

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

RAYMARK INDUSTRIES, INC.,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 96-7625
	:	
FREDERICK M. BARON, <u>et al.</u>	:	
Defendants.	:	

Cahn, C.J.

June _____, 1997

INTRODUCTION

In 1988 and 1989, Defendants in this case petitioned the Bankruptcy Court for the Eastern District of Pennsylvania to initiate involuntary bankruptcy proceedings against Raymark Industries, Inc. ("Raymark"). In 1996, the bankruptcy court found for Raymark and dismissed the involuntary petitions. Raymark now sues Defendants in this court, alleging that the involuntary petitions were wrongfully filed. Raymark requests damages pursuant to 11 U.S.C. § 303(i), Bankruptcy Rule 9011, 28 U.S.C. § 1927, and Pennsylvania state law counts for Wrongful Use of Civil Proceedings, Abuse of Process, Tortious Interference with Contractual Business Relations, Civil Conspiracy, and attorneys' fees.

Defendants have filed motions to dismiss Raymark's complaint. This opinion and order dismisses one Defendant for lack of personal jurisdiction, holds that the § 303(i), § 1927, and Rule 9011 claims are not independent causes of action, dismisses the request for fees, and holds that Raymark's other state law claims are preempted by the Bankruptcy Code.

BACKGROUND

Raymark, the Plaintiff in this case, has been named as a defendant in asbestos cases across the country. In 1988 and 1989, a number of individuals who had been plaintiffs in asbestos cases, and who had claims against Raymark through settlement or judgment of those cases ("the claimants"), filed petitions in involuntary bankruptcy against Raymark. Many of these claimants had the same counsel in both the asbestos and bankruptcy proceedings. In this case, Raymark, now the Plaintiff, alleges that those claimants and their former attorneys conspired to file wrongfully the involuntary petitions in bankruptcy against Raymark.

The first involuntary petition was filed on September 9, 1988, in the Bankruptcy Court for the Eastern District of Pennsylvania. Raymark promptly filed a counterclaim pursuant to § 303(i) of the Bankruptcy Code, which provides for damages to an involuntary debtor if the petition against it was wrongfully filed. On September 22, 1988, the involuntary petition was dismissed by the Honorable Thomas M. Twardowski, and Raymark's rights under § 303(i) were reserved. The parties later stipulated to a withdrawal of Raymark's § 303(i) counterclaim with prejudice as to the claimants, but without prejudice as to the claimants' attorneys.

On February 10, 1989, following the dismissal of the first petition, a second involuntary petition was filed against Raymark by different claimants, many of whom had the same counsel as those in the first involuntary petition. Raymark again counterclaimed

for § 303(i) damages. A trial on the merits of the involuntary petition was held in April and May, 1996, and Judge Twardowski ordered the petition dismissed on August 9, 1996. The Order of Dismissal makes no reference to Raymark's § 303(i) counterclaim. The bankruptcy case was closed on November 8, 1996.

Following the closure of the bankruptcy case, Raymark filed a complaint in this court against counsel from the first involuntary petition, and against claimants and their counsel from the second involuntary petition.¹ The complaint alleges that the involuntary petitions were the result of a conspiracy among counsel for the claimants to remove Raymark as leader of the defense in asbestos cases across the country. Am. Cmplnt. ¶ 84, 87, 89. Once asbestos litigation against Raymark was stayed because of the ongoing bankruptcy proceeding, there was no longer a need for Raymark to defend itself or maintain its national trial team. Am. Cmplnt. ¶ 87, 88, 117, Raymark alleges that its removal from this defense position was the object of the conspiracy, and that the conspiracy caused it significant financial harm.

According to the Amended Complaint, the Defendants played different roles in the conspiracy. Mr. Baron and Baron & Budd, a

¹ The law firm Defendants are Baron & Budd; Jacobs & Crumplar; Robles & Gonzales; Carpenter & Chavez; Middlebrooks & Fleming; Levy, Phillips & Konigsberg; and Wolf, Block, Schorr & Solis-Cohen. Raymark also names attorneys Mr. Baron, Mr. Jacobs, Mr. Levy and Mr. Temin (of Wolf, Block). Finally, Raymark names approximately 66 of the claimants who were petitioners in the second involuntary proceeding.

Texas firm, are alleged to have initiated the conspiracy and procured 68 claimants to be petitioners in the second involuntary petition. Am. Cmplnt. ¶ 122. Four of these claimants were former Baron & Budd clients, and the rest came to Baron & Budd from other Defendants (three from Jacobs & Crumplar, two from Levy, Phillips and Konigsberg, one from Carpenter & Chavez, six from Robles & Gonzalez, and fifty-two from Middlebrooks & Fleming.) Id.

Raymark makes certain allegations designed to support its claim that Defendants had a personal interest in the bankruptcy proceedings beyond representation of their clients' interests. Mr. Baron and Baron & Budd, it is alleged, had a contingency fee interest in their own clients' claims, and in the claims of the Robles & Gonzales, Carpenter & Chavez, and Middlebrooks & Fleming clients.² Id. at ¶ 123, 124. In addition, Mr. Baron signed 58 of the claimants' verifications in the bankruptcy proceeding as their "attorney-in-fact." Id. at ¶ 126. Mr. Levy and Levy, Phillips & Konigsberg had a contingency fee interest in their clients' claims, and participated as counsel in the involuntary proceedings.³

² This means that Baron had a contingency fee interest in 63 of the 68 total petitioners. Baron had no contingency interest in the claims of the five claimants from Jacobs & Crumplar and Levy, Phillips & Konigsberg. The amount of these five claimants' claims appears to be more substantial than the ones in which Baron had a contingency interest. Raymark's Supp. Brief in Opp. to Mot. to Dismiss, p. 7.

