IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK JACKSON, Plaintiff, v. ROHM & HAAS COMPANY, et al., Defendants.	Civil Action No. 05-4988

OPINION

Pollak, J. March 9, 2006

Before this court is "Defendants' Motion for Sanctions Pursuant to Rule 11" (Docket # 17). For the reasons discussed below, the motion will be granted.

I.

This litigation has a relatively lengthy history. It all began when plaintiff Mark Jackson went on a date with a co-worker, and she subsequently accused him of sexually assaulting her. This accusation led defendant Rohm & Haas, Jackson's employer, to question Jackson about the date and to conduct an investigation into the allegation. Rohm & Haas was ultimately unable to substantiate the allegation, and it took no action against Jackson. Nevertheless, Jackson found his interrogation by Rohm & Haas personnel so abrasive that he sued Rohm & Haas in a Pennsylvania state court for invasion of privacy

and intentional infliction of emotional distress. During discovery in the state-court case, a dispute arose as to the authenticity of a document containing some notes taken by a Rohm & Haas employee during investigation of the assault allegation. Jackson accused Rohm & Haas and its lawyers of falsifying evidence. The state court eventually disposed of the lawsuit in favor of Rohm & Haas on the ground that, whether or not Jackson's common law tort claims against Rohm & Haas had factual merit, those claims were preempted by the state workers' compensation statute. *See Jackson v. Rohm & Haas Co.*, 56 Pa. D. & C.4th 449 (Phila. Co. 2002). This ruling was sustained on appeal. *See Jackson v. McCrory*, 833 A.2d 1155 (Pa. Super. Ct. 2003); *Jackson v. McCrory*, 849 A.2d 1205 (Pa. 2004).

Jackson then brought a federal action against Rohm & Haas, several of its employees, and the lawyers who represented it in state court, realleging falsification of evidence during the state court proceedings and contending that this amounted to, *inter alia*, a violation of the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq*. That suit will be referred to as *Jackson I*. This court dismissed the complaint in *Jackson I* by order dated June 30, 2005. *See Jackson v. Rohm & Haas Co.*, 2005 WL 1592910 (E.D. Pa. June 30, 2005). I concluded that Jackson lacked standing to bring a RICO claim because his injury (loss of the state-court case) was not proximately caused by defendants' alleged fraud – that is, since the state-court ruling was based on statutory preemption rather than a finding on the merits of Jackson's privacy and

infliction-of-emotional-distress claims, Jackson would have lost whether or not defendants had falsified evidence that went to the merits of the tort claims. *Id.* at 4-5. Because RICO was the only basis for federal jurisdiction, I dismissed the entire complaint, declining to exercise supplemental jurisdiction over the remaining state-law claims. *Id.* at 5. Jackson filed a motion for reconsideration of the June 30 order, and that motion was denied by order dated January 11, 2006.

On September 19, 2005, while his motion for reconsideration was pending, Jackson filed another lawsuit in this court – the instant suit, *Jackson II* – claiming that the *Jackson I* defendants (Rohm & Haas, Rohm & Haas employees, and their state-court lawyers), plus the lawyers who represented the *Jackson I* defendants, plus Rohm & Haas's disability insurance administrator, Liberty Life[1], engaged in improper conduct in connection with *Jackson I*. In *Jackson II* Jackson makes two allegations of wrong-doing:

