and for which that date is in 2004. Nevertheless, they are enough to show that only an utterly biased person toward the DeLanos could even imagine that they did not receive any credit card statements so that they could no produce them to comply with the requests for those statements. They had no shortage of such requests: of April 20 and May 18 by Trustee Reiber; of August 14, September 29, and November 4 by Dr. Cordero; and the Order of July 26 of Judge Ninfo. Only a person utterly biased could disregard the fact that the DeLanos not only were billed, but also paid credit card charges as late as July 2004, the month when they requested those credit bureau reports. In fact, at the meeting of creditors held on February 1, 2005, at Trustee Reiber's office, Mr. DeLano admitted for the record that he currently uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156.

60. Likewise, only a person utterly biased toward the DeLanos could assume that they no longer have any checking or savings accounts despite their reference in Schedule B to their having them with M&T Bank, where Mr. DeLano still works. Therefore, they must have received monthly statements of those accounts, which they could also have produced.

61. Consequently, they must be presumed to have concealed those statements. But if they did not have them in their possession, that would only mean that they systematically destroyed them. In so doing, they could have followed the example of their advisor, Att. Werner. He stated for the record at their examination that he destroyed documents that the DeLanos had provided him for the preparation of the petition and that he engages in that practice routinely. That constitutes a

flagrant violation of 18 U.S.C. §1519, found in Chapter 73-Obstruction of Justice and providing as follows:

Whoever knowingly alters, destroys, mutilates, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of...any case filed under title 11, or in relation to or contemplation of any such...case, shall be fined under this title, imprisoned not more than 20 years, or both.

62. In the same vein, the few credit card statements that they produced, and more so the credit bureau reports, show that the DeLanos were systematically engaged in a skip and pay pattern for juggling their astonishingly high number of credit cards. This follows from the Equifax reports of July 23, 2004, which show that the DeLanos failed to make the minimum monthly payment a staggering 279 times!
63. It follows that Att. Werner's assertion in that April 16 Statement to the Court that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" was plainly untrue. If Att. Werner had conducted even a cursory inquiry, let alone a reasonable one under the suspicious circumstances of a bank loan officer that goes bankrupt owing \$98,092 on unsecured credit cards, he would have readily realized that such a statement was untrue. Therefore, Att. Werner violated FRBkrP Rule 9011(b). As to the DeLanos, to the extent that they gave him that information, they intentionally misled him, the Court, and all the creditors and parties in interest.
64. Consequently, the DeLanos' **1)** scores of credit card accounts; **2)** their charging since "1990 and prior credit card purchase" (Bkr. petition, Schedule F) tens of thousands of dollars for "living expenses" (Att. Werner's written statement to the Court dated April 16, 2004) and for the two-year educational expenses of their two children at a low in-state tuition, near-home community college; **3)** their systematic failure to make even the minimum payments, **4)** their expert knowledge about the lending industry's handling of delinquencies and bankruptcies; and **5)** their concealment of account statements that they indisputably received and were legally bound to keep, show that the DeLanos made the life-style choice to live it up on credit cards without ever intending to pay their unsecured issuers while concealing the whereabouts of the \$291,470 that they earned in just the 2001-03 fiscal years according to their petition and their 1040 IRS forms.
65. Consequently, only a disingenuous person could pretend that the DeLanos did not produce the

requested documents because they did not have them in their possession. Moreover, only a person utterly biased toward them could disregard these facts about the conduct of the DeLanos for more than 15 years, since ‘1990 and prior years’ [Bkr. Petition, Schedule F], and still refer to them, as Judge Ninfo did in his August 30 Order, as “honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case”. How impartial can he appear to a reasonable observer?

2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!

66. Confirming this favorable prejudgment of the DeLanos before they had ever taken the stand or even had their petition formally submitted to him by Trustee Reiber, Judge Ninfo stated in his Order of November 10, 2004, that he “in all respects denied...the Cordero Discovery Motion” of November 4, “because DeLano indicated in the Response [to Dr. Cordero’s discovery request of September 29] that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding”. This the Judge stated although Mr. DeLano did not provide a single document requested by Dr. Cordero! He just took Mr. DeLano’s self-serving assertion at face value and purely and simply disregarded the facts and common sense.
67. Judge Ninfo made that decision by disregarding once more the rules. He did not even mention, let alone discuss, as judges do who apply the law, Dr. Cordero’s argument in his November 4 motion about the broad scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), providing that “Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or **defense** of any party” (emphasis added). Based thereon, Dr. Cordero argued that he was entitled to defend against the DeLanos’ untimely motion to disallow his claim, which led to Judge Ninfo’s August 30 Order requiring him to take discovery from Mr. DeLano. His defense is dependent precisely on taking discovery that will allow him to establish, among other things, that the DeLanos’ motion is a desperate attempt in contravention of FRBkrP 9011(b) to eliminate him from their case because he is the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of documents that can show whether they submitted their petition in bad faith in violation of 11 U.S.C. §1325(a)(3) and are engaged in bankruptcy fraud, particularly

concealment of assets.

68. Had Judge Ninfo had any regard for the rules, he would not have uncritically sustained Att. Werner's wholesale denial in his October 28 Response to Dr. Cordero's discovery request on the pretense that "all of such demands are not relevant to the claim of Richard Cordero against the Debtors." Instead, he would have complied, as judges respectful of the legality do, with FR CivP Rule 26(b)(1), which provides that:

...Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

69. Moreover, had Judge Ninfo not been so blind by his bias, he would have put two and two together to conclude that the DeLanos' avoidance for months of their duty to comply under 11 U.S.C. §521(3) and (4) with Trustee Reiber's document production requests to the point that the Trustee moved to dismiss for "unreasonable delay" constituted reasonable evidence that in refusing to provide even one single document requested by Dr. Cordero Mr. DeLano was engaging in the same conduct aimed at the same objective, namely, concealing documents to prevent the discovery of his bankruptcy fraud.

70. By Judge Ninfo forcing Dr. Cordero to take discovery of Mr. DeLano to prove his claim against Mr. DeLano without requiring the latter to overcome the presumption of validity attached to a properly filed claim under FRBkrP Rule 3001(f), only to deny him every single document requested, the Judge has made sure that Dr. Cordero is deprived of the means of examining effectively Mr. DeLano at the upcoming evidentiary hearing. Judge Ninfo has set up Dr. Cordero to fail at a hearing that will be a sham!

3. Judge Ninfo has protected from Dr. Cordero's discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero's application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge's bias or because a 32-year veteran bank loan officer knows too much not to be protected

71. Mr. DeLano was the M&T Bank Officer who lent money for Mr. David Palmer to run his moving and storage company Premier Van Lines, which went bankrupt and gave rise to *Pfuntner v. Gordon et al.*, in which both Mr. DeLano and Dr. Cordero are parties. Mr. Palmer too is a party in that case. He was supposed to store Dr. Cordero's property, but in fact abandoned it while he kept taking in his storage and insurance fees. Dr. Cordero served him

with a summons and complaint, which Mr. Palmer never answered. Consequently, Dr. Cordero served him with an application dated December 26, 2002, for default judgment for a sum certain under FRCivP Rule 55, made applicable by FRBkrP Rule 7055, and applied to Judge Ninfo for the entry of such judgment.

72. However, even after Mr. Palmer was defaulted by the Clerk of Court Paul Warren on February 4, 2003, the Judge would not enter such judgment. Instead, flatly contradicting the requirements of Rule 55, Judge Ninfo imposed on Dr. Cordero the obligation to conduct an “inquest” to establish loss or damage of his property. Dr. Cordero participated in such an “inquest” on May 19, 2003. At the hearing on May 21, it was established that there had been loss or damage of Dr. Cordero’s property to the point that Judge Ninfo himself asked Dr. Cordero to resubmit his application for default judgment. Dr. Cordero did resubmit the same application on June 7. Nevertheless, at the hearing on June 25, 2003, Judge Ninfo would not enter it! He denied it by raising for the first time the pretext that Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back in December 2002 and that the Judge had had six months to examine! (Cf. §§I.B. and C. of Dr. Cordero’s motion of August 8, 2003.)
73. Why would Judge Ninfo ask him to resubmit the application, make him spend his effort, time, and money to do so while getting his hopes high if the Judge was going to deny it on the basis of an element that he had known for six months? Why did Judge Ninfo feel the need to become the advocate of defaulted Mr. Palmer and keep him away from his court rather than protect Dr. Cordero, whose property Mr. Palmer had lost or damaged through negligence, recklessness, and fraud? These questions are particularly pertinent because it was Mr. Palmer who had invoked the protection of the law by applying for voluntary bankruptcy on March 5, 2001, and thereby submitted himself to the jurisdiction of Judge Ninfo, under which he still was. Why did the Judge not hold Mr. Palmer to his obligation under the law to answer a summons or let him contest for himself a default judgment, as he could do under FRCivP Rules 55(c) and 60(b)?
74. Therefore, how inconsistent for Judge Ninfo to state in his Order of August 30, 2004, that “...the Court is not aware of any evidence whatsoever, produced either in the Premier A[dversary]P[roceeding] or in the DeLano Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage...”. How can the Judge cast doubt on the fact of such loss or damage since

he so much acknowledged that there had been such that he asked Dr. Cordero to resubmit the application for default judgment?...only to deny it again! What this shows is that Judge Ninfo does not know what he has done and only knows that he will do and say anything so long as it is to protect the local parties and injure Dr. Cordero. (Cf. §II of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals.)

75. This background provides the foundation for asking how much Mr. DeLano, as a party in the Pfuntner case and the lender to Mr. Palmer, knows that could incriminate others in bankruptcy fraud. In turn, this begs the question in how many other cases during his 32-year long career as a bank officer Mr. DeLano has been involved one way or another so that now he knows too much not to be protected. The same motives for Judge Ninfo to protect Mr. Palmer from Dr. Cordero's application for default judgment may explain why he is now protecting Mr. DeLano from Dr. Cordero's effort to obtain the documents showing his involvement in bankruptcy fraud. None of those motives, however, can legally justify Judge Ninfo's bias and prejudice against Dr. Cordero.