³ The true extent of Levy, Phillips' involvement in the bankruptcy proceeding is disputed. That dispute, however, is not relevant for the purposes of deciding these motions.

Raymark's Supp. Brief in Opp. to Mot. to Dismiss, p. 10. Likewise, Mr. Jacobs of Jacobs & Crumplar signed his three clients' verifications in the bankruptcy court as "attorney-in-fact," and had a contingency fee interest in their claims, though Jacobs did not appear in the bankruptcy proceedings. Id. at p. 8.

Middlebrooks & Fleming is alleged to have participated in the conspiracy by serving as local counsel for Baron & Budd in a number of Alabama asbestos cases from which Baron & Budd later procured petitioners for the bankruptcy proceedings in Pennsylvania. Similarly, Robles & Gonzales and Carpenter & Chavez served as local counsel for Baron & Budd in Florida and New Mexico asbestos cases, respectively. Middlebrooks & Fleming, Robles & Gonzales, and Carpenter & Chavez are not alleged to have appeared in the bankruptcy proceedings, nor are they alleged to have signed any pleadings for the claimants.

Finally, Raymark alleges that Mr. Temin and Wolf, Block, Schorr and Solis-Cohen, a Pennsylvania firm, were members of the conspiracy, filed the second petition against Raymark without conducting discovery, and signed all papers, except for the verifications, on behalf of all claimants without determining where the claimants lived or whether they were living or dead. Raymark's Supp. Brief in Opp. to Mot. to Dismiss, p. 11. Wolf, Block represented the law firms, not the claimants, in the bankruptcy proceedings. Id.

All Defendants have filed motions to dismiss. The court has

heard oral argument on two different occasions, and now addresses the parties' arguments.

DISCUSSION

I. 12(b)(2) MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Law firm Defendants Middlebrooks & Fleming, Robles & Gonzales, Carpenter & Chavez, Jacobs & Crumplar, and Levy, Phillips & Konigsberg, attorney Defendants Robert Jacobs and Stanley Levy, and claimant Defendants Michael Leroy, John Zaslow, George Bradley, Edward Wright, Claude Wicker, James Burkett, and Roland Avant argue that this court lacks personal jurisdiction over them.

"In deciding a motion to dismiss for lack of personal jurisdiction, we take the allegations of the complaint as true. But once a defendant has raised a jurisdictional defense, a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper." Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir.) (citations omitted), cert. denied, 117 S.Ct. 583 (1996). "Once the motion is made, plaintiff must respond with actual proofs, not mere allegations." Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3d Cir. 1984).

The court's jurisdiction over non-resident defendants is controlled by the laws of the forum state. In Pennsylvania, jurisdiction may be specific, if the defendant had sufficient contacts arising out of the defendant's forum-related activity to

justify the assertion of jurisdiction, or general, if the defendant has maintained "continuous and substantial" forum affiliations. 42 Pa.C.S.A. § 5322, 5301; Reliance Steel Products Co. v. Watson, Ess, Marshall & Enggas, 675 F.2d 587, 588 (3d Cir. 1982).

In addition, courts in Pennsylvania have recognized jurisdiction over non-resident defendants based upon the contacts of alleged resident co-conspirators. Co-conspirator jurisdiction is not separate from general or specific jurisdiction. Rather, "[t]he difference is that a court looks not only at the defendant's forum contacts, but at those of the defendant's 'resident' co-conspirators. The court imputes the contacts of the 'resident' co-conspirator over whom it has jurisdiction to the 'foreign' co-conspirator to see if there are sufficient contacts to exercise jurisdiction over the latter." Mass. School of Law at Andover, Inc. v. American Bar Assoc., 846 F.Supp. 374, 379 (E.D.Pa. 1994), aff'd 107 F.3d 1026 (3d Cir. 1997) (citations omitted). "Merely belonging to a civil conspiracy does not make a member subject to the jurisdiction of every other member's forum. . . . [T]here must also be substantial acts in furtherance of the conspiracy within the forum, of which the out-of-state co-conspirator was or should have been aware." Id. at 379-80. A proponent of co-conspirator jurisdiction must continue to meet the evidentiary burden described in Time Share for a 12(b)(2) motion, i.e., mere allegations of conspiracy, without some actual proof, are insufficient. Stranahan Gear Co., Inc. v. NL Industries, Inc., 800 F.2d 53, 58 (3d Cir.

1986) (citation omitted).

A. Personal Jurisdiction over Middlebrooks & Fleming

Middlebrooks & Fleming ("Middlebrooks") is an Alabama personal injury firm. Baron & Budd, the Texas firm, referred 52 plaintiffs to Middlebrooks for trial in Alabama, but Baron & Budd was lead counsel and Middlebrooks served only as local counsel. These 52 plaintiffs later became petitioners in the second involuntary proceeding.⁴ The only services performed by Middlebrooks were in Alabama, and Middlebrooks' role ended upon settlement of the asbestos cases. Middlebrooks affirms that it was never advised of the involuntary bankruptcy petition, and all legal action to collect settlement proceeds on behalf of the 52 claimants was performed by Baron & Budd. Middlebrooks never appeared in the Pennsylvania bankruptcy proceeding and none of its attorneys have appeared in any court in Pennsylvania.