[1] The following is a full list of the defendants named in *Jackson II*: Rohm & Haas Company; Morgan Lewis & Bockius LLP and Conrad O'Brien Gellman & Rohn, P.C. (law firms that represented Rohm & Haas in the state-court litigation); Harkins Cunningham, LLP (the law firm that represented all defendants in *Jackson I*); Liberty Life Assurance Company of Boston; Robert Vogel, Celia Joseph, Royce Warrick, Michael McLaughlin, Wayne Davis, David Gartenberg, Ellen Friedel, and Jane Greenetz (employees of Rohm & Haas); James D. Pagliaro, Paul J. Greco, P. Daffodil Tyminski, and Aretha Delight Davis (attorneys at Morgan Lewis & Bockius); Nancy Gellman, William J. O'Brien, and Kelly G. Huller (attorneys at Conrad O'Brien Gellman & Rohn, P.C.); June McCrory (the person who accused Jackson of sexually assaulting her); John G. Harkins, Eleanor Morris Illoway, Steven A. Reed, and Coleen Healy Simpson (attorneys at Harkins Cunningham, LLP); and John Doe Nos. 1-25 ("attorneys, administrators, officers, directors, executives, managers, committee members, and other agents, officials, representatives, and employees" of the organizations listed as defendants). The term "Rohm & Haas defendants" will be used hereafter to refer cumulatively to all *Jackson II* defendants other than Liberty Life.

1) the Rohm & Haas defendants[2] perpetrated a fraud on this court by advancing the same evidence in *Jackson I* that Jackson contended was fraudulent in the state-court proceedings, and 2) Rohm & Haas conspired with Liberty Life to cut off Jackson's disability benefits. Based on these factual allegations, Jackson has undertaken to plead counts under RICO and 42 U.S.C. §§ 1985, 1986, as well as several pendent state law counts, against the Rohm & Haas defendants and Liberty Life.

On November 14, 2005, the *Jackson II* Rohm & Haas defendants moved to dismiss Jackson's new complaint; concurrently, they filed the instant Rule 11 motion for sanctions directed at the *Jackson II*[3] complaint. Liberty Life also filed a motion to dismiss, and, on December 1, 2005, joined the Rule 11 motion.

On November 17, 2005, citing the length and seriousness of the Rule 11 motion and motion to dismiss filed by the Rohm & Haas defendants, Jackson requested an extension of time to respond. By order dated November 23, 2005, this court granted Jackson an extension, though a shorter one than he had requested. On December 5, 2005 – the new deadline for response – Jackson filed an amended complaint, and nothing else. Among other things, the amended complaint added ERISA counts and attempted to clarify that defendants' conduct during *Jackson I* (and not the state-court proceedings)

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[2] As explained in footnote 1, *supra*, the term "Rohm & Haas defendants" signifies "all *Jackson II* defendants other than Liberty Life."

[3] Pursuant to Rule 11(c)(1)(A), Rohm & Haas had served its Rule 11 motion on Jackson on October 20, 2005 – more than 21 days before filing it in this court.

was the sole basis for *Jackson II*. This maneuver touched off a flurry of communications: By letter dated December 6, 2005, the Rohm & Haas defendants urged that the amended complaint was not a response at all and, hence, that their Rule 11 motion should be granted as unopposed; and, by letter dated December 7, 2005, Jackson responded that the amended complaint mooted the Rule 11 motion. On December 19, 2005, the deadline for response to Liberty Life's Rule 11 motion, Jackson filed a response to the November 14, 2005 Rule 11 motion and asked that, to the extent it was untimely with respect to the November 14, 2005 motion, he be granted an extension for excusable neglect, as he thought the amended complaint would serve as an adequate response. The Rohm & Haas defendants, on December 28, 2005, filed an opposition to this latest request for an extension, arguing that Jackson made a conscious choice to respond to the Rule 11 motion with an amended complaint, and he should now be held to that choice.

Oral argument was had on January 8, 2006.

II.

The first question is whether, as the Rohm & Haas defendants have urged, this court should grant the November 14, 2005 Rule 11 motion by default, as unopposed. The Rohm & Haas defendants argue that the amended complaint did not obviate the need for a response to the motion, and they urge the court not to grant the retroactive additional extension requested by Jackson's response to Liberty Life's motion. The Rohm & Haas

defendants may be technically correct – as explained below, once the Rule 11 motion was filed, it was too late to withdraw the original complaint, and what was required was a defense of the original pleading, not a new pleading. However, prior to that January 9, 2006 oral argument on the Rule 11 motion, this court did receive a response to the motion from Jackson (i.e. – his response to Liberty Life's motion), and indeed Jackson has always made it clear he intended to oppose the motion – he just chose an ineffective way of doing so at first. Under these circumstances, while I am ready to assume that I have authority to grant a sanctions motion by default, I am reluctant to proceed in that fashion with a motion of such substantial implication.

