

Avoiding Rule 11 Sanctions By Withdrawing Complaint

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In 1995, Congress enacted the Private Securities Litigation Reform Act, 15 USCS § 78u-4, dealing with private securities litigation. The Act was designed to discourage frivolous complaints by private litigants alleging securities fraud or other securities violations.

The Act requires every judge in any private action arising under "this title" [15 USCS § 78a et seq.] to include in the record "upon final adjudication" specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion. Rule 11(b) imposes various requirements with respect to all pleadings, motions and "other paper" presented to a federal court [See, NYPRR, October 2002, page 8.] These requirements proscribe: 1) documents presented for an improper purpose (e.g., delay or harassment); 2) claims unwarranted by existing law; 3) allegations which have no evidentiary support; and 4) denials which are not warranted by the facts.

Under the Act, if a judge finds that Rule 11(b) has been violated by a party or his attorney, he must impose sanctions under Rule 11.

The recent case of *Blaser v. Bessemer Trust Company*, S.D.N.Y., No. 01 CIV. 11159 (DLC), (October 21, 2002), turned on the meaning of the phrase "upon final adjudication." Plaintiff Blaser sued Bessemer in the Southern District. Bessemer moved to dismiss on the ground that Blaser's account was with its Florida affiliate. Blaser voluntarily dismissed the New York action prior to the 21-day safe harbor provision of Rule 11(c)(1) and sued the Florida affiliate in the Florida state courts.

Southern District Judge Denise Cote denied Bessemer's motion for sanctions against plaintiff Blaser and her attorneys. The Judge found that Congress had not intended the term "upon final adjudication" to require that the court inquire into and construe a complaint which was voluntarily dismissed before 21 days had expired. Judge Cote acknowledged that Section 78 did not define "final adjudication" and that there was little case law on its meaning. However, if a voluntary dismissal without prejudice were to constitute a "final adjudication," then... "a district court would be required to conduct a Rule 11 inquiry and make specific findings as part of that inquiry in every action filed under the PSLRA which is voluntarily dismissed... If Congress actually intended to saddle district courts with this task, it would have stated so explicitly..."