The court finds that there is no personal jurisdiction over Middlebrooks. Specific jurisdiction is not appropriate, as Middlebrooks has done nothing within the forum related to this case of the underlying bankruptcy case. Nor is general jurisdiction

⁴ Middlebrooks had, in the past, referred asbestos clients to Baron & Budd, and many of these cases ended up in Pennsylvania due to the mandatory transfer order consolidating the multidistrict litigation asbestos cases. None of the these claimants were involved in the bankruptcy proceeding at issue, however, and Middlebrooks was not involved in any of the Eastern District of Pennsylvania litigation.

available, as Raymark's allegations are insufficient to meet the "continuous and substantial" showing required for general jurisdiction. These deficiencies are not overcome by Raymark's allegations of conspiracy. Pennsylvania law requires proof that the co-conspirator was or should have been aware of the conspiratorial acts within the forum state, and Raymark has provided nothing to refute or call into question Middlebrooks' statement that it was unaware of the filing of the involuntary bankruptcy petitions. Therefore, co-conspirator jurisdiction is unavailable, and Middlebrooks & Fleming is dismissed.

B. Personal Jurisdiction over Robles & Gonzales and Carpenter & Chavez

Robles & Gonzales and Carpenter & Chavez, like Middlebrooks, were local counsel for Baron & Budd and contend that they are not subject to Pennsylvania's personal jurisdiction. Robles & Gonzales is a nine-lawyer firm with one office located in Miami, Florida. The firm does not regularly conduct business in Pennsylvania, and no one associated with the firm was involved in the bankruptcy proceedings which form the basis of the matter at hand. Carpenter & Chavez is a three-lawyer law firm with one office in Albuquerque, New Mexico. Neither the law firm nor anyone associated with the firm practices law in Pennsylvania, conducts business in Pennsylvania, and or was involved in the bankruptcy proceedings at issue in this case. Raymark responds that both Robles & Gonzales

and Carpenter & Chavez were co-conspirators, and that jurisdiction is therefore appropriate.

Initially, the court notes that Raymark's allegations are insufficient to establish general or specific jurisdiction, as there are no "continuous and substantial" contacts with Pennsylvania, and neither firm was involved in the bankruptcy proceedings. Therefore, the only basis for jurisdiction would be co-conspirator jurisdiction. However, at this stage of the proceedings, the extent of Robles & Gonzales or Carpenter & Chavez' role in the conspiracy is unclear. "Our rule is generally that jurisdictional discovery should be allowed unless the plaintiff's claim is 'clearly frivolous.'" Mass. School of Law at Andover, Inc. v. American Bar Ass'n, 107 F.3d 1026, 1042 (3d Cir. 1997) (citations omitted). If Raymark can show that either firm was or could have been aware of the filing of the petitions, and that the firms were participants in a conspiracy to file those petitions, jurisdiction would be appropriate. Therefore, this court will defer ruling on these Defendants' motions to dismiss for lack of personal jurisdiction in order to allow the parties to conduct discovery.⁵

C. Personal Jurisdiction over Robert Jacobs, Jacobs & Crumplar, Stanley Levy, and Levy, Phillips & Konigsberg

Robert Jacobs and his firm, Jacobs & Crumplar, and Stanley

⁵ Whether the parties proceed with this discovery will of course depend whether Judge Twardowski allows the case to proceed.

Levy and his firm, Levy, Phillips & Konigsberg, were also local counsel for asbestos claimants who later became petitioners in the bankruptcy court. Jacobs & Crumplar is a Delaware firm that does business in Delaware and New Jersey. The firm does not transact any business in Pennsylvania and did not enter an appearance or file any pleadings in the involuntary bankruptcy proceedings. Mr. Jacobs did, however, sign three Joinder in Involuntary Petition forms on behalf of his clients as "attorney-in-fact," and forward the Joinders to Mr. Temin, counsel for creditors in the involuntary bankruptcy action in Pennsylvania. Levy, Phillips & Konigsberg is a New York firm. Mr. Levy and Levy, Phillips & Konigsberg provided two claimants for the involuntary proceedings, had a contingency fee interest in their claims, and filed pleadings in the bankruptcy proceeding.

Again, Raymark's allegations are insufficient for either general or specific jurisdiction without looking to the allegations of conspiracy. As with Robles & Gonzales and Carpenter & Chavez, however, these Defendants' role in the alleged conspiracy is unclear. Proof that these Defendants participated in a conspiracy, and that the involuntary bankruptcy petitions were filed as part of that conspiracy with Defendants' knowledge, would be sufficient grounds on which to base jurisdiction. At this stage in the proceedings, therefore, the court will defer ruling on these Motions to Dismiss in order to allow the parties to complete discovery.

D. Personal Jurisdiction Over Defendants George Bradley, Edward Wright, John Zaslow, Michael Leroy, Claude Wicker, James Burkett, and Roland Avant

These seven Defendants were claimants in the involuntary proceeding against Raymark. They now move to dismiss the complaint against them because they are non-residents of Pennsylvania and their contact with the forum was limited to appearing as petitioners in the second involuntary bankruptcy proceeding. Assuming that Raymark's allegations that the second involuntary petition was wrongfully filed are true, and given that that proceeding led to the case at issue, these Defendants' involvement with the forum is sufficient for specific jurisdiction. Therefore, these Defendants' Motions to Dismiss for lack of personal jurisdiction are denied.