III. THE TOTALITY OF CIRCUMSTANCES ASSESSED BY A REASONABLE PERSON GIVES RISE TO THE APPEARANCE OF BIAS AND PREJUDICE ON THE PART OF JUDGE NINFO THAT REQUIRES HIS RECUSAL

76. Every assertion that Dr. Cordero has made in this motion or in his other papers referred to here has been supported either by citations and discussion of the applicable law and rules or facts established by other documents in the dockets of the cases under consideration (Table of References, *infra*). Moreover, in our system of justice a person can lose his property, his freedom, and even his life on the basis of circumstantial evidence. Hence, the approach taken by fair and impartial persons, whether they be judges, jurors, or observers, when examining evidence is, not to chip away at it by discarding its elements one by one out of context, but rather to take into consideration "the totality of circumstances" and analyze it from the point of view of the reasonable persons that the law requires people to be. Such persons would proceed on the sound principle that two similar events can be explained away as a coincidence, but three form a pattern.

77. In the DeLano case, just as in the Pfuntner case, Judge Ninfo, without citing a single law or rule, let alone discussing any, but rather disregarding their provisions as well as the surrounding facts and instead engaging in his very own "local practice" (§§9 et seq., *supra*), has made a series of

decisions that so consistently benefit the local parties and injure Non-local Pro se Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias. This is the antithesis of process in accordance with law and constitutes a denial of due process (cf. §III of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals).

78. In light thereof, would it appear to a reasonable person informed of all the surrounding facts and circumstances of these cases that in the DeLano case generally, and at the upcoming evidentiary hearing in particular, Mr. DeLano or Dr. Cordero could say anything that would cause Judge Ninfo to reach any other but the forgone conclusion that Dr. Cordero has no claim against Mr. DeLano, that his claim should be disallowed, and that he has no standing to oppose the confirmation of the DeLanos' plan?...and good riddance! If so, the appearance of partiality has been reasonably questioned and Judge Ninfo has a statutory duty to recuse himself from the DeLano case. (Cf. §II of Dr. Cordero's motion of August 8, 2003.)

IV. RELIEF REQUESTED

79. Therefore, Dr. Cordero respectfully requests that:

- 1) in the interest of justice the DeLano case and the Pfuntner case, and at any rate the former, be removed under 28 U.S.C. §1412 to another district where a court unrelated to any of the parties or Judge Ninfo can give rise to the expectation that it will afford all parties a fair and impartial process, as presumably will do the U.S. court for the Northern District of New York in Albany (cf. §III of Dr. Cordero's motion of August 8, 2003);
- 2) a report be made under 18 U.S.C. §3057(a) of these cases to U.S. Attorney General Alberto Gonzales for investigation into bankruptcy fraud; into concealment of assets and other bankruptcy offenses under 18 U.S.C. §152 et seq.; and of the trustees pursuant to 28 U.S.C. §526(a)(1); and that it be recommended that the investigation be conducted by neither the U.S. Attorney's Office nor the FBI Office in Rochester or Buffalo, NY, but rather by such Offices whose personnel is not related to or familiar with any party in these cases, as presumably are the Offices in Washington, D.C., and Chicago;
- 3) Judge Ninfo recuse himself from both cases, and at any rate from the DeLano case.

February 17, 2005

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Dr. Richard Cordero

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TABLE OF REFERENCES

papers and documents referred to in the motion for Judge John C. Ninfo, II, WBNY, to recuse himself of February 17, 2005, by Dr. Richard Cordero

1. ***Dr. Cordero's** motion of **August 8, 2003, for Judge Ninfo** to remove the Pfuntner case and **recuse himself**
2. ***Dr. Cordero's** motion of **November 3, 2003, to the Court of Appeals** for the Second Circuit for leave to file updating supplement of evidence of **bias** in Judge **Ninfo's** denial of Dr. Cordero's request for a trial by jury
3. Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines
4. Voluntary Petition of January 26, 2004, under Chapter 13 of the Bankruptcy Code, with Schedules, of David DeLano and Mary Ann DeLano
5. Chapter 13 Plan of January 26, 2004
6. Dr. Cordero's Objections of March 4, 2004, to the confirmation of the DeLanos' Chapter 13 debt repayment plan
7. "Debtors' statement of April 16, 2004, in opposition to Cordero objection [sic] to claim of exemptions", submitted and filed with the court by Att. Werner
8. Dr. Cordero's Statement of July 9, 2004, in opposition to Trustee Reiber's motion to dismiss the DeLano petition and containing in the relief the text of a requested order
9. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:

Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004, to the court
10. Att. Werner's notice of hearing and order of July 19, 2004, objecting to Dr. Cordero's claim and moving to disallow it
11. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his:
12. Proposed order for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's Statement of July 9, 2004

* Incorporated by reference.

13. Att. Werner's letter of July 20, 2004, to Judge Ninfo, delivered via messenger, objecting to Dr. Cordero's proposed order for document production
14. Att. Werner's letter of July 20, 2004, to Dr. Cordero accompanying the following document:

Dr. Cordero's letter of July 21, 2004, faxed to Judge Ninfo, requesting that he issue the proposed order as agreed at the hearing on July 19, 2004
15. Judge Ninfo's order of July 26, 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter"
16. *Dr. Cordero's motion of **August 14**, 2004, for **docketing** and issue, **removal**, referral, examination, and other relief, noticed for August 23 and 25, 2004
17. Judge Ninfo's Interlocutory Order of August 30, 2004, requiring Dr. Cordero to take discovery of his claim against Debtor DeLano arising from the Pfuntner v. Gordon et al. case on appeal in the Court of Appeals for the Second Circuit
18. *Dr. Cordero's motion of **September 9**, 2004, in the **Court of Appeals** for the Second Circuit to **quash** the **order** of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to sever a claim from the case on appeal in the **Court of Appeals** to try it in the DeLano bankruptcy case, docket no. 04-20280
19. Dr. Cordero's letter of September 29, 2004, to Att. Werner requesting production of documents pursuant to Judge Ninfo's order of August 30, and without prejudice to Dr. Cordero's motion of September 9, to quash it in the Court of Appeals
20. Att. Werner's letter of October 28, 2004, to Dr. Cordero accompanying Mr. DeLano's Response to discovery demand of Richard Cordero-Objection to Claim of Richard Cordero, where discovery of every item requested is denied as not relevant and the item concerning Mr. Palmer is said not to be in Mr. DeLano's possession
21. Dr. Cordero's motion of November 4, 2004, to enforce Judge Ninfo's Order of August 30, 2004, by ordering Mr. DeLano to produce the requested documents and declaring that the Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos
22. Att. Werner's statement of November 9, 2004, to the court on behalf of the DeLanos to oppose Cordero [sic] motion regarding discovery and request that it be denied in all respects
23. Judge Ninfo's Order of November 10, 2004, denying in all respects Dr. Cordero's motion of November 4 and holding the hearing, noticed for November 17, to be moot

* Incorporated by reference.

CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated February 17, 2005, for Judge John C. Ninno, II, WBNY, to recuse himself:

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

PREMIER VAN LINES, INC.,

Debtor

Chapter 7
Case no: 01-20692

JAMES PFUNTER,

Plaintiff

Adversary Proceeding
Case no: 02-2230

-vs-

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

Defendants

**MOTION
FOR REMOVAL OF CASE
AND
RECUSAL OF JUDGE NINFO**

RICHARD CORDERO

Third party plaintiff

-vs-

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

Third party defendants

Dr. Richard Cordero affirms under penalty of perjury the following:

1. This court, the Hon. John C. Ninfo, II, presiding, and court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice against Dr. Cordero.
2. Therefore, Dr. Cordero moves for Judge Ninfo to recuse himself from this adversary proceeding under 28 U.S.C. §455(a), which provides that:

Any justice, judge, or magistrate of the United States **shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned; (emphasis added).

3. The court officers in this court as well as in the District Court, located in the same building upstairs, that have participated in such a pattern of wrongful conduct have thus far deprived Dr.

Cordero of rights, forced him to shoulder oppressive procedural burdens, and exposed him to grave procedural risks. They have given rise to the reasonable fear that due to their bias and prejudice they will in the future likewise disregard facts, rules, and law in both courts and thereby subject Dr. Cordero to similar judicial proceedings, including eventually a trial, that will be tainted with unfairness and partiality.

4. To prevent this from happening and this court and other court officers from causing Dr. Cordero further waste of time, effort, and money as well as even more emotional distress, it is necessary that this case be removed to a district court in another district where it can be reasonably expected that Dr. Cordero will be afforded the fair and impartial judicial proceedings to which he is legally entitled.

TABLE OF CONTENTS

I. Statement of facts illustrating a pattern of non-coincidental, intentional, and coordinated acts of this court and other court officers from which a reasonable person can infer their bias and prejudice against Dr. Cordero.....	392
A. The court has tolerated Trustee Gordon’s submission to it of false statements as well as defamatory statements about Dr. Cordero	392
1. The court dismissed Dr. Cordero’s counterclaims against the Trustee before any discovery, which would have shown how it tolerated the Trustee’s negligent and reckless liquidation of the Debtor for a year, and with disregard for the legal standards applicable to a 12(b)(6) motion.....	393
2. The court excused Trustee Gordon’s defamatory and false statements as merely “part of the Trustee just trying to resolve these issues,” thereby condoning the Trustee’s use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero	394
3. The court disregarded the Trustee’s admission that Dr. Cordero’s motion to extend time to file notice of appeal had been timely filed and, surprisingly finding that it had been untimely filed, denied it.....	394