III.

The next question is which *Jackson II* pleading – the original or amended complaint – this court should evaluate for purposes of the Rule 11 motion. The Rohm & Haas defendants have argued that Jackson's Rule 11 violation was complete when he failed to withdraw his original complaint by November 10, 2005 – 21 days after service of the Rule 11 motion. The Rule 11 motion should therefore be decided by reference to the original complaint, they contend. Jackson responds that the 21-day period provided by Rule 11 for withdrawal is not mandatory, but permissive, and the court may prescribe a different period. Jackson also argues that, once an amended pleading is filed, an original pleading ceases to play any role. He therefore contends that it is the amended complaint

that should be subjected to Rule 11 analysis.

The Rohm & Haas defendants have the better of this argument. Pursuant to the 1993 amendments, Rule 11 requires a party seeking sanctions to give the opposing party notice of the violation and an opportunity to correct it before filing a motion for sanctions. The notice period specified in Rule 11 is 21 days. At the end of the notice period, the party seeking sanctions may properly file its Rule 11 motion if the opposing party has taken no corrective action.

Jackson is correct that Rule 11 allows the court to prescribe a notice period other than 21 days[4], but this court has at no time prescribed a longer (or shorter) notice period, so it cannot be said that the Rohm & Haas defendants filed their motion too soon. And nothing in Rule 11 or the authorities cited by Jackson suggests that a violative pleading can be withdrawn without penalty *after* a motion for sanctions has been properly filed. Indeed, the fact that the Rule provides a safe harbor period suggests that, once that period has expired, the time for withdrawing an improper filing has passed.

Also unavailing is Jackson's argument that the general principle that amended pleadings replace their predecessors signifies that the original *Jackson II* complaint vanished without a trace once the amended complaint was filed. While Jackson was free to amend the original *Jackson II* complaint, as he has done, I am of the view that if that

[4] "It [a motion for sanctions] . . . shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged . . . claim . . . is not withdrawn or appropriately corrected." FED. R. CIV. P. 11(c)(1)(A)

original complaint contravened Rule 11, the violation was complete when Jackson failed to withdraw the original complaint within 21 days of receipt of the Rule 11 motion challenging that pleading. Before Rule 11 was amended in 1993, the law was clear that a Rule 11 violation was complete immediately upon the filing of an offending litigation document. *Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 395 (1990). Amending Rule 11 to provide a safe harbor within which corrective action could be taken was, manifestly, an effort to relax the rigor of the Rule. But it cannot reasonably be supposed that the amended Rule contemplates that the safe harbor can be allowed to lapse without express response – either a defense or a disavowal of the challenged pleading. Because Jackson neither defended nor disavowed his original *Jackson II* complaint, he is subject to sanctions if that pleading is found to violate Rule 11.

Jackson urges that, even if his original *Jackson II* complaint violated Rule 11, the fact that he waited until December 5, 2005 – 46 days after initial service of the Rule 11 motion on October 20, 2005 – to withdraw that complaint by filing an amended complaint, rather than withdrawing it within 21 days of initial service, could not have possibly prejudiced defendants. Jackson asserts that, whatever cost and inconvenience defendants incurred as a result of any Rule 11 violations in the original pleading, they would have incurred such costs and inconvenience whether Jackson withdrew his complaint within the 21-day safe harbor period or did so several days later.