II. 12(b)(6) MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM⁶

A. Standard of Review

In reviewing a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. Wisniewski v. Johns-Manville Corp., 759 F.2d

⁶ There are twenty-one separate motions to dismiss in this case. With the exception of claims based on lack of personal jurisdiction, the grounds for dismissal in the motions are essentially identical. Therefore, unless noted otherwise, this portion of the opinion treats the twenty-one motions as one motion.

271, 273 (3d Cir. 1985) (citation omitted). The court should then dismiss the complaint if the facts pled and reasonable inferences therefrom are legally insufficient to support the relief requested. See Commonwealth ex. rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173, 175 (3d Cir. 1988) (citation omitted).

B. § 303(i) Claim

Raymark's first cause of action is pursuant to § 303(i) of the United States Bankruptcy Code. Section 303(i) provides that, if the court dismisses an involuntary petition for any reason other than consent of the parties, the court may grant costs and attorneys' fees against the petitioner and for the debtor, or, if the petition was filed in bad faith, the court may grant proximately caused or punitive damages. 11 U.S.C. § 303(i). Section 303(i) allows the court to award the full panoply of relief, including attorneys' fees, compensatory, and punitive damages. In re Fox Island Square Partnership, 106 B.R. 962, 966 (Bankr. N.D.Ill. 1989) (citations omitted).

After reviewing the multiple subsections of § 303 and numerous cases imposing sanctions pursuant to § 303(i), I find that there is no independent cause of action under § 303(i), and that Raymark must make its § 303(i) request in connection with the underlying proceeding in the bankruptcy court. Therefore, I will dismiss this cause of action and allow Judge Twardowski of the United States Bankruptcy Court to decide whether or not Raymark's request for

sanctions is procedurally correct and timely, and, if so, whether Raymark's claim has merit.⁷

Section 303 of the Bankruptcy Code is entitled "Involuntary Cases." This is in contrast to §§ 301 and 302, which are entitled "Voluntary Cases" and "Joint Cases," respectively. Thus, everything in § 303 relates to the filing and managing of an involuntary petition. Subsection (d), for example, deals with the debtor's right to file an answer. Subsection (h) describes how the adjudicating court may order relief against the debtor. Subsection (j) addresses the bankruptcy court's ability to dismiss the petition. The only logical reading of subsection (i), therefore, is that it regulates the adjudicating bankruptcy judge's ability to impose sanctions for the wrongful filing of the involuntary petition. Section 303(i) states that "[i]f the court dismisses a petition under this section . . . the court may grant judgment" in favor of the involuntary debtor for costs, attorneys' fees, and, if the court finds bad faith, for proximate and punitive damages. 11

⁷ Because the bankruptcy case is now closed, Raymark may be required to file a motion to reopen pursuant to 11 U.S.C. § 350, which allows for reopening of closed cases for cause. Such a reopening is within the discretion of the bankruptcy judge. The court notes, however, that "[i]f and when the bankruptcy court becomes aware of facts that suggest that a petition for relief in bankruptcy has been filed in violation of Rule 9011 . . . the court's duty . . . to investigate such facts and the appropriateness of imposing Rule 9011 sanctions may constitute 'cause' within the meaning of § 350(b) for reopening a filing." In re Narod, 138 B.R. 478, 482 (E.D.Pa. 1992). Should Judge Twardowski decide to reopen the underlying case, it will be his decision whether to order Defendants to pay damages pursuant to § 303(i); this court takes no position on that issue.

U.S.C. § 303(i) (emphasis added). The subsection clearly contemplates that the same court that dismisses the petition is the court that can award damages. Subsection (i) was not meant to be utilized by any other judge.

Neither this court nor the parties were able to locate any case where, as here, § 303(i) sanctions were requested as a separate cause of action in a proceeding separate and apart from the underlying bankruptcy proceeding.⁸ While the fact that no court has previously imposed such sanctions is certainly not determinative, it does support this court's holding that § 303(i) sanctions are designed to be imposed in the pending bankruptcy proceeding.

⁸ Raymark cites Sjostedt v. Salmon, 128 B.R. 313 (Bankr. M.D.Fl. 1991) to support its claim that § 303(i) sanctions can be awarded by a court separate from the adjudicating bankruptcy court. In Sjostedt, a bankruptcy court imposed § 303(i) sanctions that were related to a separately filed involuntary bankruptcy case. However, the judge adjudicating the involuntary bankruptcy had already determined that the petitioner had filed in bad faith and that § 303(i) sanctions were warranted. Before that judge could determine the amount of the sanctions, however, the petitioner from the involuntary proceeding filed his own bankruptcy case. That filing stayed the involuntary proceeding and divested the initial judge of power to impose the § 303(i) sanctions that he had previously determined were warranted. Thus, the second bankruptcy judge was the only judge with the power to determine the amount of and impose the § 303(i) sanctions. This case is distinguishable from the case at hand. First, in Sjostedt the bankruptcy judge had already determined that the involuntary petition had been filed in bad faith. Second, in the bankruptcy case at issue here there was nothing preventing Raymark or Judge Twardowski from following through with the § 303(i) request. Finally, the two cases in Sjostedt involved the same parties and conduct. Here, the case at issue is independent of the underlying involuntary bankruptcy. Thus, I do not find Sjostedt applicable.