4. The court reporter tried to avoid submitting the transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it	395
B. The bankruptcy and the district courts denied Dr. Cordero’s application for default judgment although for a sum certain by disregarding the plain language of applicable legal provisions as well as critical facts	397
1. The Bankruptcy Clerk of Court and the Case Administrator disregarded their obligations in the handling of the default application	397
2. The court disregarded the available evidence in order to prejudge a happy ending to Dr. Cordero’s property search	398
3. The court prejudged issues of liability, before any discovery or discussion of the applicable legal standards, to further protect Mr. Palmer at the expense of Dr. Cordero	399
4. The court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application, but that is a pretense factually incorrect and utterly implausible	400
C. The district court repeatedly disregarded the outcome-determinative fact that the application was for a sum certain	400
1. The district court disregarded Rule 55 to impose on Dr. Cordero the obligation to prove damages at an “inquest” and dispensed with sound judgment by characterizing the bankruptcy court as the “proper forum” to conduct it despite its prejudgment and bias	402
2. The bankruptcy court asked Dr. Cordero to resubmit the default judgment application only to deny the same application again by alleging that Dr. Cordero had not proved how he had arrived at the amount claimed or that he had served Mr. Palmer properly, issues that it knew about for six or more months	402
3. The court intentionally misled Dr. Cordero into thinking that it had in good faith asked him to resubmit with the intent to grant the application	403
D. The bankruptcy court has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations	404

1. After the court issued the first order and Dr. Cordero complied with it to his detriment, it allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months	404
2. When Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the court, which changed the terms of the first order.....	404
3. The court requires that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester	405
4. The court showed no concern for the disingenuous motion that Mr. MacKnight submitted to it and that Dr. Cordero complained about in detail, whereby the court failed to safeguard the integrity of judicial proceedings	405
5. The court issued at Mr. Pfuntner's instigation its second order imposing on Dr. Cordero an onerous obligation that it never imposed on any of the other parties and then allowed Mr. Pfuntner and Mr. MacKnight to flagrantly disobey it as they did the first one.....	406
6. The court asked Dr. Cordero to submit a motion for sanctions and compensation only to deny granting it even without Mr. Pfuntner and Mr. MacKnight responding or otherwise objecting to it.....	407
7. The court's trivial grounds for denying the motion showed that it did not in good faith ask Dr. Cordero to submit it for it never intended to grant it	408
E. The court has decided after 11 months of having failed to comply with even the basic case management requirements that starting on the 13th month it will build up a record over the next nine to ten months during which it will maximize the transactional cost for Dr. Cordero, who at the end of it all will lose anyway.....	409
1. The court will in fact begin in October, not with the trial, but with its series of hearings, or rather "discrete hearings," whatever those are.....	410
2. The court is so determined to make Dr. Cordero lose that at a hearing it stated that it will require him to prove his motions' evidence beyond a reasonable doubt.....	411
3. The court latched on to Mr. MacKnight's allegation that he might not have understood Dr. Cordero and that it might be due to his appearances by phone so as to justify its denial of further phone appearances that it nevertheless continues to allow in other cases	412

4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights	412
5. The court already discounted one of Dr. Cordero’s claim against one party and ignores his other claims against the other parties.....	414
6. The court gave short notice to Dr. Cordero that he had to appear in person, the cost to him notwithstanding, to argue his motion for sanctions for the submission to it of false representations by Mr. MacKnight -who had not bothered even to file a response-, thus causing Dr. Cordero to withdraw the motion	415
F. Bankruptcy and district court officers to whom Dr. Cordero sent originals of his Resignation of Items in the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals, thereby creating the risk of the appeal being thrown out for non-compliance with an appeal requirement	416
1. Court officers also failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero’s appeal to the Court of Appeals	417

II. Recusal is required when to a reasonable person informed of the circumstances the judge’s conduct appears to lack impartiality.....418

A. Recusal should be granted because equity demands it in the interest of justice	420
B. Recusal should be carried out in the interests of judicial economy.....	421

III. To provide for fair and impartial judicial process, this case should be removed to the District Court for the Northern District of New York, held at Albany422

A. To avoid further injury through bias and prejudice, removal should be carried out forthwith, so that this motion must be decided now.....	422
--	-----

IV. Relief sought423

I. Statement of facts illustrating a pattern of non-coincidental, intentional, and coordinated acts of this court and other court officers from which a reasonable person can infer their bias and prejudice against Dr. Cordero

5. Systematically the court has aligned itself with the interests of parties in opposition to Dr. Cordero. Sua sponte it has become their advocate, whether they were absent from the court because in default, as in Mr. Palmer's case, or they were in court and very much capable of defending their interests themselves, as in the cases of Trustee Gordon, Mr. Pfuntner, and Mr. MacKnight.

A. The court has tolerated Trustee Gordon's submission to it of false statements as well as defamatory statements about Dr. Cordero

6. Dr. Cordero -who resides in NY City, entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993. From then on he paid storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about his property. Mr. Palmer and his attorney, Raymond Stilwell, Esq., assured him that it was safe and in his warehouse at Jefferson-Henrietta, in Rochester). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.

7. In search of his property in storage with Premier Van Lines, Dr. Cordero was referred to Kenneth Gordon, Esq., the trustee appointed for its liquidation. The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him.

8. Eventually Dr. Cordero found out from third parties that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by Mr. James Pfuntner. However, the latter

refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but in a letter of September 23, 2002, improper in its tone and unjustified in its content, he also enjoined Dr. Cordero not to contact him or his office anymore.

9. Dr. Cordero applied to this court, to whom the Premier case had been assigned, for a review of the Trustee's performance and fitness to serve.
10. In an attempt to dissuade the court from undertaking that review, Trustee Gordon submitted to it false statements as well as statements disparaging of the character and competence of Dr. Cordero. The latter brought this matter to the court's attention. However, the court did not even try to ascertain whether the Trustee had made such false representations in violation of Rule 9011(b)(3) F.R.Bkr.P.. Instead, it satisfied itself with just passing Dr. Cordero's application to the Trustee's supervisor, an assistant U.S. Trustee, who was not even requested and who had no obligation to report back to the court.
11. By so doing, the court failed in its duty to ensure respect for the conduct of business before it by an officer of the court and a federal appointee, such as Trustee Gordon, and to maintain the integrity and fairness of proceedings for the protection of injured parties, such as Dr. Cordero. The court's handling of Dr. Cordero's application to review Trustee Gordon's performance, even before they had become parties to this adversary proceeding, would turn out to be its first of a long series of manifestations of bias and prejudice in favor of Trustee Gordon and other parties and against Dr. Cordero.

1. The court dismissed Dr. Cordero's counterclaims against the Trustee before any discovery, which would have shown how it tolerated the Trustee's negligent and reckless liquidation of the Debtor for a year, and with disregard for the legal standards applicable to a 12(b)(6) motion

12. In October 2002, Mr. Pfuntner served the papers for this adversary proceeding on several defendants, including Trustee Gordon and Dr. Cordero.
13. Dr. Cordero, appearing pro se, cross-claimed against the Trustee, who moved to dismiss. Before discovery had even begun or any initial disclosure had been provided by the other parties –only Dr. Cordero had disclosed numerous documents with his pleadings- and before any conference of parties or pre-trial conference under Rules 26(f) and 16 F.R.Civ.P., respectively, had taken

place, the court summarily dismissed the cross-claims at the hearing on December 18, 2002. To do so, it disregarded the genuine issues of material fact at stake as well as the other standards applicable to motions under Rule 12(b)(6) F.R.Civ.P., both of which Dr. Cordero had brought to its attention.

2. The court excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues," thereby condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero

14. At the December 18 hearing, the court excused the Trustee in open court when it stated that:

"I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court...it's all part of the Trustee just trying to resolve these issues." (Transcript, pp.10-11)

15. Thereby the court approved of the use of defamation and falsehood by an officer of the court trying to avoid review of his performance. By thus sparing Trustee Gordon's reputation as trustee at the expense of Dr. Cordero's, the court justified any reasonable observer in questioning its impartiality. Moreover, by blatantly showing its lack of ethical qualms about such conduct, the court also laid the foundation for the question whether it had likewise approved the Trustee's negligent and reckless liquidation of Premier, which would have been exposed by allowing discovery. In the same vein, the court's approval of falsehood as a means 'to resolve issues' warrants the question of what means it would allow court officers to use to resolve matters at issue, such as its own reputation.

3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed and, surprisingly finding that it had been untimely filed, denied it

16. The order dismissing Dr. Cordero's crossclaims was entered on December 30, 2002, and mailed from Rochester. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003. It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved in district court to dismiss it as untimely filed. it.

17. Dr. Cordero timely mailed a motion to extend time to file the notice under Rule 8002(c)(2) F.R.Bkr.P. Although Trustee Gordon himself acknowledged on page 2 of his brief in apposition that the motion had been timely filed on January 29, this court surprisingly found that it had been untimely filed on January 30!
18. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly have made a mistake on such a critical matter. Nevertheless, the court disregarded the factual discrepancy without even so much as wondering how it could have come about, let alone ordering an investigation into whether somebody and, if so, who, had changed the filing date and on whose order. The foundation for this query is provided by evidence of how court officers mishandled docket entries and the record for Dr. Cordero's cases (paras. 32 below and 97 below). Instead, the court rushed to deny the motion to extend, which could have led to the review of its dismissal of Dr. Cordero's cross-claims.

4. The court reporter tried to avoid submitting the transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it

19. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the December 18 hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript.
20. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for... "You said that it would be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript.
21. There is further evidence supporting the implication of Reporter Dianetti's comment and giving rise to the concern that at hearings and meetings where Dr. Cordero is a participant the court engages in exchanges with parties in Dr. Cordero's absence. Thus, on many occasions the court

has cut off abruptly the phone communication with Dr. Cordero, in contravention of the norms of civility and of its duty to afford all parties the same opportunity to be heard and hear it.

22. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking its gavel, but simply by just pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, the court brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left. What is not only likely but in fact certain is that by so doing, the court, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Would the court have given by such conduct to any reasonable person at the opposite end of the phone line cause for offense and the appearance of partiality and unfairness?
23. The confirmation that Reporter Dianetti was not acting on her own in avoiding the submission of the transcript was provided by the fact that the transcript was not sent on March 12, the date on her certificate. Indeed, it was filed two weeks later on March 26, a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent to him. Thus, the transcript reached him only on March 28.
24. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering the transcript "to the party or judge" –was she even the one who sent it to the party?- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.
25. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" notations and passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in use. But no imagination is needed, only an objective assessment of the facts and the applicable legal provisions, to ask whether the Reporter was told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript to a higher-up court officer to be vetted before

mailing a final version to Dr. Cordero. When a court officer or officers so handle a transcript, which is a critical paper for a party to ask on appeal for review of a court's decision, an objective observer can reasonably question in what other wrongful conduct that denies a party's right to fair and impartial proceedings they would engage to protect themselves.