First of all, it is not clear that Jackson's assertion is correct. It is true that the

primary cost associated with the Rule 11 motion was likely incurred in preparing it, which of course occurred before the 21-day safe harbor period commenced. However, another major cost associated with defending against Jackson's original complaint would have been incurred in preparing a motion to dismiss. The Rohm & Haas defendants filed their motion to dismiss the original complaint on November 14, 2005, the day they filed their Rule 11 motion: had Jackson withdrawn that complaint during the 21-day period, no motion to dismiss would have been necessary; and if Jackson had, instead of withdrawing the pleading *in toto*, amended it to excise the challenged portions of the pleadings, defendants' motion to dismiss would have had a far smaller target and, therefore, would have been a far more modest and less costly endeavor.

Moreover, even if one were to acquiesce in Jackson's proffered supposition that his delay in withdrawing his original *Jackson II* complaint caused little or no prejudice to defendants, Jackson is wrong to think this lack of prejudice relieves him of his Rule 11 responsibilities. Rule 11 provides an offending party 21 days to withdraw its violative submission without facing sanctions, period. It does not provide for '21 days or any other period that will not prejudice the opposing party.' Once the safe harbor period has expired, the violation is complete, and sanctions are appropriate. While it is important for defendants to show that they incurred attorney's fees as a result of the filing of the allegedly violative pleading if they hope for sanctions in the form of an award of attorney's fees, Rule 11 does not require defendants to show they were additionally

prejudiced by Jackson's failure to withdraw his complaint during the interval between the expiration of the safe harbor period and the day on which Jackson finally responded to the sanctions motion. The safe harbor period specified in Rule 11 provides an adequately generous 21-day opportunity for offending parties to repent, and there is no good reason to go beyond the language of the Rule to enlarge that opportunity.

IV.

Moving on to the merits, defendants contend that the original *Jackson II* complaint violates three subsections of Rule 11: (b)(1) (presented for an improper purpose), (b)(2) (unwarranted; frivolous), and (b)(3) (lacks evidentiary support). I agree that it is unwarranted and frivolous within the meaning of Rule 11(b)(2)[5], and hence that sanctions are warranted. There is, therefore, no need to determine whether the challenged pleading is also deficient under (b)(1) or (b)(3).

The original *Jackson II* complaint is premised on two allegations of wrong-doing: 1) that the Rohm & Haas defendants perpetrated a fraud on this court by offering falsified evidence in support of its defense of *Jackson I*, and 2) Rohm & Haas and Liberty Life conspired to cut off Jackson's disability benefits.

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[5] Rule 11(b) states, in relevant part: "By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances – . . . (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law . . . ."

The first of these allegations is unwarranted and frivolous. When examined in context, it is obvious that there was nothing fraudulent about the Rohm & Haas defendants' use of the disputed evidence in *Jackson I*. The Rohm & Haas defendants point out, and Jackson offers no cogent argument to the contrary, that they offered the supposedly fraudulent document to show that certain issues had been previously litigated. Never during the litigation of *Jackson I* did the Rohm & Haas defendants represent to the court that the document was authentic or ask this court to make any decision requiring that the authenticity of the disputed document be accepted. The document was introduced to show it had been considered by the state courts, not to prove the truth of its contents. The supposed fraud Jackson now alleges thus lacks the most fundamental elements of fraud: a representation that is false, and on which falsehood the person or institution to which the representation is made is asked to rely. The Rohm & Haas defendants' *Jackson I* pleading was proper. Jackson's characterization of it as fraudulent was not warranted and was frivolous.

Jackson's second allegation – the existence of a conspiracy between Rohm & Haas and Liberty Life to terminate Jackson's disability benefits – does not on its face appear to be unwarranted and frivolous. That is, assuming the truth of the allegation, a reasonable lawyer might find it to support a cause of action against the defendants. For now, I will reserve the question of whether this allegation supports the causes of action Jackson has actually chosen to assert in *Jackson II*. That question will be addressed further below.

V.