In addition, this holding makes sense in light of the fact that this opinion also holds that § 1927 and Rule 9011 sanctions are similarly designed to be imposed by the judge in front of whom the wrongful conduct occurred. Allowing litigants to file completely collateral cases requesting relief that could and should have been requested in the original proceeding is tantamount to allowing litigants to "judge shop" until they find a judge willing to impose sanctions. This would be an inappropriate intrusion into the respect due each judge to manage his or her cases. Except on appeal, it is not the role of a district judge to examine the decisions of a bankruptcy judge or to review the conduct of attorneys before that judge.

The appropriateness of a § 303(i) award must be determined by the bankruptcy judge presiding over the involuntary petition. In this case, that is Judge Twardowski. Therefore, I am dismissing Count I of Raymark's Amended Complaint without prejudice, subject to Raymark bringing its claim in front of Judge Twardowski. He can decide whether he will consider the claim, and, if so, whether the claim has merit.⁹

⁹ The court recognizes that its initial predilection, expressed to the parties at oral argument, was to allow the § 303(i) claim to stand as an independent cause of action. On further reflection, however, and given that neither the parties nor the court found convincing precedent on either side, the court has decided that the most logical interpretation of § 303(i) is that damages pursuant to the statute can be imposed only by the bankruptcy judge who presides over the involuntary proceeding. This does not mean that § 303(i) claims must be brought before the dismissal of the involuntary petition. In re

C. § 1927 Claim

The second count of Raymark's Amended Complaint is for damages pursuant to 28 U.S.C. § 1927, which provides for costs and attorneys' fees from any attorney who "multiplies the proceedings in any case unreasonably and vexatiously." Defendants argue that Raymark has not stated a claim for relief, as § 1927 does not provide an independent cause of action.

This court agrees with Defendants. "[T]he principal purpose of imposing sanctions under 28 U.S.C. § 1927 is 'the deterrence of intentional and unnecessary delay in the proceedings.'" Zuk v. Eastern Pa. Psychiatric Inst., 103 F.3d 294, 297 (3d Cir. 1996), quoting Beatrice Foods v. New England Printing, 899 F.2d 1171, 1177 (Fed.Cir. 1990). This purpose is accomplished by confronting such delay when it occurs, not by allowing a separate lawsuit after the fact. Therefore, I agree with the Second, Fifth, and Ninth Circuit Courts of Appeals that a judge cannot impose sanctions pursuant to § 1927 for conduct that did not occur as part of the proceedings in front of that judge. See GRiD Systems Corp. v. John Fluke Mfg., 41 F.3d 1318, 1319 (9th Cir. 1994) ("Section 1927 cannot reach conduct of a party who is not involved in an action before the sanctioning court at the time of the conduct."); Matter of Case, 937 F.2d 1014,

Cooper School of Art, Inc., 709 F.2d 1104, 1105 (10th Cir. 1983) (dismissal of bankruptcy proceeding does not divest court of jurisdiction to consider damages pursuant to § 303(i)); In re Godroy Wholesale Co., Inc., 37 B.R. 496, 498 (D. Mass. 1984) (same).

1023 (5th Cir. 1991) ("The language of § 1927 limits the court's sanction power to attorney's actions which multiply the proceedings in the case before the court."); Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 69-70 (2d Cir. 1990) ("we have seen no basis for concluding that § 1927 was intended to permit a litigant to institute a new lawsuit to collect excess costs and fees incurred in a prior litigation.").¹⁰

Although not mentioned by the parties, the court finds necessary some discussion of Chambers v. Nacso, Inc., 501 U.S. 32 (1991). In Chambers, the Supreme Court held that a district court's imposition of sanctions for a party's conduct before other tribunals was appropriate, as long as the party received a hearing. Id. at 57. However, in that case the Court was discussing the imposition of sanctions pursuant to the district court's inherent power. The inherent power of the court to sanction is distinct from the power to sanction granted by statute or rule. Id. at 46.

¹⁰ Raymark argues that the district court and the bankruptcy court are not separate courts, and that therefore the district court may impose § 1927 sanctions for conduct occurring in the bankruptcy court. Raymark's argument fails. The purpose of § 1927 is frustrated by the imposition of sanctions in two distinct cases, not in two different courts. In addition, Raymark cites GRiD Systems, which relied on In re Peoro, 793 F.2d 1048 (9th Cir. 1986), to support its point. In Peoro, the Ninth Circuit Court of Appeals affirmed the imposition of sanctions by two district court judges upon a bankruptcy litigant for actions that occurred in the bankruptcy court. However, those sanctions had originally been imposed or recommended by the bankruptcy judges. That is not the case here. In any event, insofar as the Ninth Circuit Court of Appeals held that district courts and bankruptcy courts are not separate courts for the purposes of the imposition of sanctions, this court respectfully disagrees.

In addition, all of the conduct cited by the Court to support its assertion that the district court could impose sanctions for abuses occurring beyond the courtroom was in some way related to the case before the district court. In other words, the conduct in Chambers that formed the basis of the sanctions award, though it did not occur as part of the proceedings in front of the district court, still caused delay in the district court. Such is not the case here.