B. The bankruptcy and the district courts denied Dr. Cordero's application for default judgment although for a sum certain by disregarding the plain language of applicable legal provisions as well as critical facts

26. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees for years. Mr. Palmer, as president of the Debtor, was already under the bankruptcy court's jurisdiction. Nonetheless, he failed to answer Dr. Cordero's summons and complaint. Hence, Dr. Cordero timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain on December 26, 2002. But nothing happened for over a month during which Dr. Cordero had no oral or written response from the court to his application.
27. Dr. Cordero called to find out. He was informed by Case Administrator Karen Tacy that the court had withheld his application until the inspection of his property in storage because it was premature to speak of damages. Dr. Cordero indicated that he was not asking for damages, but rather for default judgment as a result of Mr. Palmer's failure to appear. Ms. Tacy said that Dr. Cordero could write to the court if he wanted.
28. Dr. Cordero wrote to the court on January 30, 2003, to request that the court either grant his application or explain its denial.
29. Only on February 4, did the court take action, or Clerk of Court Paul Warren, or Clerk Tacy, for that matter. In addition, when Dr. Cordero received a copy of the papers file by the court, what he read was astonishing!

1. The Bankruptcy Clerk of Court and the Case Administrator disregarded their obligations in the handling of the default application

30. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added) upon receiving Dr. Cordero's application of December 26, 2002. Yet, it was only on February 4, 41 days later and only at Dr.

Cordero's instigation), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay. He had to certify the fact of default to the court so that the latter could take further action on the application. It was certainly not for the Clerk to wait until the court took action.

31. It is not by coincidence that Clerk Warren entered default on February 4, the date on the bankruptcy court's Recommendation to the district court. Thereby the Recommendation appeared to have been made as soon as default had been entered. It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.
32. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until entering it out of sequence on "EOD 02/04/03" (docket entries no. 51, 43, 46, 49, 50, 52, 53)? Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer. Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it?
33. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

2. The court disregarded the available evidence in order to prejudge a happy ending to Dr. Cordero's property search

34. In its Recommendation of February 4, 2003, to the district court, the bankruptcy court characterized the default judgment application as premature because it boldly forecast that:

...within the next month the Avon Containers will be opened in the presence of Cordero, at which point it may be determined that Cordero has incurred no loss or damages, because all of the Cordero Property is accounted for and in the same condition as when delivered for storage in 1993.
35. The court wrote that on February 4, but the inspection did not take place until more than 3 three months later on May 19; it was not even possible to open all containers; the failure to enable the opening of another container led to the assumption that other property had been lost; and

the single container that was opened showed that property had been damaged. (paras. 63 below).

36. What a totally wrong forecast! Why would the court cast aside all judicial restraint to make it? Because it was in fact a biased prejudgment. It sprang from the court's need to find a pretext to deny the application. Such denial was pushed through by the court disregarding the provisions of Rule 55, which squarely supported the application since it was for judgment for Mr. Palmer's default, not for damage to Dr. Cordero's property; Mr. Palmer had been found in default by Clerk of Court Warren; and it requested a sum certain. .
37. What is more, for its biased prejudgment, the court not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, the storage containers with Dr. Cordero's property were said to have been left behind by Mr. Palmer in the warehouse of Mr. Pfuntner. The latter had written in his complaint that property had been removed from his warehouse premises without his authorization and at night. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged.
38. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice. From a court who forms anticipatory judgments, a reasonable person would not expect to receive fair and impartial treatment, much less a fair trial because at trial the prejudiced court could abuse his authority to show that its prejudgments were right.

3. The court prejudged issues of liability, before any discovery or discussion of the applicable legal standards, to further protect Mr. Palmer at the expense of Dr. Cordero

39. In the same vein, the court cast doubt on the recoverability of "moving, storage, and insurance fees...especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property." On what evidence did the court make up its mind on the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero? The court has never requested disclosure of, not to mention scheduled discovery or held an evidentiary hearing on, the storage contract, or the

terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry.

40. Such a leaning of the mind before considering pertinent evidence is called bias. From such a biased court, a reasonable person would not expect impartiality toward a litigant such as Dr. Cordero, who as pro se may be deemed the weakest among the parties; as the only non-local, and that for hundreds of miles, may be considered expendable; and to top it off has challenged the court on appeal.

4. The court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application, but that is a pretense factually incorrect and utterly implausible

41. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in its Recommendation of February 4, 2003, that:

10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers...

42. However, that suggestion was never made. Moreover, Dr. Cordero would have had absolutely no motive to accept it if ever made: Under Rule 55 an application for default judgment for a sum certain against a defaulted defendant is not dependent on proving damages. It is based on the defendant's failure to heed the stark warning in the summons that if he fails to respond, he will be deemed to consent to entry of judgment against him for the relief demanded. Why would a reasonable person, such as Dr. Cordero, ever put at risk his acquired right to default judgment in exchange for aleatory damages that could not legally be higher than the sum certain of the judgment applied for? What fairness would a disinterested observer fully informed of the facts underlying this case expect from a court that to excuse its errors puts out such kind of untenable pretense?

C. The district court repeatedly disregarded the outcome-determinative fact that the application was for a sum certain

43. The district court, the Hon. David G. Larimer presiding, accepted the bankruptcy court's February 4 Recommendation and in its order of March 11, 2003, denied entry of default judgment. Its stated ground therefor was that:

[Dr. Cordero] must still establish his entitlement to damages since the matter **does not involve a sum certain** [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate...the Bankruptcy Court is the proper forum for conducting [that] inquest. (emphasis added)

44. What an astonishing statement!, for in order to make it, the district court had to disregard five papers stating that the application for default judgment did involve a sum certain:

- 1) Dr. Cordero's Affidavit of Amount Due; ;
- 2) the Order to Transmit Record and Recommendation; ;
- 3) the Attachment to the Recommendation; ;
- 4) Dr. Cordero's March 2 motion to enter default judgment; and
- 5) Dr. Cordero's March 19 motion for rehearing re implied denial of the earlier motion.

45. The district court made it easy for itself to disregard Dr. Cordero's statement of sum certain, for it utterly disregarded his two motions that argued that point, among others.

46. After the district court denied without discussion and, thus, by implication, the first motion of March 2, Dr. Cordero moved that court for a rehearing so that it would correct its outcome-determinative error since the matter did involve a sum certain. However, the district court did not discuss that point or any other at all. Thereby it failed to make any effort to be seen if only undoing its previous injustice, or at least to show a sense of institutional obligation of reciprocity toward the requester of justice, a quid pro quo for his good faith effort and investment of countless hours researching, writing, and revising his motions. It curtly denied the motion "in all respects" period!

47. Also with no discussion, the district court disregarded Dr. Cordero's contention that when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55.

48. By making such a critical mistake of fact and choosing to proceed so expediently, the district court gave rise to the reasonable inference that it did not even read Dr. Cordero's motions, thereby denying him the opportunity to be heard, particularly since there was no oral argument. Instead, it satisfied itself with just one party's statements, namely the bankruptcy court's February 4 Recommendation. If so, it ruled on the basis of what amounted to the ex parte approach of the bankruptcy court located downstairs in the same building. It merely

rubberstamped the bankruptcy court's conclusion...after mistranscribing its content, a quick job that did justice to nobody. Would such conduct give to an objective observer the appearance of unfairness toward Dr. Cordero and partiality in favor of the colleague court?

1. The district court disregarded Rule 55 to impose on Dr. Cordero the obligation to prove damages at an “inquest” and dispensed with sound judgment by characterizing the bankruptcy court as the “proper forum” to conduct it despite its prejudgment and bias

49. The equities of this case show that Mr. Palmer had such dirty hands that he did not even dare come to court to answer Dr. Cordero's complaint. Yet, both courts spared him the consequences of his default and instead weighed down Dr. Cordero's shoulders with the contrary-to-law burden of proving damages at an inquest. The latter necessarily would have to be conducted by the bankruptcy court playing the roles of the missing defendant, its expert witness, the jury, and the judge. For a court to conduct an inquest under such circumstances would offend our adversarial system of justice, and all the more so because the court has demonstrated to have already prejudged the issues at stake and its outcome. Would an objective observer reasonably expect the bankruptcy court to conduct a fair and impartial inquest or the district court to review with any degree of care its findings and conclusions?

2. The bankruptcy court asked Dr. Cordero to resubmit the default judgment application only to deny the same application again by alleging that Dr. Cordero had not proved how he had arrived at the amount claimed or that he had served Mr. Palmer properly, issues that it knew about for six or more months

50. Pursuant to court order, Dr. Cordero flew to Rochester on May 19 and inspected the storage containers said to hold his stored property at Mr. Pfuntners' warehouse in Avon. At a hearing on May 21, he reported on the damage to and loss of property of his. Thereupon, the court sua sponte asked Dr. Cordero to resubmit his application for default judgment against Mr. Palmer. Dr. Cordero resubmitted the same application and noticed a hearing for June 25 to discuss it.

51. At that hearing, the court surprised Dr. Cordero and how! The court alleged that it could not grant the application because Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back on December 26, 2002! So why did the court ask Dr. Cordero to resubmit the application if it was not prepared to grant it anyway? But this was not all.