In addition to the frivolity of at least the first of his two underlying allegations, Jackson's pleading of all his federal causes of action themselves is also manifestly deficient. In his *Jackson II* RICO counts, Jackson claims as injury the loss of his state-court suit and his federal *Jackson I* suit. As noted above, I had ruled in the *Jackson I* opinion that Jackson's loss in state court could not create RICO standing, as that loss could not have been proximately caused by the state-court defendants' alleged fraud. Similarly, none of the improprieties defendants allegedly engaged in during *Jackson I* could have caused Jackson to lose that suit. Jackson lost that suit because he lacked RICO standing, and he lacked RICO standing because his then-alleged injury – loss of his state-court suit – could not have been caused by the state-court defendants' supposed impropriety during the state-court proceedings. The reason Jackson lost in state court and in *Jackson I* is that his claims were preempted by the Pennsylvania workers' compensation statute, and he would have lost for the same reason whether or not defendants had committed the ever-growing list of improprieties Jackson charges them with. Since I ruled in *Jackson I* that Jackson's loss in state court did not confer RICO standing on him, and because the stated rationale of that opinion should have made it clear to any lawyer who read the opinion with a modicum of care that Jackson's loss of *Jackson I* also could not confer RICO standing to support the filing of a complaint initiating *Jackson II*, Jackson's assertion in *Jackson II* of RICO injury based on Jackson's

loss in the state court and in *Jackson I* was so plainly unfounded as to be deemed without warrant and frivolous[6].

Jackson's 42 U.S.C. § 1985 count is also frivolous. The thrust of the claim is that Rohm & Haas conspired with Liberty Life to deny Jackson disability benefits in order to leverage him out of the *Jackson I* litigation, in contravention of 42 U.S.C. § 1985[7]. But Jackson's complaint does not support a finding of conspiracy between the two companies. Jackson's complaint alleges that Rohm & Haas acted "by and through" Liberty Life – *i.e.*, in an agency relationship – to interrupt his disability benefits. Nothing in the complaint suggests that Liberty Life exceeded the scope of its agency and acted solely in its own interests when it interrupted Jackson's benefits. The intracorporate conspiracy doctrine

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[6] Perhaps learning at least one thing from *Jackson I*, Jackson added as a claim of RICO injury in *Jackson II* the contention that defendants' wrongdoing caused him to "incur great expense, delay, and inconvenience" and "attorney's fees." I regard these alleged damages as derivative of the state-court and *Jackson I* litigation, and I am therefore doubtful that they can confer RICO standing on Jackson for purposes of *Jackson II* any more than his loss of those lawsuits could do. In any event, whether or not these alleged damages properly support RICO standing, they are such a minor subset of the injuries claimed in the *Jackson II* original complaint that they cannot single-handedly save that pleading from being found unwarranted and frivolous. As will be seen from the preceding and following discussion, the original complaint is dominated by claims which are without warrant and frivolous.

[7] 42 U.S.C. § 1985 provides, in relevant part, as follows: "If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified . . . the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

therefore precludes existence of a conspiracy. *See Heffernan v. Hunter*, 189 F.3d 405, 411-13 (3d Cir. 1999); *School Lane House Philadelphia, LLC v. RAIT Partnership*, 2005 WL 2397146 (E.D. Pa. Sept. 27, 2005).

Jackson's original *Jackson II* complaint also fails to support the idea of a conspiracy between any of the *Jackson I* defendants and their lawyers. Clearly the lawyers acted on behalf of their clients in the conduct of the *Jackson I* litigation, and there is no allegation in the complaint that the lawyers exceeded the scope of their agency. Straightforward application of the intracorporate conspiracy doctrine, then, precludes existence of a conspiracy among any of the *Jackson I* defendants and their lawyers. *See Heffernan*, 189 F.3d at 411-13.

