

Federal Courts Construe Rule 11 Sanctions Motions

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Two recent decisions by judges in the New York federal courts construing Rule 11 of the Federal Rules of Civil Procedure warrant scrutiny. Rule 11(c) permits federal trial judges to impose sanctions upon lawyers (and parties) who violate Rule 11(b). Rule 11(b) imposes the following requirements with respect to pleadings, motions and other "paper" presented to the court: 1) the document is not presented for an improper purpose (harassment, unnecessary delay, needless increase in cost); 2) the claims are warranted by existing law; 3) the allegations have evidentiary support or are likely to have such support after a reasonable opportunity for investigation or discovery; and 4) any denials of factual contentions are warranted on the evidence or are reasonably based on a lack of information or belief.

A motion for sanctions under Rule 11 must be made separately from all other motions and must describe the specific conduct of the lawyer (or the party) against whom the motion is directed. The motion may be made either by the opposing party or *sua sponte* by the court. In either event, the lawyer (or party) is given a window of 21 days after he is served with the motion during which he may either withdraw or "appropriately correct" the challenged document. If the document is not drawn or corrected, the court proceeds to consider the motion.

In *Jacques v. DiMarzio, Inc.*, (E.D.N.Y., August 2002), Judge Frederic Block initiated the Rule 11 inquiry *sua sponte* and then rejected a memorandum submitted by counsel in defense of his pleadings. The case involved a claim by the plaintiff under the Americans with Disabilities Act. Defense counsel asserted a counterclaim which alleged that plaintiff had harassed the defendant by filing administrative claims with two separate agencies - the NLRB and the New York State Division of Human Rights. The counterclaim originally alleged damages of \$500,000; this was later amended to \$50,000.

Judge Block concluded that the counterclaim was "utterly devoid of factual allegations to raise a colorable claim under New York law for abuse of process, malicious prosecution or prima facie tort" (all of which had been asserted in the defendant's counterclaim). After analyzing the elements and requirements of all three causes of action, the court said, "Defendant's cryptic, generalized and ill-defined conclusory claim of harassment cannot serve as a substitute for pleading the required elements of these causes of action..."

The court imposed sanctions of \$1,000 on counsel. Judge Block concluded that this amount was sufficient "to punish defendant's counsel and to deter this type of conduct in the future."

G-I Holdings Inc. v. Baron & Budd

In the *Holdings* case (S.D.N.Y., August 2002), Judge Robert W. Sweet considered one aspect of a bitter litigation involving alleged misconduct by several lawyers in asbestos litigation, including the law firm of Weitz & Luxenberg. In July, Judge Sweet had dismissed plaintiff Holdings' amended complaint charging

fraud by the lawyers. Weitz and Luxenberg moved for Rule 11 sanctions against plaintiff Holdings. The law firm argued that Holdings had asserted claims of fraud against it without investigating the claims adequately and that the claims lacked sufficient legal basis and were asserted "for the sole purpose of drumming up media attention."

One issue on the law firm's motion for sanctions was the scope of the investigations conducted by Holdings before bringing its action. Holdings asserted that it had spent 850 hours on its investigation, including 570 hours by the investigative firm of Kroll Associates and 280 hours by several lawyers. Some of this investigation consisted of interviews with a paralegal formerly employed by the law firm. These interviews were conducted under controls imposed by the court. Other elements of the investigation consisted of examination of court records relating to numerous asbestos personal injury actions initiated by Weitz & Luxenberg and interviews with court personnel.

Judge Sweet found that plaintiff Holdings had conducted a thorough investigation into the facts and that its failure to inquire whether "a particular stone left unturned would have distorted their theory" was not actionable unless the defendant could show that Holdings had intentionally avoided finding information unfavorable to it. "Failure to inquire into what has turned out to be an extremely opaque matter of procedure is not sanctionable in light of the other thorough investigation performed by Holdings..."

Judge Sweet rejected the argument of Weitz & Luxenberg that sanctions were required because Holdings had asserted claims (Count XIII of its complaint) which were clearly insufficient as a matter of law. Although recognizing a line of cases which had imposed sanctions against plaintiffs who asserted fraud claims which were later dismissed for lack of specificity in pleading, the court said, "Sanctions are not warranted in this case because it was not evident that Count XIII was destined to fail."

The court also rejected the claim that Holdings had alleged fraud by the defendants in bad faith and for favorable publicity. But Judge Sweet warned Holdings to examine the facts carefully before reasserting its fraud claim, "as Rule 11 sanctions would be a real possibility at that time."

Plaintiff's motion for counsel fees was denied. The Rule 11 motion by Weitz & Luxenberg was not frivolous and in fact presented a close question.