52. At a hearing the following week, on July 2, Dr. Cordero brought up again his application for default judgment. The court not only repeated that Dr. Cordero would have to prove damages, but also stated that he had to prove that he had properly served Mr. Palmer because it was not convinced that service on the latter had been proper. What an astonishing requirement!
53. And so arbitrary: Dr. Cordero served Mr. Palmer's attorney of record, David Stilwell, Esq., who has proceeded accordingly; Dr. Cordero certified service on him to Clerk of Court Warren and the service was entered on the docket on November 21, 2002; subsequently Dr. Cordero served the application on both Mr. Palmer and Mr. Stilwell on December 26. What is more, Clerk Warren defaulted Mr. Palmer on February 4, 2003, thus certifying that Mr. Palmer was served but failed to respond. Hence, with no foundation whatsoever, the court cast doubt on the default entered by its own Clerk of Court.
54. Likewise, with no justification it disregarded Rule 60(b), which provides an avenue for a defaulted party to contest a default judgment. Instead of recommending the entry of such judgment under Rule 55 and allowing Mr. Palmer to invoke 60(b) to challenge service if he dare enter an appearance in court, the court volunteered as Mr. Palmer's advocate in absentia. In so doing, the court betrayed any pretense of impartiality. Would a reasonable person consider that for the court to protect precisely the clearly undeserving party, the one with dirty hands, it had to be motivated by bias and prejudice against Dr. Cordero or could it have been guided by some other interest?

3. The court intentionally misled Dr. Cordero into thinking that it had in good faith asked him to resubmit with the intent to grant the application

55. If the court entertained any doubts about the validity of the claim or proper service although it had had the opportunity to examine those issues for six and eight months, respectively, it lacked any justification for asking Dr. Cordero to resubmit the application without disclosing those doubts and alerting him to the need to dispel them. By taking the initiative to ask Dr. Cordero to resubmit and doing so without accompanying warning, it raised in him reasonable expectations that it would grant the application while it could also foresee the reasonable consequences of springing on him untenable grounds for denial: It would inevitably disappoint those expectations and do so all the more acutely for having put him through unnecessary work. It follows that the court intentionally inflicted emotional distress on Dr. Cordero by taking him

for a fool! Would a reasonable person trust this court at all, let alone trust it to be fair and impartial in subsequent judicial proceedings?

D. The bankruptcy court has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations

1. After the court issued the first order and Dr. Cordero complied with it to his detriment, it allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months

56. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect the storage containers that bear labels with his name at Plaintiff Pfuntner's warehouse. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties. Nonetheless, the court neither answered it nor informed Dr. Cordero of the most convenient date.

57. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, Mr. MacKnight, who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed. But Dr. Cordero had to keep those six dates open on his calendar for no good at all and to his detriment.

2. When Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the court, which changed the terms of the first order

58. Months later Mr. Pfuntner wanted to get the inspection over with to clear his warehouse, sell it, and be in Florida worry-free to carry on his business there. Out of the blue he called Dr. Cordero on March 25 and proposed dates in one week. When Dr. Cordero asked him whether he had taken the necessary preparatory measures discussed in his January 29 letter, Mr. Pfuntner claimed not even to have seen the letter.

59. Thereupon, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P.. Reportedly the court stated that it would not be available for the

inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfunter to agree mutually.

3. The court requires that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester

60. Dr. Cordero raised a motion on April 3 to ascertain this change of the terms of the court's first order and insure that the necessary transportation and inspection measures were taken beforehand. The court received the motion on April 7, and on that very same day, thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing –as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester, That this was an illogical pretext is obvious and that it was arbitrary is shown by the fact that after that the court allowed Dr. Cordero to appear four more times by phone. Unable to travel to Rochester shortly after that surprising requirement, Dr. Cordero had to withdraw his motion.

4. The court showed no concern for the disingenuous motion that Mr. MacKnight submitted to it and that Dr. Cordero complained about in detail, whereby the court failed to safeguard the integrity of judicial proceedings

61. Meantime Mr. MacKnight raised his own motion. Therein he was so disingenuous that, for example, he pretended that Mr. Pfunter had only sued in interpleader and should be declared not liable to any party, while concealing the fact that Trustee Gordon and the Bank had stated in writing, even before the law suit had started, that they laid no claim to any stored property. So there were no conflicting claims and no basis for interpleader at all. Mr. MacKnight also pretended that Mr. Pfunter had abstained from bringing that motion before “as an accommodation to the parties,” while holding back that it was Mr. Pfunter, as plaintiff, who had sued them to begin with even without knowing whether they had any property in his warehouse, but simply because their names were on labels affixed to storage containers...some ‘accommodation’ indeed! Mr. MacKnight also withheld the fact that now it suited Mr. Pfunter to drop the case and skip to sunny Florida, so that he was in reality maneuvering to strip the parties of their claims against him through the expedient of a summary judgment while leaving them holding the bag of thousands and thousands of dollars in legal fees and shouldering the

burden of an enormous waste of time, effort, and aggravation. . Dr. Cordero analyzed in detail for the court Mr. MacKnight's mendacity and lack of candor, to no avail.

62. Although the court has an obligation under Rule 56(g) to sanction a party proceeding in bad faith, it disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would a reasonable person expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

5. The court issued at Mr. Pfunter's instigation its second order imposing on Dr. Cordero an onerous obligation that it never imposed on any of the other parties and then allowed Mr. Pfunter and Mr. MacKnight to flagrantly disobey it as they did the first one

63. Nor did the court impose on Mr. Pfunter or Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfunter wanted, the court order Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

64. Pursuant to the second court order Dr. Cordero went all the way to Rochester and on to Avon on May 19 to inspect at Mr. Pfunter's warehouse the containers said to hold his property. However, not only did both Mr. Pfunter and his warehouse manager fail even to attend, but they had also failed to take any of the necessary preparatory measures discussed since January 10 and which Mr. MacKnight had assured the court at the April 23 hearing had been or would be taken care of before the inspection.

65. At a hearing on May 21 Dr. Cordero reported to the court on Mr. Pfunter's and Mr. MacKnight's failures concerning the inspection and on the damage to and loss of his property. Once more the court did not impose any sanction on Mr. Pfunter or Mr. MacKnight for their disobedience of the second discovery order and merely preserved the status quo.

6. The court asked Dr. Cordero to submit a motion for sanctions and compensation only to deny granting it even without Mr. Pfuntner and Mr. MacKnight responding or otherwise objecting to it

66. But the court was not going to make it nearly that easy for Dr. Cordero. At that May 21 hearing Dr. Cordero asked for sanctions against and compensation from Mr. Pfuntner and Mr. MacKnight for having violated to his detriment both of the discovery orders. The court asked that he submit a written motion. Dr. Cordero noted that he had already done so. The court said that he should do so in a separate motion and that in asking him to do so the court was trying to help him.
67. Dr. Cordero wrote a motion on June 6 for sanctions and compensation under Rules 37 and 34 F.R.Civ.P., made applicable in adversary proceedings by Rules 7037 and 7034 F.R.Bkr.P., respectively, to be imposed on Mr. Pfuntner and Mr. MacKnight. It was not only a legal document that set out in detail the facts and the applicable legal standards, but also a professionally prepared statement of account with exhibits to demonstrate the massive effort and time that Dr. Cordero had to invest to comply with the two discovery orders and deal with the non-compliance of the other parties. To prove compensable work and its value, it contained an itemized list more than two pages long by way of a bill as well as a statement of rates and what is more, it provided more than 125 pages of documents to support the bill.
68. All in all the motion had more than 150 pages in which Dr. Cordero also argued why sanctions too were warranted: Neither Mr. Pfuntner, Mr. MacKnight, nor the warehouse manager attended the inspection and none of the necessary preparatory measures were taken. Worse still, they engaged in a series of bad faith maneuvers to cause Dr. Cordero not to attend the inspection, in which case they would ask the court to find him to have disobeyed the order and to order his property removed at his expense from Mr. Pfuntner's warehouse; and if Dr. Cordero nevertheless did attend, to make him responsible for the failure of the inspection, for the fact is that Mr. Pfuntner never intended for the inspection to take place. It was all a sham!
69. Yet, Mr. Pfuntner and Mr. MacKnight had nothing to worry about. So much so that they did not even care to submit a brief in opposition to Dr. Cordero's motion for sanctions and compensation. Mr. MacKnight did not even object to it at its hearing on June 25. The court did

it for them at the outset, volunteering to advocate their interests just as it had advocated Mr. Palmer's to deny Dr. Cordero's application for default judgment.

7. The court's trivial grounds for denying the motion showed that it did not in good faith ask Dr. Cordero to submit it for it never intended to grant it

70. The court refused to grant the motion alleging that Dr. Cordero had not presented the tickets for transportation –although they amount to less than 1% of the total- or that that he had not proved that he could use Mr. MacKnight's hourly rate –even though that is the legally accepted lodestar method for calculating attorney's fees-. But these were just thinly veiled pretexts. The justification for that statement is that the court did not even impose any of the non-monetary sanctions. It simply was determined to protect Mr. Pfuntner and Mr. MacKnight from any form of punishment for having violated two of its own orders, its obligation to safeguard the integrity of the judicial process notwithstanding.

71. The court was equally determined to expose Dr. Cordero to any form of grief available. Thus, it denied the motion without giving any consideration to where the equities lay between complying and non-complying parties with respect to its orders; or to applying a balancing test to the moral imperative of compensating the complying party and the need to identify a just measuring rod for the protection of the non-complying parties required to compensate; or to the notion of substantial compliance when proving a bill for compensation; let alone the applicable legal standards for imposing sanctions. Even a court's intent can be inferred from its acts: Once more, this court had simply raised Dr. Cordero's expectations when requiring him to submit this motion because 'I'm trying to help you here' while it only intended to dash them after Dr. Cordero had done a tremendous amount of extra work. Once more, the court took Dr. Cordero for a fool and thereby intentionally inflicted emotional distress on him! Is this not the way for a court to impress upon a reasonable person the appearance of deep-seated prejudice and gross unfairness?