Raymark cites Gordon v. Heimann, 715 F.2d 531, 538-39 (11th Cir. 1983) for the proposition that "[f]ee requests also . . . may be made, in appropriate cases, . . . in a separate subsequent action." However, the cases cited in Gordon all involved attorneys' fees for conduct that was related to the case in which the court awarded fees. In addition, the court of appeals in Gordon limited its statement to "appropriate cases." In the case at bar, the conduct complained of is completely unrelated to the proceedings before me. This is not an appropriate case in which to request sanctions in a separate action. Therefore, I agree with the only other judge to have thoroughly examined this portion of Gordon that the language of the court of appeals "only relates to a party's filing a statutorily authorized motion for attorney's fees for expenses incurred in the earlier action before the same court in which the party was successful." CJC Holdings, Inc. v. Wright & Lato, Inc., 142 F.R.D. 648, 655 (W.D.Tx. 1992) (citation omitted), rev'd on other grounds, 989 F.2d 791 (5th Cir. 1993).

The actions complained of by Raymark did not in any way delay or interfere with the proceedings in this court. If Defendants engaged in improper conduct, the court in which that conduct occurred is the proper forum to request sanctions. Therefore, Count Two of Raymark's Amended Complaint cannot stand as an independent cause of action and is dismissed.¹¹

D. Rule 9011

The third count of Raymark's Amended Complaint is for violation of Federal Rule of Bankruptcy Procedure 9011. Bankruptcy Rule 9011, like Federal Rule of Civil Procedure 11, is a procedural rule designed to deter improper attorney conduct by allowing a court to sanction attorneys. Like Raymark's § 1927 count, however, the Rule 9011 claim cannot stand as an independent cause of action.

If a procedural rule "provided an independent cause of action[,] it would by inference provide an independent basis for jurisdiction; i.e., violation of a federal rule. It is clear, however, that the Federal Rules of Civil Procedure provide no

¹¹ If, as discussed above, Raymark chooses to file a motion to reopen the underlying bankruptcy proceeding and Judge Twardowski allows such a reopening, it may be possible for Raymark to request § 1927 sanctions at that time. Raymark complains that the bankruptcy court may not have the power to impose sanctions pursuant to § 1927. See Regensteiner Printing Co. v. Graphic Color Corp., 142 B.R. 815, 818 (Bankr. N.D. Ill. 1992). However, that is an issue for Judge Twardowski to decide if and when it is before him. In any event, Judge Twardowski has the power to impose sanctions pursuant to Rule 9011, even if § 1927 sanctions are unavailable. Id. at 819.

independent basis for subject matter jurisdiction." National Risk Management, Inc. v. Bramwell, Civ. A. No. 92-4366, 1992 WL 368370, at *5 (E.D.Pa. Dec. 3, 1992), citing, Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 370 (1978). The Supreme Court in Owen Equipment cited Federal Rule of Civil Procedure 82 to support its holding that procedural rules provide no independent basis for subject matter jurisdiction, as Rule 82 states that procedural rules "shall not be construed to extend or limit the jurisdiction of the United States district courts[.]" Fed.R.Civ.P. 82. The same rationale applies here, as Bankruptcy Rule 9030 provides that the bankruptcy rules "shall not be construed to extend or limit the jurisdiction of the courts[.]" Therefore, since Rule 9011 cannot create federal jurisdiction, it cannot stand as an independent count in Raymark's complaint.

In addition, Raymark's request for Rule 9011 sanctions comes too late. Although the Third Circuit Court of Appeals has yet to rule on this exact issue, the court has held that "certain distinguishing features bear on the desirability of a more restrictive approach to timeliness in resolving sanction disputes." Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 98 (3d Cir. 1988). This more restrictive approach led the court to hold that all Rule 11 motions must be filed "before the entry of a final judgment." Id. at 100. Though Pensiero concerned timeliness of filing for Rule 11 motions, not Rule 9011 motions, the rationale are the same. First, there is no "good reason to wait until the lawsuit has been

concluded" before filing a Rule 9011 motion. Id. at 98. Second, with both Rule 11 and Rule 9011, "[s]wift disposition of [the] motion is essential so that any ensuing challenge to it might be included with the appeal on the merits. This approach serves the interest of judicial economy without risking a significant waste of district court efforts." Id. at 99. In this case, three months elapsed between the dismissal of the second involuntary petition and final closure of the case. Raymark had sufficient time in which to request Rule 9011 sanctions, and instead waited to make its request in front of a new judge.¹²

E. Preemption of Raymark's State Law Claims

Defendants next contend that Counts IV through VII of Raymark's Amended Complaint are preempted by the Bankruptcy Code.¹³ Federal preemption of state law causes of action is appropriate if Congress expressly legislates such preemption, or if Congressional intent can be implied from the federal legislation. If Congress has legislated comprehensively and occupied an entire field of regulation, leaving no room for supplemental state regulation,

¹² Again, as with the § 1927 claim, if the underlying case is reopened it may not be too late for Judge Twardowski to impose sanctions pursuant to Rule 9011. This, however, is an issue for Judge Twardowski.

¹³ Count IV is for Wrongful Use of Civil Proceedings pursuant to 42 Pa.C.S.A. §§ 8351-8354; Count V is for Abuse of Process; Count VI is for Tortious Interference with Contractual Business Relations; Count VII is for Civil Conspiracy.

preemption is implied. International Paper Co. v. Ouellette, 479 U.S. 481, 491 (1987). Preemption is also implied if state law interferes with the accomplishment and execution of Congressional objectives. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 204 (1983).