There are other equally fundamental defects in Jackson's § 1985 claim. The facts alleged in Jackson's original *Jackson II* complaint to support his claim of intimidation do not and cannot support that claim. Under the heading of his § 1985 count, Jackson asserts that Rohm & Haas, in conjunction with Liberty Life, interrupted his disability benefits in a pattern that was "strategically timed to coincide with aspects, events and/or phases in the ongoing state and federal litigations." Original Complaint ¶ 105. However, one need only refer back to a previous paragraph of the complaint – namely, paragraph 101, summarized *infra* – in which Jackson details the interruptions of his benefits to discover that this assertion is unsupportable. The interruptions in Jackson's disability benefits were not "strategically timed to coincide with" litigation events, and indeed, could not

have reasonably been expected to intimidate Jackson out of his federal litigation. As an initial matter, it is to be noted that only intimidation aimed at interference with a *federal* court proceeding is actionable under § 1985. *Brawer v. Horowitz*, 535 F.2d 830, 840 (3d Cir. 1976). The interruptions in Jackson's benefits that pre-date his September 19, 2003 original complaint in *Jackson I* thus cannot provide any support for his § 1985 claim, as there was no federal court proceeding with which to interfere before that date. A review of paragraph 101 of the *Jackson II* original complaint reveals that the following events were the only alleged actions with respect to benefit interruption since September 19, 2003: 1) reinstatement of benefits on October 6, 2003 (benefits had been suspended *before* Jackson filed his *Jackson I* complaint), 2) suspension of benefits on November 9, 2004, and 3) reinstatement of benefits on December 6, 2004. Jackson cannot be heard to argue that reinstatement of his benefits several days after he filed his *Jackson I* complaint was an action intended to intimidate him out of the litigation. Moreover, the suspension of benefits between November 9, 2004 and December 6, 2004 also could not have had the effect of preventing Jackson from attending or testifying in federal court, since there was neither courtroom nor discovery activity in *Jackson I* during this time interval. Indeed, there was no court-related activity whatsoever in the case within this time frame except an order from this court re-scheduling oral argument on the *Jackson I* defendants' motion to dismiss. Jackson had responded to the motion to dismiss prior to the November 9, 2004 suspension of benefits, and by January 6, 2005, the day the motion to dismiss was argued

(and, in fact, the only courtroom proceeding ever conducted in *Jackson I*[8]), Jackson's benefits had been reinstated. The facts Jackson has alleged are thus incapable of supporting an inference that defendants' actions were calculated to intimidate him out of attending or testifying in federal court[9]. As the preceding discussion demonstrates, the conclusion that Jackson's § 1985 claim is meritless is so obvious that the claim is plainly frivolous[10].

Jackson also brought a number of state-law claims in his *Jackson II* complaint, just as he did in *Jackson I*. Defendants have not addressed these claims in their motion for

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[8] This fact suggests an additional obvious and fatal defect in Jackson's § 1985 claim: he was never a potential witness in *Jackson I*. There was no discovery, no hearing, and no trial in *Jackson I* – no proceeding at which Jackson could have testified. It is true that § 1985 also prohibits intimidation intended to prevent parties from attending court, but nothing in the *Jackson II* original complaint could fairly give rise to an inference that defendants' actions were calculated to keep him out of the courtroom during oral argument on the motion to dismiss.

[9] For substantially the same reasons given in this paragraph, Jackson's RICO claim based on obstruction of justice is also frivolous in its entirety. The previous discussion of Jackson's RICO claims focused on RICO standing and concluded there were some non-frivolous elements to those claims. However, standing issues aside, Jackson's RICO claim based on obstruction of justice is frivolous in its entirety in the same way his § 1985 claim is frivolous – the facts alleged in the complaint do not and cannot support a claim of obstruction of justice.

[10] The original *Jackson II* complaint also asserts a claim under 42 U.S.C. § 1986. That statute provides, in relevant part: "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . . ." The validity of Jackson's § 1986 claim depends on the validity of his § 1985 claim, and the § 1986 claim therefore falls with the § 1985 claim.

sanctions, and I will therefore not address them in this opinion. For present purposes, it is sufficient to note that the viability in this court of Jackson's entire *Jackson II* lawsuit depends on the viability of his federal claims, since, as indicated in my *Jackson I* opinion, it would not be my intention to exercise supplemental jurisdiction over state-law claims not supported by cognizable federal claims. In sum, Jackson's claims in his original *Jackson II* complaint are predominantly without warrant and frivolous.