E. The court has decided after 11 months of having failed to comply with even the basic case management requirements that starting on the 13th month it will build up a record over the next nine to ten months during which it will maximize the transactional cost for Dr. Cordero, who at the end of it all will lose anyway

72. The June 25 hearing was noticed by Dr. Cordero to consider his motion for sanctions and compensation as well as his default judgment application. However, the court had its own agenda and did not allow Dr. Cordero to discuss them first. Instead, it alleged, for the first time, that it could hardly understand Dr. Cordero on speakerphone, that the court reporter also had problems understanding him, and that he would have to come to Rochester to attend hearings in person; that the piecemeal approach and series of motions were not getting the case anywhere and that it had to set a day in October and another in November for all the parties to meet and discuss all claims and motions, and then it would meet with the parties once a month for 7 or 8 months until this matter could be solved.
73. Dr. Cordero protested that such a way of handling this case was not speedy and certainly not inexpensive for him, the only non-local party, who would have to travel every month from as far as New York City, so that it was contrary to Rules 1 F.R.Civ.P. and 1001 F.R.Bkr.P.
74. The court replied that Dr. Cordero had chosen to file cross-claims and now he had to handle this matter that way; that he could have chosen to sue in state court, but instead had sued there, and that all Mr. Pfuntner wanted was to decide who was the owner of the property; that instead Dr. Cordero had claimed \$14,000, but the ensuing cost to the court and all the parties could not be justified; that the series of meetings was necessary to start building a record for appeal so that eventually this matter could go to Judge Larimer.
75. The court's statements are mind-boggling by their blatant bias and prejudice as well as disregard of the facts and the law. To begin with, it is just inexcusable that the court, which has been doing this work for over 30 years, has mismanaged this case for eleven months since September 2002, so that it has:
- a) failed to require even initial disclosure under Rule 26(a);
 - b) failed to order the parties to hold a Rule 26(f) conference;
 - c) failed to demand a Rule 26(f) report;
 - d) failed to hold a Rule 16(f) scheduling conference;
 - e) failed to issue a Rule 16(f) scheduling order;

f) failed to demand compliance with its first discovery order by not requiring Mr. MacKnight as little as to choose one of Dr. Cordero's six proposed dates for the Rochester trip and inspection;

g) failed to insure execution by Mr. Pfuntner and Mr. MacKnight of its second and last discovery order.

76. It is only now that the court wants to 'start building a record'...what a damning admission that it has not built anything for almost a year! However, it wants to build it at Dr. Cordero's expense by requiring him to travel monthly to Rochester for an unjustifiably long period of seven to eight months after the initial hearings next October and November. This is not so much an admission of incompetence as it is an attempt to further rattle Dr. Cordero and maximize the transactional cost to him in terms of money and inconvenience, just as the court put Dr. Cordero through the extra work of resubmitting the default judgment application (paras. et seq. 50 above) and writing a separate sanctions and compensation motion (paras. 66 above) only to deny both of them on already known or newly concocted grounds.

1. The court will in fact begin in October, not with the trial, but with its series of hearings, or rather "discrete hearings," whatever those are

77. At the June 25 hearing to the court proposed a slate of dates for the first hearings in October and November and asked the parties to state their choice at a hearing the following week.

78. At the July 2 hearing, Dr. Cordero again objected to the dragged-out series of hearings. The court said that the dates were for choosing the start of trial. Nevertheless, Dr. Cordero withheld his choice in protest.

79. But the court has just issued an order dated July 15 where there is no longer any mention of a trial date. The dates in October and November are for something that the court designates as "discrete hearings." Dr. Cordero has been unable so far to find in either the F.R.Bkr.P. or the F.R.Civ.P. any provision for "discrete hearings," much less an explanation of how they differ from a plain "hearing." Therefore, Dr. Cordero has no idea of how to prepare for a "discrete hearing."

80. In any event, the point is this: There is no trial, just the series of hearings announced by the court at the June 25 hearing, which will be dragged out for seven to eight months after those in

October and November. There is every reason to believe that the court will in fact drag out this series that long, for it stated in the order that at the “discrete hearings” it will begin with Plaintiff Pfuntner’s complaint. Thereby it admitted by implication that after more than a year of mismanagement the court has not gotten this case past the opening pleading. Given the totality of circumstances relating to the way the court has treated Dr. Cordero, would an objective observer reasonably fear that by beginning at that elemental stage of the case, the court will certainly have enough time to teach Dr. Cordero a few lessons of what it entails for a non-local pro se to come into its court and question the way it does business with Trustee Gordon or the other locals?

2. The court is so determined to make Dr. Cordero lose that at a hearing it stated that it will require him to prove his motions’ evidence beyond a reasonable doubt

81. At the July 2 hearing Dr. Cordero protested the court’s denial of his motion for sanctions and compensation and his default judgment application. The court said that if he wanted, he could present his evidence for his motions in October. However, it warned him that he would have to present his evidence properly, that it was not enough to have evidence, but that it also had to be properly presented to meet the burden of proof beyond a reasonable doubt, and that on television sometimes the prosecutor has the evidence but he does not meet the burden of reasonable doubt and he ends losing his case, and that likewise at trial Dr. Cordero would have to be prepared to meet that burden of proof.
82. What an astonishing statement! It was intended to shock Dr. Cordero and it did shock him with the full impact of its warning: It did not matter if he persisted in pursuing his motions, the court would hold the bar so high that the he would be found to have failed to clear it. It was not just a warning; it was the announcement of the court’s decision at the end of trial, the one that had not yet started!
83. But the shock was even greater when Dr. Cordero, a pro se litigant, realized that he could not be required to play the role of a prosecutor, that this is an adversary proceeding and as such a civil matter, not a criminal case. Upon further research and analysis, Dr. Cordero became aware of the fact that to prove something beyond a reasonable doubt is the highest of three standards of proof, and that there are two lower ones applied to civil matters, namely proof by a preponderance of the evidence and the one requiring clear and convincing evidence. Moreover,

there is not compelling reason why Dr. Cordero should not be allowed to prove his claims against Mr. Palmer, Mr. Pfuntner, and Mr. MacKnight by a preponderance of the evidence, the lowest standard. The court's warning was just intended to further rattle Dr. Cordero and intentionally inflict on him even more emotional distress. There is further evidence supporting this statement.

3. The court latched on to Mr. MacKnight's allegation that he might not have understood Dr. Cordero and that it might be due to his appearances by phone so as to justify its denial of further phone appearances that it nevertheless continues to allow in other cases

84. It was Mr. MacKnight who in a paper dated June 20 alleged that:

The undersigned has been unable to fully understand all Cordero's presentations when he appears by telephone means, though the undersigned believes though is by no means certain that he has understood the substance of Cordero's arguments. [sic]

85. From this passage it becomes apparent that the source of Mr. MacKnight's inability to understand does not reside in Dr. Cordero, regardless of how he appears in court. Nonetheless, the court rallied to Mr. MacKnight's side and picked up his objection to make it its own. Requiring Dr. Cordero to appear in person in court will run up his expenses excessively and wreak havoc with his calendar, for the court will require him to be in court at 9:30 a.m. so that he will have to leave New York City on Tuesday and stay at a hotel in order to be in court on time the next morning.

86. Indeed, the court's objective at the end of this dragged-out process is not to achieve a just and equitable solution to the controversy among the parties. Rather, it already knows that the record will be that of a case so unsatisfactorily decided that it will be appealed; it even knows that the appeal will land in Judge Larimer's hands. Could an objective observer who knew how receptive Judge Larimer was to the court's recommendation to deny Dr. Cordero's default judgment application (paras. 43 above) reasonably infer from the court's comment that the court was letting Dr. Cordero know that he could be as dissatisfied with its rulings and object as much as he liked, an appeal would again get him nowhere?; and thus, that Dr. Cordero is doomed to lose, they will make sure of it?

4. The court blames Dr. Cordero for being required now to travel to Rochester monthly because he chose to sue and to do so in

federal rather than state court, whereby the court disregards the law and the facts and penalizes Dr. Cordero for exercising his rights

87. The court blames Dr. Cordero for having to travel now to Rochester monthly since he chose to sue in federal court. This statement flies in the face of the facts. At the outset is the fact that Mr. Palmer had the bankruptcy and liquidation of his company, Premier Van Lines, dealt with in federal court under federal law. Then Mr. Pfuntner brought his adversary proceeding in federal court and under federal law. He sued not only Dr. Cordero, but also Trustee Gordon, a federal appointee, and other parties. He claims from them \$20,000 and has asked for contribution from all of them.
88. Contrary to the court's misstatement, Mr. Pfuntner did not only want to determine who owned what in his warehouse. He also sued for administrative and storage fees. What is more, no two parties were adverse claimants to the same property in Mr. Pfuntner's warehouse. Far from it, Trustee Gordon and the Bank have let the court know in writing that neither lays claim to Dr. Cordero's property and that they encourage Mr. Pfuntner to release that property to him. Thus, Mr. Pfuntner's claim in interpleader is bogus. All Mr. Pfuntner wanted was to recoup somehow the lease fees that Mr. Palmer owes him. To that end, he sued everybody around, even the Hockey Club, which has stated not to have any property in the warehouse at all, but whose name Mr. Pfuntner found on a label.
89. If Dr. Cordero had filed his counter-, cross-, and third-party claims in state court, he would still have had to travel to Rochester, so what difference does it make whether he has to travel to Rochester to attend proceedings in a state court in Rochester or in a federal court in Rochester? If Dr. Cordero had filed his claims in state court, whether in New York City or in Rochester, Mr. Pfuntner and the other parties could have removed them to federal court under 28 U.S.C. §1452(a) if only for reasons of judicial economy, assuming that the state court had agreed to exercise jurisdiction at all given that property of the Premier estate was involved, e.g. the storage containers and vehicles, over which the federal court has exclusive jurisdiction under 28 U.S.C. §1334(e).