In the instant case, Congress has not expressly preempted state claims such as Raymark's in the Bankruptcy Code. However, Congressional intent can be implied by looking to the remedies available in the Code. As noted by the District Court of Maryland, "[r]emedies and sanctions for improper behavior and filings in the bankruptcy court . . . are matters on which the Bankruptcy Code is far from silent[.]" Koffman v. Osteoimplant Tech., Inc., 182 B.R. 115, 124 (D.Md. 1995). Debtors injured by the filing of an involuntary petition have both § 303(i) and Rule 9011 at their disposal, and these remedies can fully compensate such debtors. However, the existence of a comprehensive legislative scheme, by itself, is insufficient to support preemption without some other "special features" that warrant preemption. English v. General Electric Co., 496 U.S. 72, 87 (1990).

I find that the bankruptcy scheme has sufficient "special features" to justify preemption. First, "Congress has expressed its intent that bankruptcy matters be handled in a federal forum by placing bankruptcy jurisdiction exclusively in the district courts as an initial matter." MSR Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 913 (9th Cir. 1996). Second, "the adjustment of

rights and duties within the bankruptcy process itself is uniquely and exclusively federal. . . . [T]he highly complex laws needed to constitute the bankruptcy courts and regulate the rights of debtors and creditors also underscore the need to jealously guard the bankruptcy process from even slight incursions and disruptions brought about by state malicious prosecution actions." Id. at 914. Third, "the unique, historical, and even constitutional need for uniformity in the administration of the bankruptcy laws is another indication that Congress wished to leave the regulation of parties before the bankruptcy court in the hands of the federal courts alone." Id. at 915. I agree with the Ninth Circuit Court of Appeals that not to find the state claims preempted would lead to "a world where the specter of additional litigation must haunt virtually every actor in a bankruptcy proceeding." Id. at 916.

Several other state courts, citing MSR Exploration and an earlier Ninth Circuit Court of Appeals case, Gonzales v. Parks, 830 F.2d 1033 (9th Cir. 1987), have also held that state law claims such as Raymark's are preempted by the Bankruptcy Code. See Koffman, 182 B.R. at 125 ("Allowing state tort actions based on allegedly bad faith bankruptcy filings . . . to go forward ultimately would have the effect of permitting state law standards to modify the incentive structure of the Bankruptcy Code and its remedial scheme"); Sarno v. Thermen, 608 N.E.2d 11, 18 (Ill. App. 1992); Edmonds v. Lawrence Nat'l Bank & Trust Co., 823 P.2d 219, 222 (Kan.App. 1991); Mason v. Smith, 672 A.2d 705, 708 (N.H. 1996);

Idell v. Goodman, 224 Cal.App.3d 262 (1990). In fact, only one court has held that state law claims are not preempted by the remedies in the Bankruptcy Code. The District Court of Appeal of Florida, writing before MSR Exploration, stated that "it is not immediately apparent how the prospect of state courts doing what the bankruptcy courts already can do [i.e., penalize bad faith filings] might deter good faith filers. . . . [And, w]e have already considered any supposed need for interpretive uniformity and found it unlikely." R.L. LaRoche, Inc. v. Barnett Bank of South Florida, N.A., 661 So.2d 855, 862, 864 (Ct. App. 4th Dist. 1995). I find the need for uniformity compelling, and am not persuaded by LaRoche. In addition, because the purpose of our bankruptcy scheme is to give debtors a fresh start while concurrently protecting creditors, any interference with this scheme as envisioned by Congress would be inappropriate.

Raymark points to the Third Circuit Court of Appeals' opinion in Paradise Hotel Corp. v. Bank of Nova Scotia, 842 F.2d 47 (3d Cir. 1988), to support its argument that preemption is not warranted.¹⁴ In Paradise Hotel, the court of appeals held that,

¹⁴ Raymark also argues that the Ninth Circuit Court of Appeals' opinions, and Gonzales in particular, dealt with the problem of state court interference in the bankruptcy process, not with state law interference. Thus, they argue, though the Ninth Circuit Court of Appeals held that state courts cannot impose their rulings on the bankruptcy process, federal courts should not be similarly barred. This argument is not compelling. I am unable to discern any reason why state courts should be completely barred from entertaining state law claims relating to a bankruptcy filing, but federal district courts sitting in

upon completion of Chapter 11 proceedings in the bankruptcy court, the debtor in that case could maintain a district court lawsuit alleging malicious prosecution and abuse of process by the creditor. However, the court did not discuss jurisdiction, preemption, or Gonzales, focusing instead on whether § 303(i)(2) should be an exclusive remedy in that case. In fact, that court explicitly limited its holding to claims "like those of Paradise" in "situation[s] of this kind." Paradise Hotel, 842 F.2d at 52. In Paradise Hotel, the debtor had exercised his right to convert his Chapter 7 proceeding to a Chapter 11 proceeding, which forced a release of his § 303(i) claim. To hold that § 303(i) was exclusive, the court argued, would require the debtor

to choose between two unattractive alternatives. One alternative would be to pay the price of indefinitely postponing the conversion in order to litigate the legal sufficiency of the petition, the bad faith of the petitioner, and the amount of its damages in the Chapter 7 case. The other alternative would be to convert immediately in order to secure the Chapter 11 advantages the debtor was intended to have but thereby release its claims against the petitioner who allegedly petitioned in bad faith. We think Congress did not intend that a debtor should have to pay this kind of a penalty for exercising its statutory right to convert promptly."