VI.

Jackson's counsel will be sanctioned for filing a complaint violative of Rule 11[11]. Defendants request reimbursement for all expenses and attorney's fees incurred by defendants in both the *Jackson I* and *Jackson II* litigation. Defendants also request an injunction enjoining Jackson from filing any more lawsuits against defendants without court permission. I agree with defendants that an award of expenses and attorney's fees is appropriate in this case with respect to *Jackson II*. I do not, however, think it would be appropriate to enter an award for expenses and attorney's fees incurred in *Jackson I*. The 1993 advisory committee notes to Rule 11 counsel that any award of attorney's fees to an opponent "should not exceed the expenses and attorneys' fees for the services directly and unavoidably caused by the violation . . . ." The Rule 11 violations addressed in this

[11] Rule 11(c)(2)(A) bars imposition of monetary sanctions on a represented party for Rule 11(b)(2) violations. Therefore, only Jackson's counsel, and not Jackson himself, will be sanctioned in today's order.

opinion are confined to *Jackson II.*

This court also declines to award defendants all their expenses and attorney's fees for *Jackson II.* In considering what sanctions are appropriate, the 1993 advisory committee notes to Rule 11 suggest that, in a particular case, the court may find some or all of the following factors to be pertinent: "[w]hether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants." Based on Jackson's counsel's conduct during *Jackson II*, and based on the oral argument of the Rule 11 issues, I am not convinced that his Rule 11 violations in connection with *Jackson II* were willful. Rather, I conclude that in the course of this hard-fought litigation counsel's zeal undermined his judgment; very regrettably, his zeal has taken him well beyond the bounds of negligence and into a realm of relative indifference to the legal setting in which he was crafting his pleadings. It should be added that, while this is not the first lawsuit between these parties – in fact, it is the third lawsuit by the same plaintiff against the same core defendants, and arising out of the same alleged harms (but with the cadres of accused defendants and the categories of

alleged harms enhanced at each iteration of the charges) – there is no evidence that Jackson's counsel has committed Rule 11 violations in other litigation. Further, as noted above, Jackson's complaint appears to contain some non-frivolous elements: defendants' Rule 11 motion does not challenge Jackson's state-law claims. Some of the factors in the advisory notes weigh against lenience, and some weigh in favor of lenience. On balance, this court believes a sanction somewhat less than the full amount of defendants' expenses and attorney's fees is deserved and necessary to deter future violations by Jackson's counsel: he will be sanctioned in the amount of two-thirds (2/3) of the expenses and attorney's fees reasonably incurred by defendants in preparation of their motion for sanctions and motions to dismiss the original complaint in *Jackson II*. This court expects that this sanction will put an end to Jackson's Rule 11 violations, and defendants' request for the somewhat unusual remedy of an injunction will therefore be denied at this time.

An order effectuating the foregoing accompanies this opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK JACKSON, Plaintiff, v. ROHM & HAAS COMPANY, et al., Defendants.	Civil Action No. 05-4988

ORDER

March 9, 2006

For the reasons given in the accompanying opinion, it is hereby ORDERED that "Defendants' Motion for Sanctions Pursuant to Rule 11" (Docket # 17) is GRANTED: Plaintiff Mark Jackson's counsel, Richard J. Silverberg (I.D. No. 48329), will be sanctioned in an amount equal to two-thirds of the expenses and attorney's fees

reasonably incurred by defendants in preparation of their motion for sanctions and motions to dismiss the original complaint in *Jackson II*, such amount to be paid by plaintiff's counsel to defendants. Defendants are requested to submit to the court a joint statement of their respective expenses and attorney's fees and a proposed calculation of the sanction within fourteen calendar days from the filing of this order, and Mr. Silverberg will have fourteen calendar days to respond to defendants' submission.

BY THE COURT:

/s/ Louis H. Pollak

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Pollak, J.