5. The court already discounted one of Dr. Cordero's claim against one party and ignores his other claims against the other parties

90. The court asserts that Dr. Cordero sued for \$14, 000. This amount is only one item of Dr. Cordero's claim against only one party, namely, Mr. Palmer. The total amount of that claim appears in Dr. Cordero's application for default judgment against that party, to wit, \$24,032.08. The reason for the court asserting that the claim is only \$14,000 is that in its Recommendation of February 4, 2003, for the district court to deny the application, the court cast doubt on the recoverability of "moving, storage, and insurance fees" (para. 39 above), never mind that to do so it had to indulge in a prejudgment before having the benefit of disclosure, discovery, or a defendant given that Mr. Palmer has not showed up to challenge either the claim or the application.
91. Since that February 4 prejudgment, the court's prejudice against Dr. Cordero has intensified to the point that now the court has definitely discounted the amount in controversy, although it legally remains valid until disposition of the claim at trial or on appeal. What is more, the court has already dismissed Dr. Cordero's claims against the other parties, for example, the claim for \$100,000 against Trustee Gordon for defamation and the claim for the Trustee's reckless and negligent liquidation of Premier, claims that the court dismissed but that are on appeal and can be reinstated, unless the court presumes to prejudge the decision of the Court of Appeals for the Second Circuit. Likewise, the court's prejudice has already dismissed Dr. Cordero's claims against Mr. Dworkin, Jefferson Henrietta Associates, Mr. Delano, and the Bank for their fraudulent, reckless, or negligent conduct in connection with Dr. Cordero's property as well as those for breach of contract, not to mention the request for punitive damages. And why would the court ignore Dr. Cordero's claims against Mr. MacKnight's client, Mr. Pfuntner, for compensation, among other things, for denying his right to access, inspect, remove, and enjoy his property?
92. This set of facts warrants the question whether a court that reduces a party's claim to a minimal expression even before a trial date is anywhere in the horizon and loses sight altogether of other claims can give the appearance of either impartiality or knowing what it is talking about. Would an objective observer reasonably question whether the court twists the facts because due to incompetence it ignores even the basic facts of a case that has been before it for almost a year or rather because its bias and prejudice against Dr. Cordero prompts it to make any

statement, however ill-considered or contrary to the facts, so long as it is to Dr. Cordero's detriment? Is it not quite illogical for the court, on the one hand, to blame Dr. Cordero for having run up excessive costs for the court and the parties given that his claim is only for \$14,000, and on the other hand, to drag out this case for the next 9 to 10 months?

6. The court gave short notice to Dr. Cordero that he had to appear in person, the cost to him notwithstanding, to argue his motion for sanctions for the submission to it of false representations by Mr. MacKnight -who had not bothered even to file a response-, thus causing Dr. Cordero to withdraw the motion

93. There must be no doubt that the court intends to maximize Dr. Cordero's transactional cost of prosecuting this case: On June 5 Mr. MacKnight submitted representations to the court concerning Dr. Cordero's conduct at the inspection. Whereas Mr. MacKnight did not attend, Dr. Cordero did and he knows those representations to be objectively false. After the appropriate request for Mr. MacKnight to correct them and the lapse of the safe haven period under Rule 9011 F.R.Bkr.P., Dr. Cordero moved for sanctions on July 20. Mr. MacKnight must have received from the court such an unambiguous signal that he need not be afraid of the court imposing any sanctions requested by Dr. Cordero that again he did not even bother to oppose the motion.
94. Instead, the court had Case Administrator Karen Tacy call Dr. Cordero near noon on Thursday, July 31, to let him know that it had denied his request to appear by phone and that if he did not appear in person, it would deny the motion; otherwise, he could contact all the parties to try to obtain their consent to its postponement until the hearing in October.
95. The court waited until only 6 days before the hearing's return date of August 6 to let him know. Moreover, it knows because Dr. Cordero has brought it to its attention that Mr. MacKnight has ignored the immense majority of his letters and phone calls, and has even challenged the validity of Mr. Pfuntner's written agreement to the May 19 inspection. Dr. Cordero could not risk being left waiting by Mr. MacKnight only to play into his hands given the foreseeable consequences. He withdrew the motion.
96. To appear in person would have cost Dr. Cordero an enormous amount of money, for he would have had to buy flight and hotel tickets at the highest, spot price and cut to pieces two weekdays on very short notice. And what for? To be in court at 9:30 a.m. for a 15 to 20 minutes

hearing. Would an objective person who knew about the court's indifference to the submission of falsehood to it have expected the court to give more importance to imposing sanctions for the sake of the court's integrity than to denying them to make Dr. Cordero's trip for naught in order to keep wearing him down financially and emotionally?

F. Bankruptcy and district court officers to whom Dr. Cordero sent originals of his Redesignation of Items in the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals, thereby creating the risk of the appeal being thrown out for non-compliance with an appeal requirement

97. Dr. Cordero knew that to perfect his appeal to the Court of Appeals he had to comply with Rule 6(b)(2)(B)(i) F.R.A.P. by submitting his Redesignation of Items on the Record and Statement of Issues on Appeal. He was also aware of the suspected manipulation of the filing date of his motion to extend time to file the notice of appeal, which so surprisingly prevented him from refiling his notice of appeal to the district court (paras. 16 above). Therefore, he wanted to make sure of mailing his Redesignation and Statement to the right court. To that end, he phoned both Bankruptcy Case Administrator Karen Tacy and District Appeals Clerk Margaret (Peggy) Ghysel. Both told him that his original Designation and Statement submitted in January 2003 was back in bankruptcy court; hence, he was supposed to send his Redesignation and Statement to the bankruptcy court, which would combine both for transmission to the district court, upstairs in the same building.
98. But just to be extra safe, Dr. Cordero mailed on May 5 an original of the Redesignation and Statement to each of the court clerks. What is more, he sent one attached to a cover letter to District Clerk Rodney Early.
99. It is apposite to note that in the letter to Mr. Early, Dr. Cordero pointed out a mistake, that is, that in the district court's acknowledgement of the notice of appeal to the Court of Appeals, the district court had referred to each of Dr. Cordero's actions against Trustee Gordon and Mr. Palmer as Cordero v. Palmer. Was it by pure accident that the mistake used the name Palmer, who disappeared and cannot be found now, rather than that of Gordon, who can easily be located?
100. The district court transferred the record on May 19 to the Court of Appeals. The latter, in turn, acknowledged the filing of the appeal by letter to Dr. Cordero. When he received it on May 24,

imagine his shock when he found out that the Court's docket showed no entry for his Redesignation and Statement! Worse still, he checked the bankruptcy and the district courts' dockets and neither had entered it or even the letter to Clerk Early! Dr. Cordero scrambled to send a copy of his Redesignation and Statement to Appeals Court Clerk Roseann MacKechnie. Even as late as June 2, her Deputy, Mr. Robert Rodriguez, confirmed to Dr. Cordero that the Court had received no Redesignation and Statement or docket entry for it from either the bankruptcy or the district court. Dr. Cordero had to call both lower courts to make sure that they would enter this paper on their respective dockets. His May 5 letter to Clerk Early was entered only on May 28.

101. The excuse that these court officers gave as well as their superiors, Bankruptcy Clerk Paul Warren and District Deputy Rachel Bandysh, that they just did not know how to handle a Redesignation and Statement, is simply untenable. Dr. Cordero's appeal cannot be the first one ever from those courts to this Court; those officers must know that they are supposed to record every event in their cases by entering each in their dockets; and 'certify and send the Redesignation and Statement to the circuit clerk,' as required under Rule 6(b)(2)(B). Actually, it was a ridiculous excuse!
102. No reasonable person can believe that these omissions in both courts were merely coincidental accidents. They furthered the same objective of preventing Dr. Cordero from appealing. The officers must have known that the failure to submit the Redesignation and Statement would have been imputed to Dr. Cordero and could have caused the Court to strike his appeal. But there is more.

1. Court officers also failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals

103. Rules 4(a)(1)(A) and 28(a)(C) F.R.A.P. consider jurisdictionally important that the dates of the orders appealed from and the notice of appeal establish the appeal's timeliness. This justifies the question whether the following omissions could have derailed Dr. Cordero's appeal to the Court and, if so, whether they were intentional.
104. Indeed, as of last May 19, the bankruptcy court docket no. 02-2230 for the adversary proceeding Pfuntner v. Gordon et al did not carry an entry for the district court's March 27

denial “in all respects” of Dr. Cordero’s motion for reconsideration in *Cordero v. Gordon*. By contrast, it did carry such an entry for the district court’s denial, also of March 27, of Dr. Cordero’s motion for reconsideration in *Cordero v. Palmer*.

105. Also on May 19, the district court certified the record on appeal to the Court of Appeals, but it failed to send to the Court copies of either of the March 27 decisions that Dr. Cordero is appealing from and which determine his appeal’s timeliness. The fact is that the Court’s docket for this case as of July 7, 2003, did not have entries for copies of either of the March 27 decisions, although it carried entries for the earlier decisions of March 11 and 12 that Dr. Cordero had moved the district court to reconsider. However, Dr. Cordero’s notice of appeal to the Court made it clear that the March 27 orders were the main orders from which he was appealing since it is from them that the timeliness of his notice of appeal would be determined.
106. Is this further evidence that bankruptcy and district court officers, in general, enter in their dockets and send to the Court of Appeals just the notices and papers that they want and, in particular, that their failure to enter and send Dr. Cordero’s Redesignation of Items and Statement of Issues was intentionally calculated to adversely affect his appeal? If those court officers dare tamper with the record that they must submit to the Court, what will they not pull in their own courts on a black-listed pro se party living hundreds of miles away? This evidence justifies the question whether they manipulated the filing date of Dr. Cordero’s motion to extend time to file notice of appeal (paras. 16 above) in order to bar his appeal from this court’s dismissal of his cross-claims against Trustee Gordon. If so, what did they have to gain therefrom and on whose orders did they do it?

II. Recusal is required when to a reasonable person informed of the circumstances the judge’s conduct appears to lack impartiality

107. Section §455(a) of 28 U.S.C. provides for judicial disqualification “in any proceeding in which [the judge’s] impartiality **might** reasonably be questioned” (emphasis added; para. 2 above). This is a test based on reason, not on the certainty provided by hard evidence of partiality. A reasonable opinion is all that is required and what affords the test’s element of objectivity. Whenever the test is met, recusal of the judge is mandated.