Id. at 52.

Paradise Hotel is inapplicable here. Not only is that opinion explicitly restricted to its facts, but the rationale of the opinion is inapposite, as, unlike the debtor in Paradise, Raymark had the opportunity -- and indeed, utilized that opportunity by

diversity or exercising supplemental jurisdiction should not be similarly barred.

filing § 303(i) counterclaims -- to litigate the filing of the involuntary petitions. Raymark was never faced with "two unattractive alternatives," and I see no reason why preempting Raymark's state law claims would be unfair.

The purpose of § 303(i) and Rule 9011 is to address exactly the misuse of the bankruptcy system that Raymark seeks to litigate through its state law claims. To allow such claims based upon exclusively federal conduct such as the filing of a bankruptcy petition, when Congress has created a comprehensive Bankruptcy Code to address any misuse, would unnecessarily interfere with the scheme created by Congress. I do not believe that such a result was intended. Therefore, I find that Raymark's claims are preempted.

F. Attorneys' Fees Claim

Count VIII of Raymark's Amended Complaint requests attorneys' fees pursuant to 42 Pa.C.S.A. § 2503. Though Raymark does not specify under which subsection of § 2503 it is requesting fees, the court assumes that Raymark requests fees pursuant to § 2503(7) and § 2503(9).¹⁵ Section 2503(7) allows for fees to any participant "as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter," and § 2503(9)

¹⁵ The court makes this assumption due to the apparent inapplicability of the other subsections. Raymark is, of course, welcome to clarify the matter.

allows for fees to any participant "because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." Defendants claim that fees pursuant to § 2503 are available only during the matter in which the improper conduct has occurred. Since the alleged improper conduct occurred before the commencement of the litigation before me, Defendants argue, Raymark is not entitled to attorneys' fees under § 2503. This court agrees.

It is clear that Raymark is not entitled to fees for conduct that occurred before the commencement of the case in court. Cher-
Rob, Inc. v. Art Monument Co., 594 A.2d 362, 364 (Pa.Super. 1991); Commonwealth Dept. of Transportation v. Smith, 602 A.2d 499, 501 (Pa.Cmwltth.), app. denied, 613 A.2d 561 (Pa. 1992). Indeed, the statute itself provides for fees for conduct that occurred "during the pendency of a matter" and "in commencing the matter." 42 Pa.C.S.A. § 2503(7) and (9). Raymark argues, however, that the conduct at issue did occur during the matter, but the matter was before a different court and judge. However, in Smith, the Commonwealth Court of Pennsylvania held that "matter" within the meaning of § 2503(7) and (9) applies "only to those matters pending or commencing in a court of the unified judicial system of this Commonwealth." Smith, 602 A.2d at 503. Therefore, § 2503 fees are not available for matters pending in the bankruptcy court or the federal district court. See also, Reitz v. Dieter, 840 F.Supp. 353, 355 (E.D.Pa. 1993) (§ 2503(9) fees not available unless the case

was litigated before a Pennsylvania state court or before a federal court sitting in diversity and applying Pennsylvania law; § 2503(9) has no force in federal court where the Federal Rules of Civil Procedure apply). Raymark's claim for attorneys' fees is dismissed.

CONCLUSION

The parties to this proceeding have presented a myriad of motions, amended motions, supplemental motions, letter briefs, and memoranda. After sorting through the motions and examining the facts and law, I have held that (1) Defendant Middlebrooks & Fleming is not subject to this court's personal jurisdiction, (2) the § 303(i), § 1927, and Bankruptcy Rule 9011 counts cannot stand as independent causes of action,¹⁶ (3) Raymark's state law claims are preempted by the Bankruptcy Code, and (4) the § 2503 attorneys' fees count is dismissed. An appropriate Order is attached.

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

¹⁶ Contrary to Defendants' assertions, the fact that Counts I, II, and III of Raymark's Amended Complaint are not independent causes of actions does not mean I have no subject matter jurisdiction over the Complaint. Federal district courts have subject matter jurisdiction over all matters involving a federal question. 28 U.S.C. § 1331. This includes all cases under Title 11. 28 U.S.C. § 1334. Therefore, I have subject matter jurisdiction and am able to adjudicate the personal jurisdiction and preemption issues raised by Defendants.

RAYMARK INDUSTRIES, INC.,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 96-7625
	:	
FREDERICK M. BARON, <u>et al.</u>	:	
Defendants.	:	

O R D E R

AND NOW, this ____ day of June, 1997, upon consideration of all Defendants' Motions to Dismiss and Plaintiff's Responses thereto, it is hereby ORDERED that Defendants' Motions are GRANTED, as follows:

(1) Defendant Middlebrooks & Fleming is DISMISSED for lack of personal jurisdiction,

(2) Counts I, II and III of Raymark's Amended Complaint relate to United States Bankruptcy Court for the Eastern District of Pennsylvania Cases No. 89-20233T and No. 88-21315T, and are DISMISSED without prejudice subject to Plaintiff's proceeding with these claims in those cases, and

(3) Counts IV, V, VI, VII and VIII of Raymark's Amended Complaint are DISMISSED.

This Order applies to all Motions to Dismiss filed by all

Defendants in this case. The clerk is directed to close the docket for statistical purposes.

BY THE COURT:

Edward N. Cahn, Chief Judge