108. As the Supreme Court has put it, “[t]he goal of section 455(a) is to avoid even the appearance of partiality...to a reasonable person...even though no actual partiality exists because the judge...is pure in heart and incorruptible,” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988).
109. The Supreme Court’s construction derives from the legislative intent for §455(a), which Congress adopted on the grounds that “Litigants ought not have to face a judge where there is a reasonable question of impartiality,” S. Rep. No. 93-419, at 5 (1973); H.R. Rep. No. 93-1453 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6351, 6355. Thus, Congress provided for recusal when there is ““reasonable fear” that the judge will not be impartial”, *id.*
110. Recognizing that public confidence in those that administer justice is the essence of a system of justice, the Court of Appeals for this circuit has adopted this test of objective appearance of bias and prejudice: Whether “an objective, disinterested observer fully informed of the underlying facts [would] entertain significant doubt that justice would be done absent recusal;” *United States v. Lovaglia*, 954 F.2d 811, 815 (2d Cir. 1992).
111. The test is reasonably easy to meet because more important than keeping the judge in question on the bench is preserving the trust of the public in the system of justice. Thus, the petitioner of recusal need not prove that the judge is aware of his bias or prejudice given that “[s]cienter is not an element of a violation of §455(a),” since the “advancement of the purpose of the provision -- to promote public confidence in the integrity of the judicial process -- does not depend upon whether or not the judge actually knew of facts creating an appearance of impropriety, so long as the public might reasonably believe that he or she knew;” *Liljeberg*, at 859-60. All is needed is that the petitioner be “a reasonable person, [who] knowing all the circumstances, would believe that the judge's impartiality could be questioned;” *In Re: International Business Machines*, 618 F.2d 923, at 929 (2d Cir.1980).
112. The facts stated in Part I (paras. 5 et seq. above) are apt to raise the inference of lack of impartiality and fairness, both of which are critical characteristics of justice. Moreover, a reasonable person can well doubt the coincidental nature of such a long series of instances of

disregard of facts, law, and rules of procedure, all of which consistently harm Dr. Cordero and spare the other parties of the consequences of their wrongful acts. If these court officers had through mere incompetence failed to proceed according to fact and law, then all the parties would have shared and shared alike the negative and positive impact of their mistakes. However, the sharing here has been in the bias and prejudice shown by this court, the court reporter, the clerk of court, the district judge, and assistant clerks. The facts bear this out and provide the basis for their impartiality to be questioned. That is more than is required for recusal; for “what matters is not the reality of bias or prejudice but its appearance”; *Liteky v. United States*, 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994).

A. Recusal should be granted because equity demands it in the interest of justice

113. Even in the absence of actual bias, disqualification of a judge is required to ensure that “justice must satisfy the appearance of justice”, *In re Murchison*, 349 U.S. 133, 136 (1955). How much more strongly recusal is required in the presence of evidence of bias!
114. This court has shown disregard for facts, rules, and laws; tolerance for parties’ submissions of false and disingenuous statements and disobedience to its orders; and misleading and injurious inconsistency in its positions. Through its disrespect for truth and legality it has breached its duty to maintain the integrity of the judicial process. Instead of promoting legal certainty it has indulged in arbitrariness that has irreparably impaired the trust that a litigant must have in its good judgment and precluded his reliance on its sense of justice. That is what an objective §455 inquiry would reveal if “made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances”; *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1309 (2d Cir. 1988).
115. The bias and prejudice that the court has exuded has permeated the atmosphere that other court officers in both the bankruptcy and the district court have breathed. By failing to exhibit an unwavering commitment to upholding the high ethical standards that should guide the administration of justice, it has fostered a permissive environment. In it the performance of administrative tasks, critical for the judicial process to follow its proper course, is vitiated by disregard for the rules and facts as well as lack of candor. This breeds unpredictability and unreliability, which are inimical to due process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden* 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997). Also these court

officers have allowed their conduct to give the appearance of bias and prejudice against Dr. Cordero.

116. By contrast, Dr. Cordero can with clean hands protest to being the target of this bias and prejudice. He has no other fault than being in the unfortunate position of having paid storage and insurance fees for almost ten years to store his property and upon searching for it to have found a pack of mendacious characters who handled it negligently, recklessly, and fraudulently and bounced him between themselves until they threw him into this court. Here Dr. Cordero has made his best effort to comply conscientiously and at a high professional level with all his legal obligations and court rules.

117. "Justice should not only be done, but should manifestly and undoubtedly be seen to be done;" Ex parte McCarthy, [1924] 1K. B. 256, 259 (1923). However, what Dr. Cordero has seen is acts and omissions done by the court and court officers that have so consistently worked to his detriment and the others parties' benefit that they cannot reasonably be explained away as a coincidental series of mistakes of incompetence. Rather, to an "objective, disinterested observer," In re: Certain Underwriter Defendants, In re Initial Public Offering Securities Litigation, 294 F.3d 297 (2d Cir. 2002), those acts and omissions would look like a pattern of intentional and coordinated wrongs targeted on him, a pro se party living hundreds of miles away whom these court and officers have deemed weak enough to treat as expendable. Dr. Cordero should not be subjected to the same abuse at their hands for the many months that the court has already stated it will drag out this case. Equity should not tolerate that to happen. Enough is enough! From now on, "Justice must satisfy the appearance of justice," as the Supreme Court reaffirmed recently in Aetna Life Insurance Co. v. Lavoie et al., 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

B. Recusal should be carried out in the interests of judicial economy

118. The adversarial proceeding should be removed from this court because a wrongful denial of a §455(a) motion to recuse for bias and prejudice is likely to result in the vacatur of any judgment entered by the judge in question and the consequent need to retry the entire case. United States v. Brinkworth, 68 F.3d 633, 639 (2d Cir. 1995). That would cause a considerable waste of judicial resources, particularly in a multiparty case like this, as well as of the parties' effort, time, and money.

III. To provide for fair and impartial judicial process, this case should be removed to the District Court for the Northern District of New York, held at Albany

119. On equitable and judicial economy considerations, this case should be removed to a court that is likely unfamiliar with any of the parties, neutral to their interests, and not under the influence of any of the court officers in question. Only such a court can reasonably be expected to conduct a fair and impartial judicial process, including eventually a trial, for all the parties. Consequently, this adversarial proceeding should be transferred in its entirety to the District Court for the Northern District of New York, held at Albany, which meets these criteria and is fairly equidistant from all the parties.

120. Such removal can be carried out under 28 U.S.C. §1412, which provides as follows:

A district court may transfer a case or proceeding under title 11 to a district court for another district, **in the interest of justice** or for the convenience of the parties; (emphasis added).

1. To avoid further injury through bias and prejudice, removal should be carried out forthwith, so that this motion must be decided now

121. Retaining the proceeding in this court would subject Dr. Cordero to further bias and prejudice from the part of the court and its officers. It will amount to intentionally inflicting on him even more emotional distress as well as causing him additional waste of time, effort, and money. Therefore, to avoid this result, the removal must be carried out forthwith. It follows that this motion must be decided now. The court must neither put off deciding it nor cause its postponement until October as it has done with three other motions of Dr. Cordero, which has redounded to his detriment and to the benefit of other parties.

122. Hence, the court should not discriminatorily deny Dr. Cordero's request to appear by phone to argue this motion while it allows the continued use of the speakerphone in its courtroom. Nor should the court require that Dr. Cordero spend hundreds of dollars to travel to Rochester and stay overnight in a hotel there and thus disrupt two days so that he can appear in person at a 20 minutes hearing. That would constitute an additional act of disregard of Rules 1001 F.R.Bkr.P. and 1 F.R.Civ.P. requiring that proceedings be conducted speedily, inexpensively, and justly.

IV. Relief Sought

123. Dr. Cordero respectfully requests that:

- 1) the Hon. John C. Ninfo, II, recuse himself from this adversarial proceeding, namely, In re Premier Van Lines, Inc., dkt. no. 02-2230;
- 2) this adversarial proceeding be transferred in its entirety to the District Court for the Northern District of New York, held at Albany;
- 3) the court ask the Director of the Administrative Office of the United States Courts and the judicial council of the second circuit to conduct an investigation into the pattern of wrongful acts complained about here and of the court and court officers that so far appear to have participated in it;
- 4) Dr. Cordero be allowed to present his arguments by phone given that requiring that he appear in person at the hearing of this motion would cause him unjustifiable hardship in terms of cost and time;
- 5) the court not cut abruptly the phone communication with Dr. Cordero, but instead allow him to raise his objections for the record and participate in the hearing until it is definitely concluded for all the parties so that Dr. Cordero may be afforded the same opportunity that it affords to the other parties to be heard and hear its comments;
- 6) the court grant Dr. Cordero any other relief that is just and fair.

Dated: August 8, 2003

Dr. Richard Cordero

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**The DeLanos' income of \$291,470,
mortgage receipts of \$382,187,
and credit card borrowing of \$98,092**

unaccounted for due to the judges' and the trustees' refusal to require the DeLanos to produce documents supporting their declaration in Schedule B (D:31) of their bankruptcy petition that at the time of its filing on January 27, 2004, they had in hand and on account only \$535!¹

Exhibit page #	Mortgages referred to in the incomplete documents produced by the DeLanos to Chapter 13 Trustee George Reiber ^a (cf.Add:966§B)	Mortgages or loans	
		year	amount
D ^b :342	1) from Columbia Banking, S&L Association	16jul75	\$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers & Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-54	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed?	Subtotal	\$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition of January 27, 2004 (D:23)			
2001	1040 IRS form (D:186)	\$91,229	\$91,229
2002	1040 IRS form (D:187) Statement of Financial Affairs (D:47)	\$91,859	91,655
2003	1040 IRS form (D:188) Statement of Financial Affairs (D:47)	+97,648	+108,586
to this must be added the receipts contained in the \$98,092 owed on 18 credit cards, as declared in Schedule F (D:38) ^c		\$280,736 ^d	\$291,470 ^d
		TOTAL	\$673,657

^a The DeLanos claimed in their bankruptcy petition that their only real property is their home, valued on November 23, 2003, at \$98,500, as to which their mortgage is still \$77,084 and their equity is only \$21,416 (D:30/Sch.A)...after making mortgage payments for 30 years! and having received during that same period at least \$382,187 through the known elements of a string of mortgages! *Mind-boggling!*

^b D=Designated items in the record of *Cordero v. DeLano*, 05-6190L, WDNY, of April 18, 2005.

^c The DeLanos declared that their credit card debt on 18 cards totals \$98,092 (D:38/Sch.F), while they set the value of their household goods at only \$2,810! (D:31/Sch.B) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years.

^d Why do these numbers not match?

¹ [Http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf](http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf).

Blank